

BANKRUPTCY JUDGESHIP NEEDS

HEARING
BEFORE THE
SUBCOMMITTEE ON
COMMERCIAL AND ADMINISTRATIVE LAW
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS
FIRST SESSION

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JUNE 16, 2009
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BANKRUPTCY JUDGESHIP NEEDS

TUESDAY, JUNE 16, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:14 a.m., in room 2141, Rayburn House Office Building, the Honorable Steve Cohen (Chairman of the Subcommittee) presiding.

Present: Representatives Cohen, Conyers, Watt, Scott, and Jordan.

Staff present: (Majority) James Park, Counsel; Adam Russell, Professional Staff; and (Minority) Zachary Somers, Counsel.

Mr. COHEN. This hearing of the Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, will now come to order.

Without objection, the Chair will be authorized to declare a recess of the hearing. I will now recognize myself for a short statement.

Bankruptcies have been steadily on the rise since October 2006, well before the current economic downturn. With the significant recession that the country is currently experiencing, particularly when combined with the related foreclosure, consumer credit and health care crises, this trend has been exacerbated significantly.

According to the Administrative Office of the U.S. Courts—there were over 1 million bankruptcy filings nationwide for the 12-month period ending March 31, 2009, representing a 33 percent increase over the 12-month period ending March 31, 2008.

Moreover, the sharpest increase in filings was in Chapter 11 cases, where there were—nearly 70 percent increase over the previous year. And bankruptcies involving primarily business debts were up almost 60 percent in that same period of time.

We have had some hearings in this Committee on Chapter 11 and problems associated therewith. We have been hearing for some time that the country is facing the greatest economic crisis since the great depression, and these numbers are stark evidence of that assertion.

A well-functioning bankruptcy system is absolutely critical to helping individuals and businesses weather this economic storm, and having a sufficient number of bankruptcy judges is key to making that system work.

Bankruptcies are extremely high in my district, in the Western District of Tennessee, and one of my predecessors, Walter Chandler, had a lot to do with drafting the bankruptcy laws back in the late 1930's.

Today we consider the recommendations of the Judicial Conference of the United States with respect to bankruptcy judgeships.

The Judicial Conference recommends the authorization of 13 new bankruptcy judgeships, the conversion of 22 temporary judgeships to permanent status, and the extension of two temporary judgeships for another 5 years.

In total, the recommendation affects 25 judicial districts in nine of the 12 geographically based Federal judicial circuits.

The Judicial Conference's recommendations are based on its comprehensive study of bankruptcy judgeship needs.

Last time Congress authorized or even addressed the issue of bankruptcy judgeships was almost 4 years ago, when it authorized 28 temporary judgeships in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 that are now about to expire.

Unfortunately, that is not all that is about to expire, but that is all.

It is well past time that we revise and revisit the critical issue of bankruptcy judgeships needs and I am gratified that we are able to do so today. Accordingly, I look forward to hearing testimony this morning.

And I would now like to recognize Mr. Jordan, who is the Ranking Member once removed, for his opening remarks.

Mr. JORDAN. Thank the Chair for recognizing—for that nice title.

Mr. Chairman, I, too, want to begin by thanking you for holding this hearing and thank our witnesses who are here today for taking time out of their schedule.

As some of you know, additional permanent bankruptcy judges have not been authorized since 1992. Although the House has passed on more than one occasion legislation authorizing additional permanent bankruptcy judges since—since that 1992 date, the Senate, unfortunately, has not acted on this legislation.

Obviously, judges are crucial to the bankruptcy process. They, with the help of bankruptcy trustees, ensure that the work is completed, creditors are paid, assets are properly disbursed.

If judicial workloads become overburdened, it prevents bankruptcy cases from advancing as they should. This either prolongs the bankruptcy process or subtracts from the amount of time judges can dedicate to each of the cases on their dockets.

As consumers and businesses seek to use bankruptcy as a means to receiving a fresh start from the economic stress they—the current recession has caused, it is important that we have a sufficient number of judges to make the system work properly.

The need for additional judges is premised on a comprehensive study of judicial resource needs conducted by the Judicial Conference. With the expertise of our witnesses, today's hearing should provide a useful opportunity for us to obtain a greater understanding of how the Judicial Conference assesses the Nation's bankruptcy judgeship needs and assures that all currently authorized judicial resources are maximized.

I do want to note that I have some concerns that the 1991 case weights that are the basis for the current study of bankruptcy judgeship needs are woefully out of date. There are understandable reasons as to why the study is so out of date.

Nonetheless, I will be interested in the witnesses' testimony regarding the current study, whether it can be relied on, and what the cost to the bankruptcy system will be of waiting until an updated survey and study—which I understand is currently in the works—is, in fact, completed.

I look forward to our witnesses' testimony. Of course, I do have to leave here in about a half an hour, so—look forward to their testimony nonetheless, and yield back my time.

Mr. COHEN. I thank the gentleman for his statement.

And I now recognize Mr. Conyers, the most distinguished Member of the Subcommittee, from the great city of Detroit, which is having some interaction with the bankruptcy courts, I believe, for an opening statement and welcome him.

Mr. CONYERS. Thank you, Mr. Chairman.

I am here to commend you for taking this subject up as rapidly as you have with the Committee. I am very proud of the witnesses that have joined us for this discussion.

And I don't think it is tipping off anybody to anything, but we have a roughly bipartisan agreement, a consensus, on the need for more judges. Now, I won't say that that is elementary, because nothing in the Congress is elementary. You may think it is elementary, but it is very important.

And I hope with the distinguished group that you have gathered here today for this discussion that we go underneath the—call a need for more numbers. I mean, that is—I don't know how you could argue that.

But what else do we need to look at in—in this whole unique part of the Federal judiciary? What else needs to be examined? This is the Committee that has that jurisdiction.

So we don't want to just have a superficial discussion about how many numbers we need, how fast we need them, how we need to make permanent all the temporaries that are about to expire, but what—what about the bankruptcy court and the procedures and rules and conduct in which it operates, and the tragedy that millions of people are now being forced into this as a way out?

This is a relief valve. It is no longer an embarrassment. It used to be a disgrace. Nobody would ever want to talk about it. That period of time in our culture is gone. You are hoping you can get into bankruptcy.

And now the problem is there is long lines. You can't even get there in a timely fashion. So a lot of damage goes on in the meantime, while you are processing a person, a family, a small business for this economic circumstance that has befallen them.

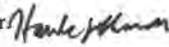
So I am proud to be on your Committee.

Mr. COHEN. Thank you. Appreciate your statement. Likewise, I reciprocate. I am proud to be on your Committee.

Without objection, other Members' opening statements will be included in the record.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF THE HONORABLE HENRY C. "HANK" JOHNSON, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA, AND MEMBER, SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

Statement for Subcommittee on Commercial and Administrative Law
 Hearing on Bankruptcy Judgeship Needs
 Congressman Henry C. "Hank" Johnson, Jr. 
 June 16, 2009

Thank you, Mr. Chairman, and thank you for holding this hearing on the need for additional bankruptcy judges. Our federal courts are overburdened and some judges simply cannot handle their current caseload. There is a need for new judges that extends to our bankruptcy courts. Bankruptcy courts are an integral part of our federal judiciary and it is important that we take seriously requests from those in the trenches asking for additional judicial resources. Bankruptcy filings topped 1 million in 2008 and they are unlikely to decrease in the near future. This overburdening is not a situation created by the current economic crisis, but the current situation is certainly exacerbating it. Additional judgeships are critical to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings.

Congress has authorized new bankruptcy judgeships in 2005, but we did not authorize the number of judgeships recommended by the Judicial Conference and the authorized judgeships are temporary. Those judgeships will soon expire. We have a responsibility to ensure the bankruptcy system has adequate judicial resources to manage its caseload efficiently. The Judicial Conference's report makes clear that more judges are needed. Indeed, it is my firm belief that even the Department of Justice should add additional bankruptcy trustees. As we have seen with the myriad of financial bailouts and ensuing insolvencies and foreclosure crises, the field of bankruptcy is ever growing. More resources are needed to combat the increasing workloads. I urge my colleagues to act swiftly to enact legislation implementing the recommendations of the Judicial Conference so our bankruptcy judges can continue their important work.

I yield back the balance of my time.

Mr. COHEN. I am now pleased to introduce the witness—the first witness, and we introduce our witnesses just prior to their speaking in this hearing today.

I want to thank everybody here for their appearing and their testimony. Without objection, your written statements will be placed in the record. We ask you limit your oral remarks to 5 minutes.

There is a lighting system. It shows that if you—green light means you have started and you have got anywhere from 5 to 1 minute left. When it hits yellow, you are in your last minute. And when it goes to red, you should have—be concluding promptly.

After each witness has presented his or her testimony, Subcommittee Members will be permitted to ask questions, also subject to the 5-minute limitation. And you have got a button there when you do start to push to turn on your microphone.

Our first witness is Ms. Barbara Lynn—it is to your right hand, your index finger, kind of like when you are going on the airplane on that clear deal.

Our first witness is Barbara Lynn. Judge Lynn took the oath of office as United States district judge for the Northern District of Texas on Valentine's Day 2000.

Judge Lynn is chair of the committee on the administration of bankruptcy systems, the Judicial Conference of the United States, and been very involved in different ABA activities. And we appreciate Judge Lynn for being here.

And you can begin your testimony.

Judge LYNN. Good morning.

Mr. COHEN. Good morning.

Is she on?

Are you on?

**TESTIMONY OF THE HONORABLE BARBARA M.G. LYNN,
UNITED STATES DISTRICT COURT FOR THE NORTHERN DIS-
TRICT OF TEXAS, ON BEHALF OF THE JUDICIAL CON-
FERENCE OF THE UNITED STATES**

Judge LYNN. Better? Yes. All right. Good morning.

Chairman Cohen, Chairman Conyers and Members of the Subcommittee, as Chairman Cohen has told you, I am a district judge in Dallas, Texas. I am also the chair of the administration of the bankruptcy system committee of the Judicial Conference, and it is in that capacity that I appear before you today.

I am pleased to testify in support of the recommendations for bankruptcy judges. Sufficient judicial resources are essential to ensure that our bankruptcy courts can effectively and efficiently determine the rights and the responsibilities of parties in cases before them.

In performing its statutory duty to advise Congress on the need for bankruptcy judgeships, our Judicial Conference makes biennial recommendations for the authorization of additional bankruptcy judgeships, the continuing need for existing bankruptcy judgeships and other judgeship actions.

In exercise of that duty, as the chairman has advised, we recommend that Congress authorize the following: 13 new permanent bankruptcy judgeships, the conversion of 22 existing temporary judgeships to permanent status, and the extension of two temporary bankruptcy judgeships for 5 years.

The need for these judgeships is critical. Our filings are approaching near-record levels, just as the bankruptcy courts are in peril of losing many of their judicial resources—specifically, the temporary judgeships, which were created or extended by Congress in connection with the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act, which we in the field call BAPCPA.

Today I urge your assistance in passing the judgeship legislation which will alleviate these overcrowded dockets and assure that the bankruptcy system can satisfy its vital mission, which is much in the minds of the public in our current economic circumstances.

These judgeships are, I submit to you, essential to the administration of justice. Although the Judicial Conference sought 47 additional permanent and temporary judgeships in early 2005, the year when BAPCPA was passed, only 28 temporary judgeships were authorized, and most of those were based on an outdated 1999 judicial conference recommendation.

All of the temporary judgeships authorized or extended by BAPCPA are now approaching their lapse dates, after which the next vacancies in those districts cannot be filled.

At the same time, the workload of bankruptcy judges has substantially and steadily increased since the first full year after BAPCPA took effect, and filings are nearing pre-BAPCPA levels.

Without congressional action on the judicial resources recommended by the conference, bankruptcy courts could simultaneously face record filings and a reduction in judicial resources needed to handle them.

Both business and non-business case filings are increasing dramatically. Pro se filings, which require additional judicial time to equitably adjudicate, are among these increased filings.

Moreover, the provisions of BAPCPA have added to the particular work required of bankruptcy judges in each case.

To be specific about the picture of bankruptcy over the last several years, I note that bankruptcy case filings have increased steadily. The Chairman mentioned these numbers, so I will not repeat them, but I will simply say that as of the year ending March 31, 2009, the number of filings from 2006 had doubled.

We are now at 1.2 million as of that time frame, without even accounting for seasonal adjustments. And that is nearly 60 percent higher than it was during the first year following BAPCPA's passage.

The judicial conference fully understands the current budget climate, and its recommendation for authorization of additional judgeships is not undertaken lightly. The districts that require additional resources have shown a sustained need for additional judgeships, and they remain overburdened by crushing caseloads.

I will cite the Eastern District of Michigan as an example, and we have requested additional resources there since 1993.

In the Western District of Tennessee, where my colleague Judge David Kennedy sits and Representative Cohen, of course—is your district, a permanent judgeship has been recommended since 1997.

If the temporary judgeship authorized by BAPCPA expires with the next vacancy in or after July 2011, that district will revert to the number of judges it had in 1992 before it experienced a dramatically increased workload.

The conference takes seriously its role as a steward of taxpayer dollars, and I assure you that we have requested judgeship vacancies be filled only where there is a workload need after exploring all alternatives to filling the need for additional resources.

It is our view that bankruptcy judgeship legislation is the necessary solution to cure the problem of inadequate resources to fill these needs.

The survey that we conducted was mentioned. I will be happy in the question period, if you like, to detail all of the factors that we consider in addition to the weighted caseload.

And, Mr. Jordan, I will happily entertain any questions you might choose to ask me about the weighted case load and how that works.

But we believe we have sufficient data to fully justify that each of these judgeships be filled. We believe that to ensure that the bankruptcy court system operates as Congress has intended that we need all of these resources to fill a critical void in our system.

I thank you very much for your kind attention, and I will be happy to answer any questions you might choose to ask me.

[The prepared statement of Judge Lynn follows:]

PREPARED STATEMENT OF THE HONORABLE BARBARA M.G. LYNN

JUDICIAL CONFERENCE OF THE UNITED STATES

TESTIMONY OF

**JUDGE BARBARA M. G. LYNN, CHAIR
COMMITTEE ON THE ADMINISTRATION OF THE
BANKRUPTCY SYSTEM**



BEFORE

**THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

ON

**THE 2009 BANKRUPTCY JUDGESHIP RECOMMENDATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES**

JUNE 16, 2009

Chairman Cohen and members of the Subcommittee,

My name is Barbara Lynn. I am a District Court Judge in the Northern District of Texas. I am also Chair of the Judicial Conference's Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee") and in that capacity I appear before you today.

Thank you for the opportunity to testify in support of the Judicial Conference's 2009 bankruptcy judgeship recommendation, which was transmitted to Congress on February 9, 2009.

Sufficient judicial resources are essential to ensure that the bankruptcy courts can effectively and efficiently adjudicate the rights and responsibilities of parties who come before them in bankruptcy cases and proceedings. In performance of its statutory duty to advise Congress on the need for bankruptcy judgeships, the Judicial Conference makes biennial recommendations for the authorization of additional bankruptcy judgeships, the continuing need for existing bankruptcy judgeships, and other judgeship actions.

The Judicial Conference recommends that Congress authorize 13 new permanent bankruptcy judgeships in 10 judicial districts, convert 22 existing temporary bankruptcy judgeships to permanent status in 15 judicial districts, and extend two existing temporary bankruptcy judgeships for five years. For your convenience, I have provided as Attachment 1 a chart listing, by district, the additional judgeships and other judgeship actions recommended by the Judicial Conference.

The need for these judgeships is critical, with filings increasing to near-record levels and the bankruptcy courts in peril of losing many of their judicial resources. It is time to pass judgeship legislation to alleviate the overcrowded dockets and assure that the bankruptcy system operates efficiently, especially in our current economic circumstances. Today, I ask for your assistance in securing sufficient resources for the bankruptcy system.

THE NEED FOR ADDITIONAL JUDGESHIPS

The judgeships recommended by the Judicial Conference are essential. New bankruptcy judgeships were last authorized in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), and even then, fewer judgeships were authorized than were needed. Before that, new bankruptcy judgeships had not been authorized by Congress since 1992. All of the judgeships authorized or extended by BAPCPA are temporary judgeships¹ that are now approaching their lapse dates, after which vacancies in those districts cannot be filled. At the same time, workload has substantially increased since the first full year after BAPCPA took effect, with filings nearing pre-BAPCPA levels. Without Congressional action on the judicial resources recommended by the Conference, the bankruptcy courts could face record filings at the same time as a reduction in judicial resources to handle them.

Since enactment of BAPCPA, the bankruptcy workload has increased substantially. Both business and non-business case filings are increasing dramatically in the current economy. Pro-se filings, which require additional judicial time to equitably adjudicate, are among the increased filings. Moreover, BAPCPA increased the work required of bankruptcy judges in each case.

Case filings have increased steadily since BAPCPA took effect. During 2006 (the first full year following the general implementation of BAPCPA) there were about 618,000 bankruptcies filed. Since 2006, filings have increased consistently, with a 38% increase from 2006 to 2007 and a 31% increase from 2007 to 2008. In the 12-month period ending March 31, 2009, there were approximately 1.2 million bankruptcy petitions filed -- nearly double the number of petitions filed

¹ All bankruptcy judges are appointed for terms of 14 years. Usually, a temporary judgeship is set to lapse five years or more after a judge is appointed. During these five years, any vacancy in the district can be filled. After the five year period expires ("the lapse date"), the first vacancy that occurs in the district cannot be filled. Congress can extend the lapse date. Congress can also convert temporary judgeships to permanent status.

in 2006. Moreover, seasonally adjusted monthly filings² for March 2009 at annual rates stood at just over 1.4 million, nearing the level of filings seen in late 2004, the last year prior to BAPCPA's enactment.

Weighted filings per authorized judgeship have also seen significant increases. From 2006 to 2007, the national average weighted filings per authorized judgeship increased 16% and from 2007 to 2008 the average increased a further 27%. As of the end of March 2009, the national average weighted filings per authorized judgeship stood nearly 60% higher than the first year following BAPCPA.

Even apart from the changes brought about by BAPCPA, the workload associated with these filing levels is underestimated in the current calculations due to other changes that have occurred in the bankruptcy system since the time the case weight formula was developed in 1991. For example, complex chapter 11 cases, and mega-cases barely existed when the current case weights were developed. The amount of time required to adjudicate complicated cases is thus largely missing from the current case weights.

In addition to near record case filings, bankruptcy courts now face bankruptcy cases that are more complex and time consuming than anything previously handled. Cases such as Chrysler, Circuit City, and other national and international corporate reorganizations consume a tremendous amount of a bankruptcy court's time. Substantial increases in consumer case filings are also problematic for the courts that have inadequate judicial resources.

For many years, the judiciary has sought to secure additional bankruptcy judgeships. In 1999, the Judicial Conference recommended to Congress the authorization of 24 additional judgeships and conversion of two temporary judgeships to permanent. In anticipation of

² Because filings have been increasing at a steady pace month to month, 12 month totals understate the current bankruptcy filing rate. Seasonally adjusted figures account for this undercounting.

enactment of then pending bankruptcy legislation that included additional bankruptcy judgeships, the Judicial Conference did not submit a new recommendation to Congress in 2001. When that legislation was not enacted, a new Conference recommendation for 36 additional judgeships and action on existing temporary judgeships was transmitted in 2003, superseding the 1999 recommendation. By early 2005, the circuits requested and the Judicial Conference recommended 47 additional judgeships and action on the existing temporaries. In April 2005, however, BAPCPA was enacted, authorizing only 28 temporary bankruptcy judgeships based upon the outdated 1999 Conference recommendation. Five of the judgeships authorized by BAPCPA had not been recommended by the Conference.

Immediately following enactment of BAPCPA, the Judiciary transmitted draft legislation for 24 additional judgeships to complete the authorization of all judgeships recommended in 2005. In the wake of BAPCPA, the Judicial Conference took a very conservative position in making its 2007 recommendation. The new law required interpretation, process changes, and additional per-case work. Additionally, the courts were processing all of the cases filed in the run-up to the effective date of BAPCPA. However, the actual work being performed by the court was not reflected in the 2007 caseload numbers, which were skewed by the combination of reduced filings immediately following BAPCPA's enactment and a case weighting formula that pre-dated BAPCPA. Nonetheless, the Judicial Conference conservatively abided by the procedures and standards it developed in 1991, and consequently recommended only four additional judgeships plus the conversion of several existing temporary judgeships.

The Judicial Conference understands the current budget climate, and its recommendation for authorization of additional bankruptcy judgeships is not undertaken lightly. The number of judgeships recommended by the Conference has increased with each new request because of the

backlog of needed judgeships that were not authorized, coupled with escalating case filings. The districts that require additional resources have shown a sustained need for the additional judgeships, under great stress and overburdened by burgeoning caseloads.

For example, for the Eastern District of Michigan, additional judicial resources have been recommended since 1993. One additional judgeship was recommended in 1993, 1995, 1997, and 1999. Two additional judgeships were recommended in 2003. By 2005, four additional judgeships were recommended. After BAPCPA authorized only one temporary judgeship in 2005, the Conference recommended three judgeships in 2007 and recommends those same three judgeships now based upon that district's overwhelming workload.

For the Northern District of Mississippi, additional judicial resources have been recommended since 2003. One additional judgeship was recommended in 2003, 2005, 2007, and now again in 2009. This is a single-judge court, and its weighted case filings are nearly double the Judicial Conference's designated weighted case filings per judgeship for bankruptcy courts. Additionally, the judge must travel between the court's official duty station in Aberdeen, as well as outlying additional places of holding court in Greenville and Oxford, Mississippi.

The recommended conversions are also necessary to maintain efficient court operations. For the Western District of Tennessee, one additional permanent judgeship was recommended in 1997 and 1999. The recommendation increased to two additional permanent judgeships in 2003 and 2005. In 2005, BAPCPA authorized only one additional temporary judgeship for the district. The temporary judgeship will expire upon the next vacancy occurring on or after July 1, 2011. At that point, the Western District of Tennessee will revert to the number of bankruptcy judgeships it was authorized in 1992, despite an ever-increasing workload.

Similarly, for the Eastern District of Virginia, one additional permanent judgeship was recommended in 1997, 1999, 2003, and 2005. In 2005, BAPCPA authorized only a temporary bankruptcy judgeship for that district. That judgeship is now set to lapse on or after September 11, 2011. This means that a district that asked for additional resources for over twelve years is now at risk of reverting to its resource levels dating back to 1992.

The Judicial Conference takes seriously its role as a steward of taxpayer dollars. Therefore, bankruptcy judgeship vacancies are filled only when there is a workload need. In addition, before recommending judgeship actions, the Conference examines whether courts are using alternative means of maximizing their existing judicial resources. An overburdened court may use several strategies to temporarily alleviate the caseload burden,³ such as streamlined case management procedures, assistance from other bankruptcy courts, recalled judges, expansion of automation programs, or addition of more support personnel. Rising case filings and increasing weighted caseloads per judgeship, however, quickly outpace the benefits of these programs. A circuit's request for additional judicial resources is made only after a sustained pattern demonstrates that the judicial caseload of the district can no longer be administered by other methods. Thus, each district for which a judgeship action is requested has already experienced a sustained elevated caseload that exceeds the capabilities of the number of judges in that district.

Bankruptcy judgeship legislation is the necessary solution. Such legislation is needed to alleviate the overcrowded dockets and ensure that the bankruptcy system operates efficiently in the current economy. Bankruptcy courts cannot be expected to function perpetually with overwhelming caseloads.

³ These strategies are detailed further in Attachment 3.

BASIS FOR JUDGESHIP RECOMMENDATIONS

The Judicial Conference makes its judgeship recommendation pursuant to the statutory requirement⁴ to submit recommendations to Congress for new bankruptcy judgeships. To assist the Conference in performing this responsibility, the Bankruptcy Committee biennially conducts a national survey, which follows the requirements of the Judicial Conference's 1991 policy for bankruptcy judgeship recommendations.⁵

The 1991 policy sets out a number of workload factors that should be considered in assessing a circuit's request for additional bankruptcy judgeships. The first element is the weighted caseload of the district for which resources are requested. It is generally expected that, in addition to other judicial duties, a bankruptcy court should have a workload of 1,500 or more annual case weighted filings per judgeship to justify an additional judgeship. Recognizing that factors in addition to workload can necessitate additional judgeships, the Conference policy also provides for consideration of: the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; and the availability of alternative solutions and resources for handling the court's workload.

Requests to convert existing temporary judgeships to permanent status are evaluated from the same perspective as the assessment of requests for additional judgeships, using the same weighted caseload standard of 1,500 weighted filings per judgeship and the same additional factors. If a district with a temporary judgeship were to lose that judgeship, and the resulting per-judgeship weighted case filings in that district would meet or exceed 1,500 (and therefore qualify

⁴ 28 U.S.C. § 152 (b) (2).

⁵ The survey process is described in Appendix 4. The Judicial Conference Policy and the Workload Factors are detailed in Attachment 5.

the district for consideration for an additional judgeship during the next survey cycle), it is considered to be evidence of the need to convert the temporary judgeship to permanent status.

This is an analysis based upon both logic and conservation of public resources. It would cost the Federal Government considerable time and expense to permit an existing temporary judgeship to lapse, conduct a survey of the then over-burdened district, process a recommendation through the Bankruptcy Committee and the Judicial Conference, and enact authorizing legislation for a new judgeship in that district. Most of this expensive process can be eliminated, and time saved for both the judiciary and the Congress, by acknowledging the need in that district for a permanent judgeship.

A slightly different caseload standard is followed to evaluate a circuit's request to extend an existing temporary judgeship. For extensions, the weighted caseload standard is 1,000 weighted filings per judgeship. This standard stems from the analysis conducted pursuant to the Judicial Conference's separate statutory duty to report whether there is a continuing need for each bankruptcy judgeship throughout the country.⁶ The continuing needs assessment guides the circuits' decisions whether to fill bankruptcy judgeship vacancies in their bankruptcy courts. In the continuing needs assessment, if a district's weighted filings per judgeship were to remain above 1,000 with one less judgeship in that district, a recommendation would be made that all of the judgeships in that district continue to be needed to manage the workload of the court. Since extensions of temporary judgeships are more analogous to continuing needs than to additional needs, the continuing needs standard is used. If a district with a temporary judgeship were to remain above 1,000 after the loss of the judgeship, then the Conference deems all of the judgeships in the district to be necessary, including the temporary. To avoid losing the necessary temporary

⁶ 28 U.S.C. § 152 (b) (3).

judgeship, the Conference recommends extending the period of time during which the district is protected from losing a judgeship. The additional factors considered for extension requests are the same as for additional judgeship requests.

As Chair of the Bankruptcy Committee, I initiated the most recent judgeship survey in October 2008, asking all chief circuit judges to assess the bankruptcy judgeship needs within their circuits. The Bankruptcy Committee received circuit requests for 14 additional bankruptcy judgeships in 12 judicial districts. Additionally, the Bankruptcy Committee received requests to convert 22 temporary judgeships in 16 judicial districts to permanent status. By February 2009, the Committee had sufficient data to make recommendations on most of these requests, and the Judicial Conference adopted a recommendation, based on the courts' workloads, to authorize nine additional permanent judgeships in six judicial districts, convert 22 existing temporary judgeships to permanent status in 15 judicial districts, and extend one existing temporary judgeship for five years. That recommendation was transmitted to Congress with draft legislation on February 9, 2009. By June 2009, the Committee was able to gather sufficient data to act on the remaining requests, and the Judicial Conference adopted a recommendation, based on the courts' workloads, to authorize four more new permanent judgeships and recommend extension of one more existing temporary judgeship. This brings the total 2009 recommendation to 13 new additional permanent judgeships in 10 judicial districts, conversion of 22 existing temporary judgeships to permanent status in 15 judicial districts, and extension of two existing temporary judgeship for five years each.

The Judicial Conference's 2009 bankruptcy judgeship recommendation supersedes its 2007 recommendation.

CONCLUSION

We share a common interest in ensuring that the bankruptcy court system has adequate judicial resources to manage its caseloads in a just, economical, and timely manner. A near record level of cases is pending in our bankruptcy courts, and the case filings continue to increase. Many of the districts for which additional bankruptcy judgeships are sought have had overwhelming filings for years, pre-dating the BAPCPA authorization of additional resources. Although the judiciary has developed creative and innovative techniques to fully utilize its existing judgeships, the bankruptcy courts can no longer operate as effectively in some districts because of the heavy workload. Our judicial resources are strained, and the cost to society of an overburdened bankruptcy system, especially in this economic climate, is enormous.

I therefore urge you to provide for 13 additional permanent bankruptcy judgeships, conversion of 22 existing temporary judgeships, and extension of two existing temporary judgeships as recommended by the Judicial Conference. Thank you, once again, for your consideration of our recommendations and your support for the bankruptcy system. I look forward to our continuing joint efforts to improve the administration of bankruptcy system and believe that the enactment of the Judicial Conference's 2009 bankruptcy judgeship recommendations will be our most important first step.

I would be pleased to answer any questions.

**2009 BANKRUPTCY JUDGESHIP RECOMMENDATIONS
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES**

BANKRUPTCY DISTRICT	TOTAL CURRENT BANKRUPTCY JUDGESHIPS	LAPSE DATES OF TEMPORARY JUDGESHIP(S)	2009 JUDICIAL CONFERENCE RECOMMENDATION TOTAL: 13 additional P 22 conversions from T to P 2 extensions
FIRST CIRCUIT			
New Hampshire	1P, 1T*	11/12/1998	convert 1T to P
SECOND CIRCUIT			
New York - Northern District	2P, 1T	2/16/2012	convert 1T to P
New York - Southern District	9P, 1T	11/30/2011	convert 1T to P
THIRD CIRCUIT			
Delaware	1P, 5T	1) 4/26/2010 2) 12/9/2010 3) 2/23/2011 4) 3/13/2011 5) 3/13/2011	convert 5T to P
New Jersey	8P, 1T	10/3/2011	convert 1T to P
Pennsylvania - Eastern District	5P, 1T	6/28/2011	extend 1T by five years
Pennsylvania - Middle District	2P, 1T	9/28/2011	convert 1T to P
FOURTH CIRCUIT			
Maryland	4P, 3T	1) 4/3/2011 2) 4/3/2011 3) 6/19/2011	convert 3T to P
North Carolina - Eastern District	2P, 1T	7/28/2011	convert 1T to P
North Carolina - Middle District	2P, 1T	11/23/1998	extend 1T by five years
North Carolina - Western District	2P		add 1P
Virginia - Eastern District	5P, 1T	9/11/2011	convert 1T to P
West Virginia - Southern District	1P		add 1P
FIFTH CIRCUIT			
Mississippi - Northern District	1P		add 1P
SIXTH CIRCUIT			
Michigan - Eastern District	4P, 1T	7/15/2011	add 3P
Tennessee - Eastern District	3P, 1T	4/26/2010	convert 1T to P
Tennessee - Western District	4P, 1T	7/1/2011	convert 1T to P
EIGHTH CIRCUIT			
Arkansas - Eastern & Western Districts	3P		add 1P
NINTH CIRCUIT			
California - Eastern District	6P, 1T	runs from date of appointment when filled	add 1P and convert 1T to P
Nevada	3P, 1T	9/1/2011	add 1P & convert 1T to P
ELEVENTH CIRCUIT			
Florida - Middle District	8P		add 1P
Florida - Northern District	1P		add 1P
Florida - Southern District	5P, 2T	1) 2/10/2011 2) 2/13/2011	convert 2T to P
Georgia - Northern District	8P		add 2P
Georgia - Southern District	2P, 1T	3/22/2011	convert 1T to P

* P=permanent judgeship, T=temporary judgeship

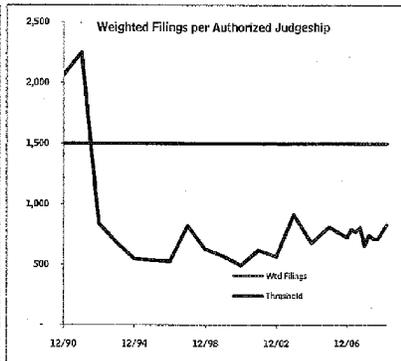
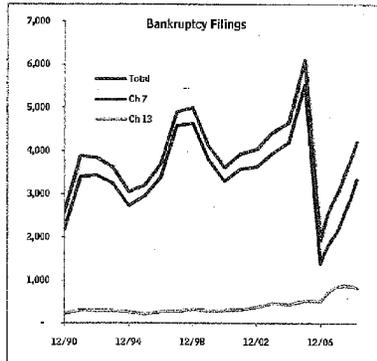
ATTACHMENT 2

District of New Hampshire

Authorized Judgeships	
Permanent:	1
Temporary:	1
Total Authorized:	2

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	2,568	490	2,078	2,175	165	227	2,062	1	2,062
12/31/1991	3,879	598	3,281	3,398	175	306	2,249	1	2,249
12/31/1992	3,840	164	3,676	3,430	114	294	1,679	2	839
12/31/1993	3,622	153	3,469	3,250	76	293	1,363	2	681
12/31/1994	3,054	111	2,943	2,725	65	263	1,006	2	503
12/31/1995	3,207	92	3,115	2,957	35	214	1,076	2	538
12/31/1996	3,692	92	3,600	3,387	42	262	1,053	2	527
12/31/1997	4,902	187	4,715	4,586	41	272	1,643	2	822
12/31/1998	4,994	417	4,577	4,639	29	326	1,256	2	628
12/31/1999	4,104	348	3,756	3,791	23	287	1,141	2	570
12/31/2000	3,615	302	3,313	3,295	17	303	989	2	495
12/31/2001	3,931	334	3,597	3,582	32	317	1,239	2	619
12/31/2002	4,034	212	3,822	3,627	26	381	1,136	2	568
12/31/2003	4,426	178	4,248	3,945	15	466	1,832	2	916
12/31/2004	4,651	158	4,493	4,195	17	439	1,360	2	680
12/31/2005	6,097	586	5,511	5,533	32	531	1,625	2	812
12/31/2006	1,925	218	1,707	1,390	12	521	1,451	2	726
3/31/2007	2,299	269	2,030	1,637	16	642	1,581	2	791
6/30/2007	2,579	306	2,273	1,825	18	732	1,543	2	771
9/30/2007	2,804	331	2,473	1,977	21	803	1,612	2	806
12/31/2007	2,983	327	2,656	2,100	20	860	1,312	2	656
3/31/2008	3,183	307	2,876	2,297	18	867	1,487	2	743
6/30/2008	3,458	318	3,140	2,555	19	883	1,426	2	713
9/30/2008	3,676	351	3,325	2,775	27	873	1,427	2	713
12/31/2008	3,931	393	3,538	3,030	38	863	1,540	2	770
3/31/2009	4,207	461	3,746	3,344	40	823	1,651	2	825

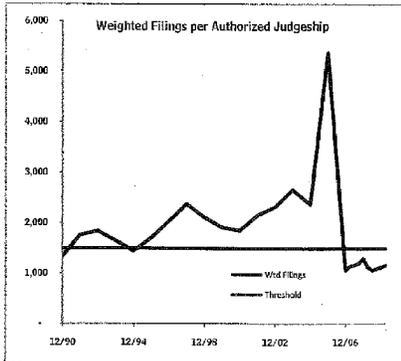
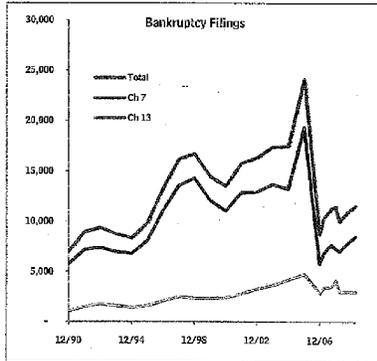


Northern District of New York

Authorized Judgeships	
Permanent:	2
Temporary:	1
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	6,992	622	6,370	5,783	127	1,071	2,658	2	1,329
12/31/1991	8,889	792	8,097	7,170	192	1,504	3,527	2	1,764
12/31/1992	9,350	925	8,425	7,386	188	1,767	3,680	2	1,840
12/31/1993	8,729	823	7,906	6,968	136	1,595	3,294	2	1,647
12/31/1994	8,336	711	7,625	6,787	100	1,427	2,890	2	1,445
12/31/1995	9,779	696	9,083	8,059	105	1,593	3,416	2	1,708
12/31/1996	13,289	839	12,450	11,099	100	2,057	4,080	2	2,040
12/31/1997	16,173	777	15,396	13,559	88	2,502	4,758	2	2,379
12/31/1998	16,703	505	16,198	14,287	53	2,346	4,235	2	2,117
12/31/1999	14,466	394	14,072	12,084	47	2,320	3,834	2	1,917
12/31/2000	13,507	407	13,100	11,043	50	2,395	3,717	2	1,858
12/31/2001	15,760	425	15,335	12,865	72	2,815	4,305	2	2,153
12/31/2002	16,310	346	15,964	12,952	75	3,272	4,642	2	2,321
12/31/2003	17,403	333	17,070	13,676	68	3,642	5,326	2	2,663
12/31/2004	17,505	285	17,220	13,242	45	4,216	4,737	2	2,368
12/31/2005	24,155	321	23,834	19,354	45	4,748	16,113	3	5,371
12/31/2006	8,711	214	8,497	5,781	35	2,885	3,198	3	1,066
3/31/2007	10,265	251	10,014	6,815	39	3,399	3,451	3	1,150
6/30/2007	10,808	270	10,538	7,333	42	3,421	3,503	3	1,168
9/30/2007	11,262	270	10,992	7,658	38	3,551	3,620	3	1,207
12/31/2007	11,490	297	11,193	7,290	42	4,134	3,887	3	1,296
3/31/2008	10,043	235	9,808	7,041	32	2,962	3,413	3	1,138
6/30/2008	10,450	230	10,220	7,429	31	2,980	3,213	3	1,071
9/30/2008	10,911	248	10,663	7,839	40	3,023	3,287	3	1,096
12/31/2008	11,235	263	10,972	8,187	43	2,995	3,378	3	1,126
3/31/2009	11,526	288	11,238	8,481	50	2,977	3,501	3	1,167

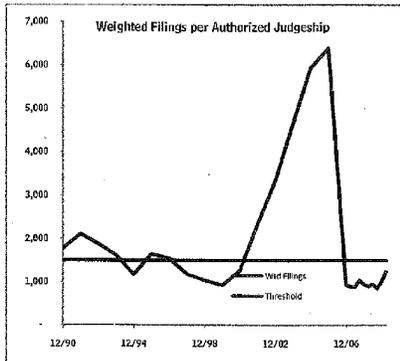
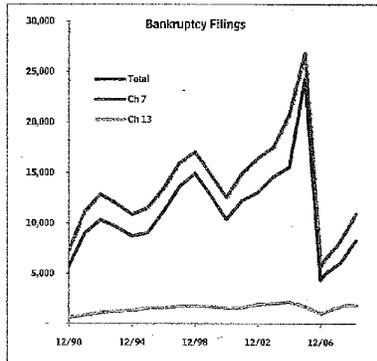


Southern District of New York

Authorized Judgeships	
Permanent:	9
Temporary:	1
Total Authorized:	10

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	7,312	1,132	6,180	5,705	945	656	12,416	7	1,774
12/31/1991	11,096	1,528	9,568	8,943	1,299	844	14,735	7	2,105
12/31/1992	12,851	1,682	11,169	10,304	1,431	1,096	16,920	9	1,880
12/31/1993	11,932	1,227	10,705	9,619	1,068	1,237	14,580	9	1,620
12/31/1994	10,851	1,025	9,826	8,686	839	1,315	10,548	9	1,172
12/31/1995	11,519	1,150	10,369	9,027	910	1,568	14,797	9	1,644
12/31/1996	13,452	950	12,502	11,163	695	1,574	13,872	9	1,541
12/31/1997	15,972	846	15,126	13,604	621	1,740	10,677	9	1,186
12/31/1998	17,047	586	16,461	14,918	385	1,727	9,411	9	1,046
12/31/1999	14,798	565	14,233	12,727	380	1,683	8,354	9	928
12/31/2000	12,524	788	11,736	10,339	613	1,563	11,422	9	1,269
12/31/2001	14,904	1,236	13,668	12,228	1,042	1,609	21,028	9	2,336
12/31/2002	16,409	1,598	14,811	13,033	1,424	1,918	30,117	9	3,346
12/31/2003	17,552	1,059	16,493	14,611	867	2,031	41,817	9	4,646
12/31/2004	20,739	3,195	17,544	15,552	2,911	2,166	53,418	9	5,935
12/31/2005	26,868	1,025	25,843	24,310	790	1,722	63,889	10	6,389
12/31/2006	5,737	566	5,171	4,321	370	993	9,290	10	929
3/31/2007	6,312	422	5,890	4,878	237	1,159	8,991	10	899
6/30/2007	6,805	407	6,398	5,246	215	1,308	8,910	10	891
9/30/2007	7,251	475	6,776	5,461	265	1,492	10,343	10	1,034
12/31/2007	7,672	467	7,205	5,786	242	1,612	9,472	10	947
3/31/2008	8,231	673	7,558	6,048	441	1,712	8,985	10	898
6/30/2008	8,836	698	8,138	6,541	457	1,812	9,510	10	951
9/30/2008	9,537	741	8,796	7,163	496	1,869	8,619	10	862
12/31/2008	10,230	871	9,359	7,769	604	1,840	10,003	10	1,000
3/31/2009	10,941	1,148	9,793	8,276	823	1,820	12,354	10	1,235

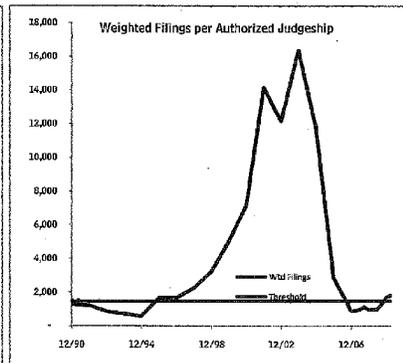
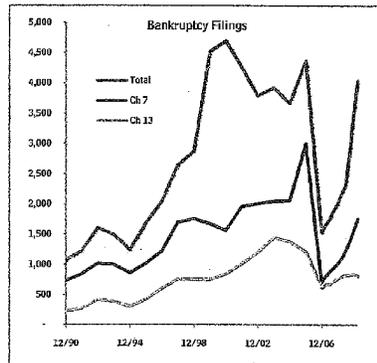


District of Delaware

Authorized Judgeships	
Permanent:	1
Temporary:	5
Total Authorized:	6

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	5
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	1,068	114	954	734	104	230	1,303	1	1,303
12/31/1991	1,218	126	1,092	840	106	272	1,224	1	1,224
12/31/1992	1,606	243	1,363	1,016	173	417	1,739	2	870
12/31/1993	1,492	163	1,329	997	113	380	1,457	2	728
12/31/1994	1,235	120	1,115	859	75	301	1,178	2	589
12/31/1995	1,679	277	1,402	1,013	246	420	3,361	2	1,681
12/31/1996	2,044	239	1,805	1,219	217	605	3,368	2	1,684
12/31/1997	2,646	214	2,432	1,697	189	759	4,544	2	2,272
12/31/1998	2,871	372	2,499	1,756	362	753	6,517	2	3,259
12/31/1999	4,526	2,115	2,411	1,671	2,103	752	10,146	2	5,073
12/31/2000	4,695	2,320	2,375	1,562	2,291	842	14,386	2	7,193
12/31/2001	4,259	1,374	2,885	1,958	1,289	1,012	28,347	2	14,174
12/31/2002	3,789	649	3,140	2,006	561	1,201	24,341	2	12,171
12/31/2003	3,918	505	3,413	2,046	423	1,445	32,725	2	16,363
12/31/2004	3,668	276	3,392	2,059	233	1,376	23,577	2	11,789
12/31/2005	4,368	218	4,150	2,997	158	1,211	17,266	6	2,878
12/31/2006	1,528	244	1,284	706	203	619	5,527	6	921
3/31/2007	1,653	219	1,434	804	178	671	5,535	6	922
6/30/2007	1,750	243	1,507	881	198	671	5,970	6	995
9/30/2007	1,897	288	1,609	947	220	727	6,948	6	1,158
12/31/2007	2,002	306	1,696	1,012	223	763	5,925	6	988
3/31/2008	2,172	351	1,821	1,102	257	809	5,988	6	998
6/30/2008	2,303	361	1,942	1,228	251	820	6,075	6	1,012
9/30/2008	2,827	729	2,098	1,379	603	830	7,788	6	1,298
12/31/2008	3,482	1,198	2,284	1,559	1,068	839	10,258	6	1,710
3/31/2009	4,040	1,604	2,436	1,754	1,452	813	10,950	6	1,825

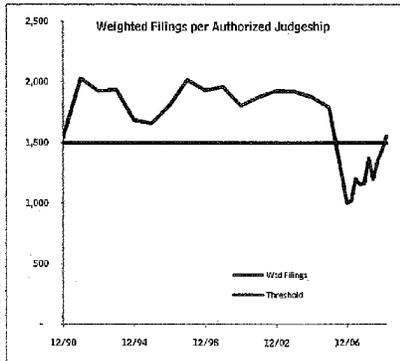
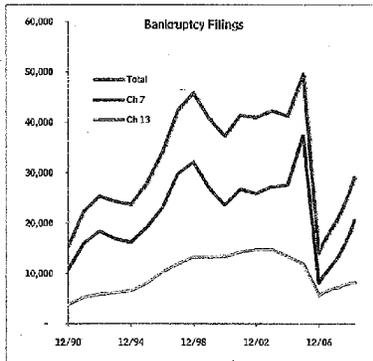


District of New Jersey

Authorized Judgeships	
Permanent:	8
Temporary:	1
Total Authorized:	9

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	15,405	1,128	14,277	10,785	747	3,869	10,771	7	1,539
12/31/1991	22,338	1,305	21,033	16,046	958	5,330	14,213	7	2,030
12/31/1992	25,343	1,561	23,782	18,423	1,010	5,907	15,390	8	1,924
12/31/1993	24,295	1,870	22,425	16,920	1,195	6,178	15,494	8	1,937
12/31/1994	23,688	1,354	22,334	16,216	889	6,580	13,480	8	1,685
12/31/1995	27,788	1,195	26,593	19,130	588	8,067	13,265	8	1,658
12/31/1996	34,091	1,068	33,023	23,016	683	10,389	14,467	8	1,808
12/31/1997	42,434	1,112	41,322	29,826	635	11,969	16,132	8	2,016
12/31/1998	45,880	876	45,004	32,137	455	13,283	15,451	8	1,931
12/31/1999	40,814	877	39,937	27,005	479	13,328	15,660	8	1,958
12/31/2000	37,305	660	36,645	23,599	326	13,377	14,429	8	1,804
12/31/2001	41,484	730	40,754	26,766	384	14,333	15,005	8	1,876
12/31/2002	40,999	689	40,310	25,922	349	14,726	15,408	8	1,926
12/31/2003	42,377	734	41,643	27,256	354	14,764	15,372	8	1,921
12/31/2004	41,280	684	40,596	27,598	312	13,370	15,017	8	1,877
12/31/2005	49,597	765	48,832	37,443	251	11,905	16,111	9	1,790
12/31/2006	14,041	493	13,548	8,130	204	5,704	9,026	9	1,003
3/31/2007	15,893	560	15,333	9,465	221	6,205	9,178	9	1,020
6/30/2007	17,275	705	16,570	10,357	358	6,558	10,810	9	1,201
9/30/2007	18,702	802	17,900	11,388	387	6,924	10,395	9	1,155
12/31/2007	19,948	864	19,084	12,402	385	7,160	10,492	9	1,166
3/31/2008	21,191	947	20,244	13,477	412	7,301	12,345	9	1,372
6/30/2008	22,911	925	21,986	14,925	303	7,682	10,777	9	1,197
9/30/2008	24,764	993	23,771	16,523	334	7,907	12,175	9	1,353
12/31/2008	26,833	1,067	25,766	18,327	335	8,170	12,921	9	1,436
3/31/2009	29,181	1,217	27,964	20,590	369	8,206	13,981	9	1,553

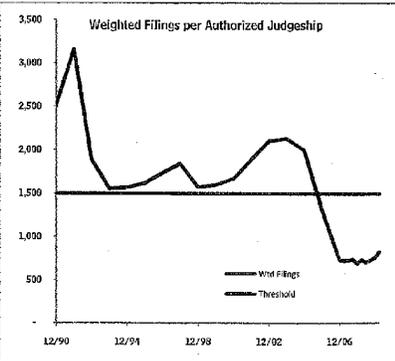
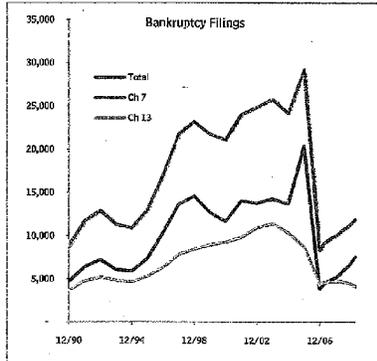


Eastern District of Pennsylvania

Authorized Judgeships	
Permanent:	5
Temporary:	1
Total Authorized:	6

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	-
Extensions:	1

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	8,821	663	8,158	4,712	403	3,705	7,528	3	2,509
12/31/1991	11,716	939	10,777	6,394	580	4,740	9,481	3	3,160
12/31/1992	12,877	1,128	11,749	7,216	493	5,167	9,477	5	1,895
12/31/1993	11,286	976	10,310	6,079	399	4,804	7,761	5	1,552
12/31/1994	10,894	849	10,045	5,883	376	4,632	7,840	5	1,568
12/31/1995	12,990	596	12,394	7,371	307	5,309	8,088	5	1,618
12/31/1996	17,020	605	16,415	10,348	288	6,376	8,686	5	1,737
12/31/1997	21,773	561	21,212	13,661	277	7,822	9,221	5	1,844
12/31/1998	23,187	392	22,795	14,576	149	8,457	7,856	5	1,573
12/31/1999	21,752	328	21,424	12,682	132	8,934	7,990	5	1,598
12/31/2000	21,099	328	20,771	11,649	180	9,269	8,353	5	1,671
12/31/2001	24,014	319	23,695	14,040	144	9,828	9,450	5	1,890
12/31/2002	24,887	318	24,569	13,805	114	10,966	10,532	5	2,106
12/31/2003	25,800	350	25,450	14,251	144	11,400	10,671	5	2,134
12/31/2004	24,191	396	23,795	13,710	161	10,319	9,993	5	1,999
12/31/2005	29,207	413	28,794	20,418	111	8,675	7,894	6	1,316
12/31/2006	8,325	209	8,116	3,891	48	4,386	4,391	6	732
3/31/2007	9,067	240	8,827	4,377	60	4,630	4,351	6	725
6/30/2007	9,485	256	9,229	4,737	68	4,680	4,376	6	729
9/30/2007	9,778	274	9,504	4,992	66	4,720	4,451	6	742
12/31/2007	9,970	297	9,673	5,165	77	4,728	4,136	6	689
3/31/2008	10,346	315	10,031	5,519	77	4,750	4,409	6	735
6/30/2008	10,761	337	10,424	5,978	80	4,702	4,225	6	704
9/30/2008	11,023	372	10,651	6,385	95	4,542	4,384	6	731
12/31/2008	11,432	407	11,025	6,905	106	4,420	4,555	6	759
3/31/2009	11,849	457	11,392	7,550	125	4,173	4,965	6	827

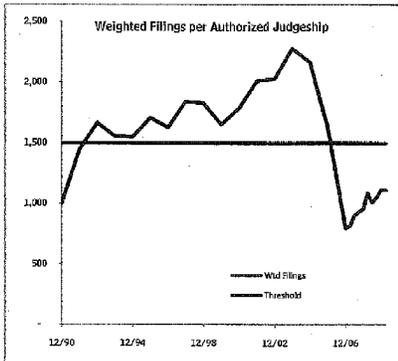
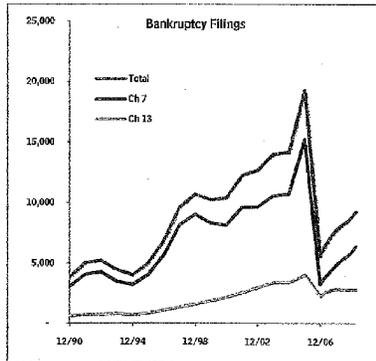


Middle District of Pennsylvania

Authorized Judgeships	
Permanent:	2
Temporary:	1
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	3,801	526	3,275	3,041	159	597	1,995	2	997
12/31/1991	5,012	807	4,205	4,069	237	701	2,894	2	1,447
12/31/1992	5,196	746	4,450	4,245	214	731	3,327	2	1,663
12/31/1993	4,436	741	3,695	3,465	186	774	3,108	2	1,554
12/31/1994	3,985	578	3,407	3,198	119	661	3,096	2	1,548
12/31/1995	4,973	661	4,312	4,038	109	817	3,414	2	1,707
12/31/1996	6,833	758	6,075	5,658	88	1,083	3,254	2	1,627
12/31/1997	9,593	852	8,741	8,141	96	1,349	3,682	2	1,841
12/31/1998	10,693	837	9,856	9,025	69	1,600	3,657	2	1,828
12/31/1999	10,212	706	9,506	8,285	59	1,866	3,303	2	1,652
12/31/2000	10,370	745	9,625	8,132	66	2,168	3,576	2	1,788
12/31/2001	12,232	811	11,421	9,604	79	2,549	4,017	2	2,009
12/31/2002	12,675	461	12,214	9,636	61	2,978	4,056	2	2,028
12/31/2003	14,003	280	13,723	10,559	57	3,385	4,553	2	2,276
12/31/2004	14,179	298	13,881	10,721	52	3,406	4,323	2	2,162
12/31/2005	19,309	381	18,928	15,210	58	4,039	4,885	3	1,628
12/31/2006	5,558	192	5,366	3,271	31	2,247	2,391	3	797
3/31/2007	6,349	196	6,153	3,742	28	2,573	2,444	3	815
6/30/2007	6,849	192	6,657	4,117	34	2,691	2,706	3	902
9/30/2007	7,332	197	7,135	4,506	27	2,791	2,797	3	932
12/31/2007	7,713	211	7,502	4,831	32	2,843	2,875	3	958
3/31/2008	8,007	230	7,777	5,149	41	2,810	3,265	3	1,088
6/30/2008	8,262	237	8,025	5,398	44	2,817	3,031	3	1,010
9/30/2008	8,480	259	8,221	5,624	55	2,799	3,162	3	1,054
12/31/2008	8,839	264	8,575	5,964	59	2,814	3,338	3	1,113
3/31/2009	9,245	267	8,978	6,409	53	2,781	3,338	3	1,113

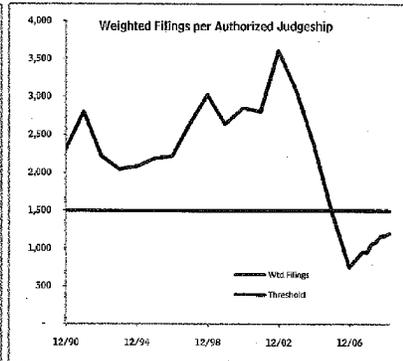
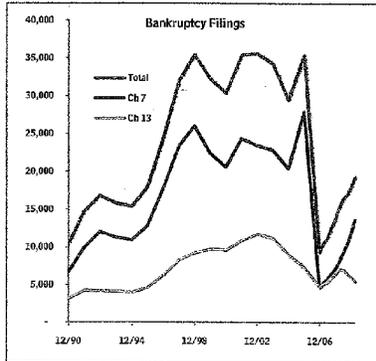


District of Maryland

Authorized Judgeships	
Permanent:	4
Temporary:	3
Total Authorized:	7

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	3
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	10,311	1,356	8,955	6,672	460	3,174	6,927	3	2,309
12/31/1991	14,707	1,653	13,074	9,882	593	4,228	8,407	3	2,802
12/31/1992	16,790	1,642	15,148	12,019	576	4,188	8,851	4	2,213
12/31/1993	15,790	1,575	14,215	11,254	405	4,130	8,175	4	2,044
12/31/1994	15,343	1,243	14,100	10,938	417	3,985	8,320	4	2,080
12/31/1995	17,925	1,493	16,432	12,790	479	4,651	8,732	4	2,183
12/31/1996	24,347	1,460	22,878	17,738	353	6,252	8,863	4	2,216
12/31/1997	31,991	1,678	30,313	23,403	292	8,292	10,558	4	2,639
12/31/1998	35,430	1,231	34,199	26,011	209	9,208	12,098	4	3,024
12/31/1999	32,273	795	31,478	22,403	159	9,709	10,548	4	2,637
12/31/2000	30,335	677	29,658	20,572	166	9,597	11,406	4	2,851
12/31/2001	35,388	758	34,630	24,356	174	10,858	11,216	4	2,804
12/31/2002	35,573	873	34,700	23,447	412	11,711	14,417	4	3,604
12/31/2003	34,231	523	33,708	22,853	194	11,182	12,334	4	3,083
12/31/2004	29,467	417	29,050	20,384	112	8,971	9,464	4	2,366
12/31/2005	35,345	760	34,585	27,895	131	7,319	10,403	7	1,486
12/31/2006	9,349	333	9,016	4,663	95	4,591	5,257	7	751
3/31/2007	10,503	414	10,089	5,309	122	5,071	5,754	7	822
6/30/2007	11,222	406	10,816	5,791	134	5,296	6,210	7	887
9/30/2007	12,509	389	12,120	6,448	135	5,925	6,696	7	957
12/31/2007	13,733	380	13,353	7,119	150	6,463	6,640	7	949
3/31/2008	15,217	344	14,873	8,073	139	7,004	7,401	7	1,057
6/30/2008	16,339	405	15,934	9,191	162	6,985	7,564	7	1,081
9/30/2008	16,926	525	16,401	10,302	228	6,395	8,096	7	1,157
12/31/2008	18,005	628	17,377	11,834	226	5,944	8,195	7	1,171
3/31/2009	19,261	733	18,528	13,593	250	5,418	8,389	7	1,198

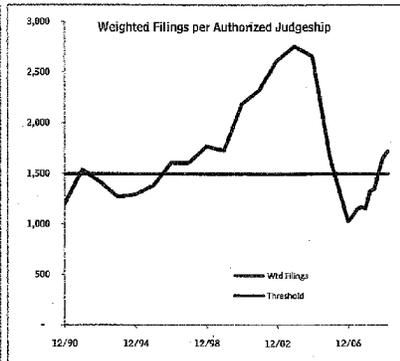
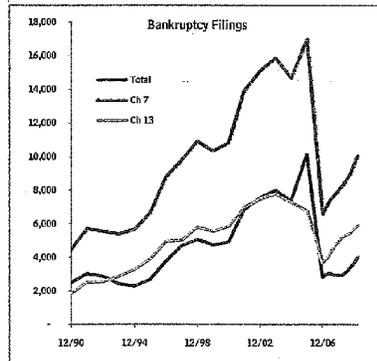


Eastern District of North Carolina

Authorized Judgeships	
Permanent:	2
Temporary:	1
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total			Non-business			Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
	Total	Business	Non-business	Ch 7	Ch 11	Ch 13			
12/31/1990	4,480	560	3,920	2,502	111	1,842	2,390	2	1,195
12/31/1991	5,710	656	5,054	3,027	139	2,528	3,075	2	1,538
12/31/1992	5,557	585	4,972	2,881	109	2,540	2,836	2	1,418
12/31/1993	5,391	521	4,870	2,434	83	2,854	2,538	2	1,269
12/31/1994	5,652	474	5,178	2,284	74	3,277	2,594	2	1,297
12/31/1995	6,637	457	6,180	2,678	50	3,900	2,762	2	1,381
12/31/1996	8,801	446	8,355	3,775	58	4,958	3,214	2	1,607
12/31/1997	9,788	426	9,362	4,692	57	5,029	3,213	2	1,606
12/31/1998	10,914	321	10,593	5,064	34	5,803	3,536	2	1,768
12/31/1999	10,325	263	10,062	4,744	31	5,539	3,455	2	1,728
12/31/2000	10,832	257	10,575	4,912	60	5,857	4,373	2	2,187
12/31/2001	13,917	231	13,686	6,835	55	7,019	4,651	2	2,326
12/31/2002	15,072	225	14,847	7,543	62	7,459	5,234	2	2,617
12/31/2003	15,875	209	15,666	8,000	73	7,781	5,512	2	2,756
12/31/2004	14,707	163	14,544	7,378	64	7,261	5,318	2	2,659
12/31/2005	16,994	220	16,774	10,165	39	6,786	4,900	3	1,633
12/31/2006	6,601	136	6,465	2,839	42	3,716	3,053	3	1,028
3/31/2007	7,048	142	6,906	3,033	47	3,966	3,222	3	1,074
6/30/2007	7,451	149	7,302	3,071	47	4,331	3,428	3	1,143
9/30/2007	7,703	182	7,521	2,974	52	4,674	3,512	3	1,171
12/31/2007	7,992	223	7,769	2,954	60	4,975	3,468	3	1,156
3/31/2008	8,284	247	8,037	2,952	77	5,252	3,972	3	1,324
6/30/2008	8,593	291	8,302	3,143	94	5,353	4,049	3	1,350
9/30/2008	8,956	334	8,622	3,374	117	5,458	4,560	3	1,520
12/31/2008	9,572	366	9,206	3,662	133	5,769	4,970	3	1,657
3/31/2009	10,062	416	9,646	4,023	131	5,899	5,158	3	1,719

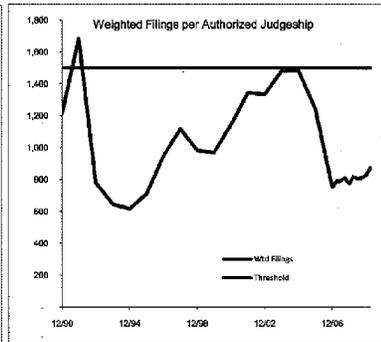
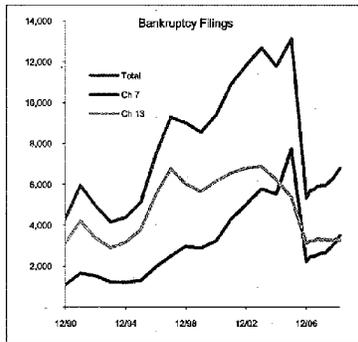


Middle District of North Carolina

Authorized Judgeships	
Permanent:	2
Temporary:	1
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	-
Extensions:	1

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	4,327	460	3,867	1,091	94	3,138	2,424	2	1,212
12/31/1991	5,942	525	5,417	1,644	86	4,210	3,369	2	1,684
12/31/1992	4,960	415	4,545	1,529	58	3,371	2,339	3	780
12/31/1993	4,157	325	3,832	1,210	52	2,894	1,938	3	646
12/31/1994	4,388	222	4,166	1,191	34	3,163	1,845	3	615
12/31/1995	5,109	184	4,925	1,287	37	3,783	2,127	3	709
12/31/1996	7,459	167	7,292	1,952	25	5,480	2,845	3	948
12/31/1997	9,289	212	9,077	2,483	37	6,766	3,347	3	1,116
12/31/1998	9,014	144	8,870	2,968	18	6,028	2,948	3	983
12/31/1999	8,543	113	8,430	2,876	17	5,649	2,911	3	970
12/31/2000	9,398	115	9,283	3,228	14	6,154	3,425	3	1,142
12/31/2001	10,908	257	10,651	4,300	56	6,552	4,035	3	1,345
12/31/2002	11,822	247	11,575	4,997	24	6,801	4,002	3	1,334
12/31/2003	12,681	182	12,499	5,770	25	6,886	4,441	3	1,480
12/31/2004	11,775	236	11,539	5,517	37	6,221	4,448	3	1,483
12/31/2005	13,140	309	12,831	7,745	15	5,380	3,732	3	1,244
12/31/2006	5,335	155	5,180	2,218	20	3,094	2,259	3	753
3/31/2007	5,688	179	5,509	2,446	27	3,214	2,366	3	789
6/30/2007	5,732	175	5,557	2,473	27	3,228	2,377	3	792
9/30/2007	5,907	182	5,725	2,554	25	3,325	2,425	3	808
12/31/2007	5,940	187	5,753	2,631	22	3,282	2,326	3	775
3/31/2008	5,940	196	5,744	2,631	13	3,291	2,451	3	817
6/30/2008	6,101	237	5,864	2,804	19	3,276	2,413	3	804
9/30/2008	6,264	280	5,984	2,995	22	3,245	2,430	3	810
12/31/2008	6,521	305	6,215	3,175	19	3,321	2,483	3	828
3/31/2009	6,801	361	6,440	3,507	27	3,260	2,625	3	875

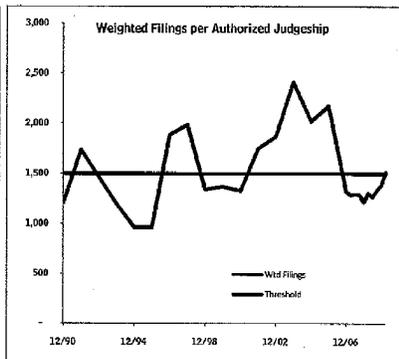
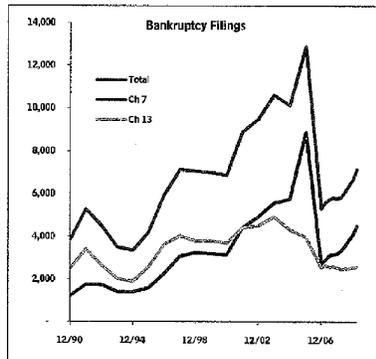


Western District of North Carolina

Authorized Judgeships	
Permanent:	2
Temporary:	-
Total Authorized:	2

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	3,852	260	3,592	1,229	107	2,513	2,411	2	1,205
12/31/1991	5,285	209	5,076	1,752	126	3,403	3,471	2	1,736
12/31/1992	4,501	179	4,322	1,740	100	2,651	2,928	2	1,464
12/31/1993	3,500	100	3,400	1,409	67	2,020	2,391	2	1,196
12/31/1994	3,338	86	3,252	1,400	43	1,893	1,928	2	964
12/31/1995	4,188	85	4,103	1,586	39	2,563	1,917	2	959
12/31/1996	5,936	90	5,846	2,267	51	3,615	3,775	2	1,888
12/31/1997	7,126	82	7,044	3,072	29	4,023	3,971	2	1,986
12/31/1998	7,056	69	6,987	3,246	33	3,775	2,685	2	1,343
12/31/1999	6,996	66	6,930	3,189	21	3,784	2,732	2	1,366
12/31/2000	6,861	73	6,788	3,148	23	3,687	2,653	2	1,327
12/31/2001	8,887	125	8,762	4,427	51	4,407	3,499	2	1,749
12/31/2002	9,488	104	9,384	4,926	58	4,504	3,736	2	1,868
12/31/2003	10,609	137	10,472	5,571	112	4,922	4,819	2	2,410
12/31/2004	10,122	87	10,035	5,757	50	4,314	4,036	2	2,018
12/31/2005	12,880	83	12,797	8,871	36	3,972	4,343	2	2,172
12/31/2006	5,305	112	5,193	2,724	35	2,545	2,639	2	1,320
3/31/2007	5,573	128	5,445	2,903	33	2,636	2,571	2	1,285
6/30/2007	5,720	149	5,571	3,104	40	2,575	2,587	2	1,294
9/30/2007	5,810	166	5,644	3,162	47	2,601	2,576	2	1,288
12/31/2007	5,778	187	5,591	3,188	48	2,542	2,427	2	1,213
3/31/2008	5,834	197	5,637	3,336	48	2,450	2,603	2	1,301
6/30/2008	6,088	210	5,878	3,546	49	2,493	2,532	2	1,266
9/30/2008	6,386	247	6,139	3,841	52	2,491	2,677	2	1,339
12/31/2008	6,662	259	6,403	4,093	46	2,520	2,771	2	1,385
3/31/2009	7,140	285	6,855	4,484	53	2,599	3,024	2	1,512

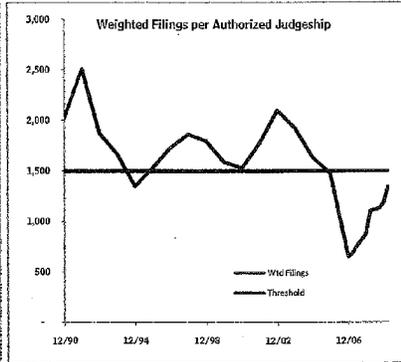
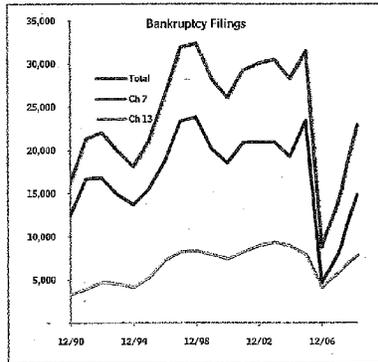


Eastern District of Virginia

Authorized Judgeships	
Permanent:	5
Temporary:	1
Total Authorized:	6

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total			Non-business			Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
	Total	Business	Non-business	Ch 7	Ch 11	Ch 13			
12/31/1990	16,219	2,332	13,887	12,434	487	3,296	8,089	4	2,022
12/31/1991	21,319	2,508	18,811	16,722	632	3,957	10,034	4	2,509
12/31/1992	22,062	1,442	20,620	16,787	536	4,752	9,352	5	1,870
12/31/1993	19,936	1,322	18,614	14,877	507	4,548	8,318	5	1,664
12/31/1994	18,130	818	17,312	13,698	281	4,143	6,735	5	1,347
12/31/1995	21,120	792	20,328	15,510	316	5,287	7,655	5	1,531
12/31/1996	26,906	785	25,521	18,736	291	7,271	8,651	5	1,739
12/31/1997	31,921	767	31,154	23,417	235	8,266	9,306	5	1,861
12/31/1998	32,398	545	31,853	23,824	204	8,367	8,969	5	1,794
12/31/1999	28,262	369	27,893	20,181	148	7,922	7,929	5	1,586
12/31/2000	26,131	296	25,835	18,543	148	7,433	7,633	5	1,527
12/31/2001	29,271	311	28,960	20,866	174	8,231	8,860	5	1,772
12/31/2002	30,092	399	29,693	20,993	164	8,934	10,501	5	2,100
12/31/2003	30,528	406	30,122	21,018	160	9,348	9,614	5	1,923
12/31/2004	28,319	318	28,001	19,313	109	8,897	8,156	5	1,631
12/31/2005	31,505	313	31,192	23,492	89	7,920	8,830	6	1,472
12/31/2006	8,773	217	8,556	4,597	72	4,103	3,881	6	647
3/31/2007	10,215	267	9,948	5,496	74	4,642	4,108	6	685
6/30/2007	11,359	311	11,048	6,232	76	5,048	4,539	6	756
9/30/2007	12,528	363	12,165	7,026	84	5,416	4,895	6	816
12/31/2007	13,848	416	13,432	7,927	101	5,816	5,246	6	874
3/31/2008	15,419	498	14,921	9,049	118	6,250	6,614	6	1,102
6/30/2008	17,551	603	16,948	10,709	133	6,707	6,679	6	1,113
9/30/2008	19,529	698	18,831	12,247	140	7,140	6,759	6	1,126
12/31/2008	21,242	783	20,459	13,554	188	7,499	7,090	6	1,182
3/31/2009	22,953	865	22,088	14,856	226	7,870	8,041	6	1,340

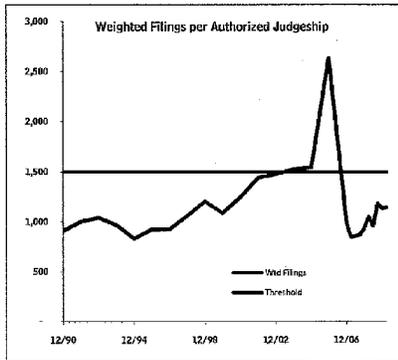
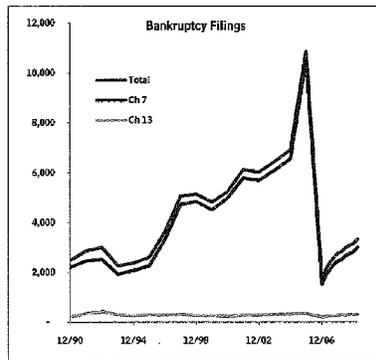


Southern District of West Virginia

Authorized Judgeships	
Permanent:	1
Temporary:	-
Total Authorized:	1

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	2,487	240	2,247	2,211	60	215	909	1	909
12/31/1991	2,862	251	2,611	2,465	51	343	1,003	1	1,003
12/31/1992	2,998	278	2,720	2,515	64	419	1,099	1	1,099
12/31/1993	2,269	171	2,092	1,926	42	294	966	1	966
12/31/1994	2,368	171	2,197	2,076	33	259	832	1	832
12/31/1995	2,605	168	2,437	2,276	34	294	925	1	925
12/31/1996	3,632	167	3,465	3,321	24	287	926	1	926
12/31/1997	5,067	188	4,879	4,730	28	309	1,061	1	1,061
12/31/1998	5,141	150	4,991	4,835	37	269	1,203	1	1,203
12/31/1999	4,812	138	4,674	4,512	35	265	1,088	1	1,088
12/31/2000	5,242	156	5,086	4,990	27	225	1,244	1	1,244
12/31/2001	6,122	189	5,933	5,793	37	292	1,438	1	1,438
12/31/2002	6,020	226	5,794	5,687	49	284	1,477	1	1,477
12/31/2003	6,447	189	6,258	6,100	31	315	1,525	1	1,525
12/31/2004	6,913	87	6,826	6,558	29	326	1,541	1	1,541
12/31/2005	10,855	85	10,770	10,482	32	338	2,633	1	2,633
12/31/2006	1,736	45	1,691	1,514	19	201	983	1	983
3/31/2007	2,110	46	2,064	1,869	16	224	849	1	849
6/30/2007	2,382	48	2,334	2,102	18	261	856	1	856
9/30/2007	2,584	55	2,529	2,307	18	258	868	1	868
12/31/2007	2,755	66	2,689	2,448	24	283	932	1	932
3/31/2008	2,816	64	2,752	2,498	24	294	1,052	1	1,052
6/30/2008	2,976	79	2,897	2,668	23	285	958	1	958
9/30/2008	3,083	87	2,996	2,753	26	304	1,184	1	1,184
12/31/2008	3,144	85	3,059	2,821	23	300	1,137	1	1,137
3/31/2009	3,333	82	3,251	3,007	22	304	1,145	1	1,145

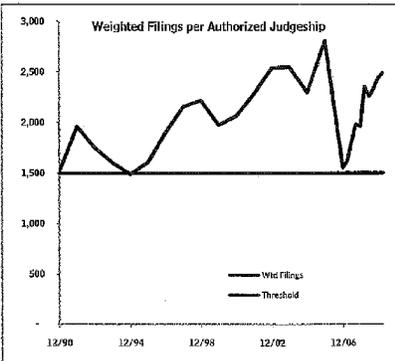
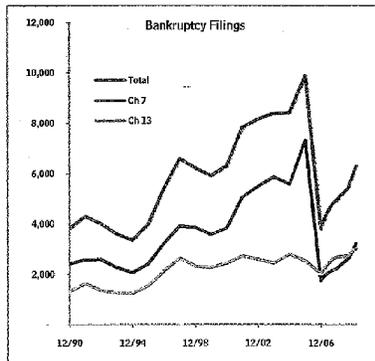


Northern District of Mississippi

Authorized Judgeships	
Permanent:	1
Temporary:	-
Total Authorized:	1

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	3,824	185	3,639	2,431	46	1,325	1,507	1	1,507
12/31/1991	4,299	223	4,076	2,579	60	1,632	1,960	1	1,960
12/31/1992	4,015	180	3,835	2,599	46	1,353	1,749	1	1,749
12/31/1993	3,609	161	3,442	2,273	37	1,265	1,609	1	1,609
12/31/1994	3,355	113	3,242	2,063	33	1,250	1,486	1	1,486
12/31/1995	4,002	131	3,871	2,419	26	1,552	1,607	1	1,607
12/31/1996	5,426	136	5,290	3,235	25	2,146	1,905	1	1,905
12/31/1997	6,602	153	6,449	3,915	28	2,646	2,159	1	2,159
12/31/1998	6,226	135	6,091	3,859	32	2,320	2,218	1	2,218
12/31/1999	5,917	133	5,784	3,589	27	2,277	1,974	1	1,974
12/31/2000	6,314	99	6,215	3,894	22	2,453	2,066	1	2,066
12/31/2001	7,841	96	7,745	5,071	30	2,737	2,284	1	2,284
12/31/2002	8,169	131	8,038	5,501	45	2,606	2,538	1	2,538
12/31/2003	8,391	127	8,264	5,878	36	2,460	2,548	1	2,548
12/31/2004	8,420	63	8,357	5,582	26	2,811	2,295	1	2,295
12/31/2005	9,897	87	9,810	7,326	32	2,529	2,806	1	2,806
12/31/2006	3,814	97	3,717	1,765	18	2,025	1,551	1	1,551
3/31/2007	4,248	110	4,138	1,958	17	2,269	1,620	1	1,620
6/30/2007	4,578	121	4,457	2,080	16	2,478	1,807	1	1,807
9/30/2007	4,807	123	4,684	2,167	15	2,620	1,978	1	1,978
12/31/2007	4,937	132	4,805	2,226	23	2,684	1,961	1	1,961
3/31/2008	5,143	141	5,002	2,386	31	2,723	2,351	1	2,351
6/30/2008	5,253	150	5,103	2,490	40	2,722	2,257	1	2,257
9/30/2008	5,467	159	5,308	2,643	48	2,775	2,335	1	2,335
12/31/2008	5,890	179	5,711	2,907	44	2,938	2,437	1	2,437
3/31/2009	6,305	197	6,108	3,236	42	3,025	2,484	1	2,484

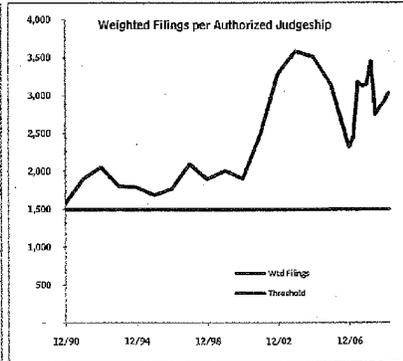
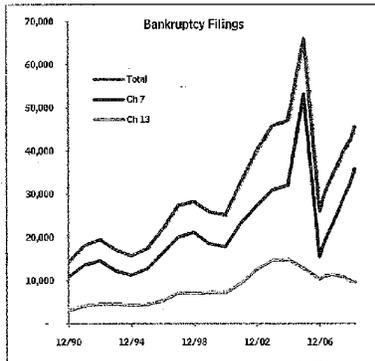


Eastern District of Michigan

Authorized Judgeships	
Permanent:	4
Temporary:	1
Total Authorized:	5

Judgeship Recommendation(s)	
Additional Judgeships:	3
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	14,272	830	13,442	10,906	303	3,042	6,300	4	1,575
12/31/1991	18,041	944	17,097	13,568	367	4,081	7,595	4	1,899
12/31/1992	19,481	1,128	18,353	14,600	343	4,509	8,212	4	2,053
12/31/1993	17,021	767	16,254	12,237	247	4,524	7,207	4	1,802
12/31/1994	15,707	623	15,084	11,226	237	4,229	7,152	4	1,788
12/31/1995	17,290	545	16,745	12,648	224	4,402	6,739	4	1,685
12/31/1996	21,871	591	21,280	16,362	213	5,281	7,076	4	1,769
12/31/1997	27,348	595	26,753	19,992	223	7,123	8,387	4	2,097
12/31/1998	28,198	373	27,825	21,123	133	6,934	7,589	4	1,897
12/31/1999	25,824	359	25,465	18,443	147	7,225	8,023	4	2,006
12/31/2000	25,122	333	24,789	17,832	128	7,157	7,606	4	1,902
12/31/2001	32,785	401	32,384	23,223	172	9,390	9,941	4	2,485
12/31/2002	39,968	481	39,487	27,177	188	12,600	13,124	4	3,281
12/31/2003	45,755	390	45,365	30,894	175	14,677	14,320	4	3,580
12/31/2004	47,098	446	46,592	32,041	198	14,796	14,024	4	3,506
12/31/2005	65,909	648	65,261	53,072	202	12,628	15,677	5	3,135
12/31/2006	25,962	510	25,452	15,547	137	10,267	11,584	5	2,317
3/31/2007	29,392	628	28,764	18,295	151	10,931	12,251	5	2,450
6/30/2007	31,744	677	31,067	20,457	151	11,123	15,845	5	3,169
9/30/2007	33,799	739	33,060	22,301	140	11,346	15,611	5	3,122
12/31/2007	35,690	790	34,900	24,338	134	11,205	15,688	5	3,138
3/31/2008	37,511	846	36,665	26,361	138	11,000	17,217	5	3,443
6/30/2008	39,676	945	38,731	28,716	146	10,802	13,726	5	2,745
9/30/2008	41,227	1,081	40,146	30,778	177	10,262	14,216	5	2,843
12/31/2008	42,720	1,166	41,554	32,765	181	9,764	14,583	5	2,917
3/31/2009	45,610	1,228	44,382	35,806	183	9,610	15,159	5	3,032

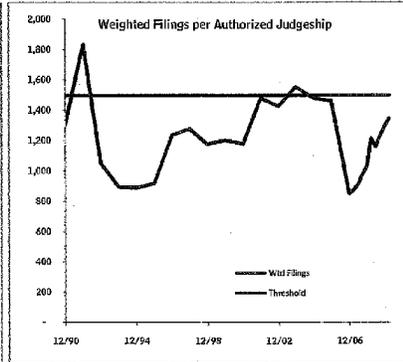
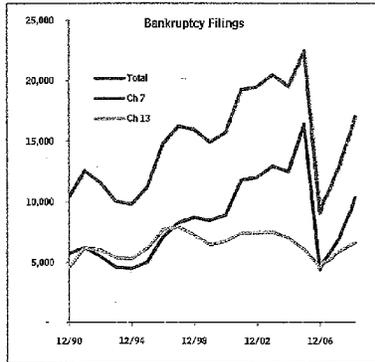


Eastern District of Tennessee

Authorized Judgeships	
Permanent:	3
Temporary:	1
Total Authorized:	4

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total			Non-business			Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
	Total	Business	Non-business	Ch 7	Ch 11	Ch 13			
12/31/1990	10,396	260	10,136	5,729	73	4,585	3,927	3	1,309
12/31/1991	12,559	325	12,234	6,234	93	6,214	5,502	3	1,834
12/31/1992	11,591	595	10,996	5,497	70	6,006	4,203	4	1,051
12/31/1993	10,026	416	9,610	4,586	58	5,369	3,583	4	896
12/31/1994	9,813	343	9,470	4,475	44	5,284	3,564	4	891
12/31/1995	11,199	343	10,856	4,996	39	6,155	3,668	4	917
12/31/1996	14,798	384	14,414	7,060	51	7,676	4,947	4	1,237
12/31/1997	16,254	422	15,832	8,268	53	7,926	5,111	4	1,278
12/31/1998	15,984	336	15,648	8,696	44	7,235	4,703	4	1,176
12/31/1999	14,944	236	14,708	8,447	58	6,436	4,808	4	1,202
12/31/2000	15,703	239	15,464	8,900	48	6,753	4,708	4	1,177
12/31/2001	19,272	379	18,893	11,774	76	7,420	5,919	4	1,480
12/31/2002	19,524	277	19,247	12,024	62	7,433	5,705	4	1,426
12/31/2003	20,495	247	20,248	12,936	66	7,488	6,217	4	1,554
12/31/2004	19,537	249	19,288	12,487	63	6,985	5,917	4	1,479
12/31/2005	22,471	184	22,287	16,415	45	6,009	5,850	4	1,462
12/31/2006	9,063	124	8,939	4,405	29	4,621	3,394	4	848
3/31/2007	10,091	149	9,942	5,099	28	4,958	3,497	4	874
6/30/2007	10,695	168	10,527	5,527	29	5,134	3,644	4	911
9/30/2007	11,377	200	11,177	5,996	34	5,344	3,904	4	976
12/31/2007	12,261	200	12,061	6,513	32	5,713	4,116	4	1,029
3/31/2008	12,973	219	12,754	6,998	42	5,928	4,854	4	1,213
6/30/2008	13,987	233	13,754	7,851	43	6,086	4,629	4	1,157
9/30/2008	14,923	261	14,662	8,609	47	6,260	4,934	4	1,233
12/31/2008	15,847	302	15,545	9,332	48	6,460	5,180	4	1,295
3/31/2009	17,046	335	16,711	10,365	48	6,625	5,377	4	1,344

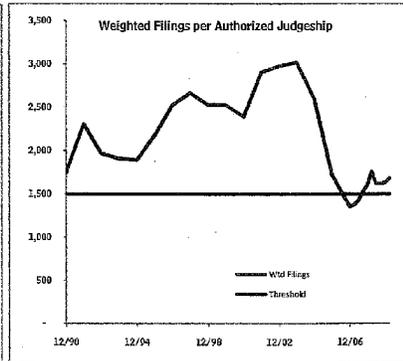
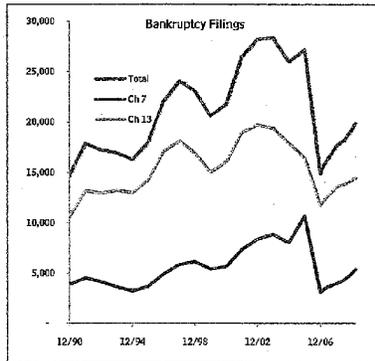


Western District of Tennessee

Authorized Judgeships	
Permanent:	4
Temporary:	1
Total Authorized:	5

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total			Non-business			Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
	Total	Business	Non-business	Ch 7	Ch 11	Ch 13			
12/31/1990	14,689	207	14,482	3,904	159	10,621	5,226	3	1,742
12/31/1991	17,892	300	17,592	4,533	176	13,175	6,917	3	2,306
12/31/1992	17,226	380	16,846	4,154	148	12,920	7,868	4	1,967
12/31/1993	16,938	306	16,632	3,632	105	13,198	7,632	4	1,908
12/31/1994	16,269	244	16,025	3,225	71	12,970	7,560	4	1,890
12/31/1995	17,965	236	17,729	3,655	89	14,218	8,695	4	2,174
12/31/1996	22,081	223	21,858	4,903	75	17,101	10,094	4	2,523
12/31/1997	24,052	187	23,865	5,852	73	18,122	10,661	4	2,665
12/31/1998	23,081	241	22,840	6,135	55	16,888	10,114	4	2,529
12/31/1999	20,613	315	20,298	5,430	191	14,990	10,107	4	2,527
12/31/2000	21,794	148	21,646	5,672	82	16,039	9,566	4	2,392
12/31/2001	26,469	270	26,199	7,342	158	18,968	11,616	4	2,904
12/31/2002	28,207	207	28,000	8,385	121	19,700	11,901	4	2,975
12/31/2003	28,351	149	28,202	8,861	107	19,383	12,068	4	3,017
12/31/2004	25,967	132	25,835	8,096	64	17,867	10,399	4	2,600
12/31/2005	27,190	179	27,011	10,718	58	16,414	8,609	5	1,722
12/31/2006	14,877	121	14,756	3,111	48	11,718	6,747	5	1,349
3/31/2007	15,783	137	15,646	3,462	45	12,276	6,883	5	1,377
6/30/2007	16,428	138	16,290	3,694	36	12,698	7,122	5	1,424
9/30/2007	16,926	157	16,769	3,812	38	13,075	7,639	5	1,528
12/31/2007	17,574	157	17,417	3,966	39	13,568	8,000	5	1,600
3/31/2008	17,936	158	17,778	4,159	36	13,740	8,783	5	1,757
6/30/2008	18,130	168	17,962	4,324	42	13,763	8,086	5	1,617
9/30/2008	18,708	174	18,534	4,642	41	14,025	8,081	5	1,616
12/31/2008	19,216	192	19,024	4,982	45	14,189	8,157	5	1,631
3/31/2009	19,878	201	19,677	5,382	55	14,441	8,414	5	1,683

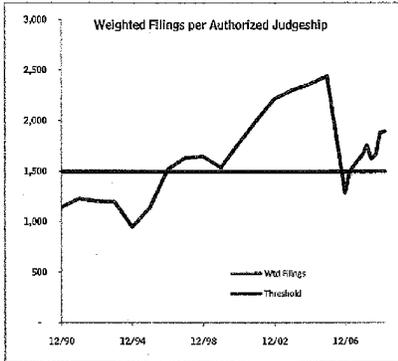
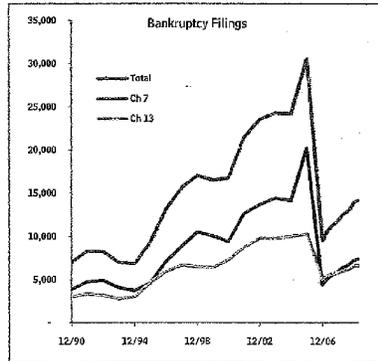


Eastern and Western Districts of Arkansas

Authorized Judgeships	
Permanent:	3
Temporary:	-
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	7,062	467	6,595	3,878	145	3,013	3,432	3	1,144
12/31/1991	8,315	497	7,818	4,793	106	3,375	3,696	3	1,232
12/31/1992	8,253	577	7,676	4,948	90	3,175	3,616	3	1,205
12/31/1993	7,000	444	6,556	4,084	61	2,827	3,596	3	1,199
12/31/1994	6,840	373	6,467	3,733	46	3,036	2,851	3	950
12/31/1995	9,378	422	8,956	4,627	54	4,677	3,427	3	1,142
12/31/1996	13,194	486	12,708	7,129	80	5,964	4,559	3	1,520
12/31/1997	15,643	539	15,104	8,853	52	6,722	4,904	3	1,635
12/31/1998	17,052	408	16,644	10,516	44	6,475	4,948	3	1,649
12/31/1999	16,533	295	16,238	10,082	36	6,408	4,613	3	1,538
12/31/2000	16,784	261	16,523	9,410	35	7,331	5,333	3	1,778
12/31/2001	21,484	290	21,194	12,641	36	8,801	6,002	3	2,001
12/31/2002	23,546	282	23,264	13,691	43	9,806	6,651	3	2,217
12/31/2003	24,307	429	23,878	14,472	52	9,771	6,902	3	2,301
12/31/2004	24,263	376	23,887	14,170	49	10,045	7,076	3	2,359
12/31/2005	30,568	426	30,142	20,227	40	10,289	7,325	3	2,442
12/31/2006	9,564	276	9,288	4,423	27	5,092	3,854	3	1,285
3/31/2007	10,534	313	10,221	5,001	29	5,481	4,441	3	1,480
6/30/2007	11,083	335	10,748	5,410	35	5,623	4,669	3	1,556
9/30/2007	11,494	346	11,148	5,659	44	5,779	4,832	3	1,611
12/31/2007	11,852	397	11,455	5,945	55	5,840	4,981	3	1,660
3/31/2008	12,491	412	12,079	6,405	54	6,026	5,285	3	1,762
6/30/2008	12,782	429	12,353	6,562	53	6,158	4,879	3	1,626
9/30/2008	13,241	454	12,787	6,886	45	6,299	4,997	3	1,666
12/31/2008	13,991	497	13,494	7,250	97	6,632	5,644	3	1,881
3/31/2009	14,195	540	13,655	7,412	110	6,659	5,684	3	1,895

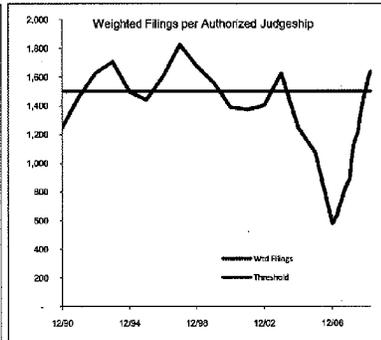
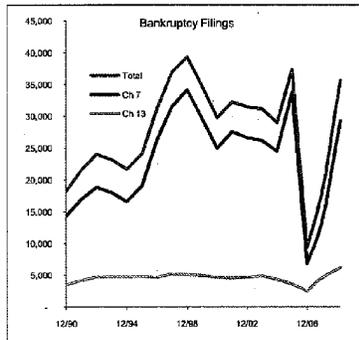


Eastern District of California

Authorized Judgeships	
Permanent:	6
Temporary:	1
Total Authorized:	7

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	18,231	1,614	16,617	14,305	391	3,503	7,480	6	1,247
12/31/1991	21,559	2,026	19,533	16,914	465	4,133	8,770	6	1,462
12/31/1992	24,045	2,668	21,377	18,828	465	4,708	9,769	6	1,628
12/31/1993	23,213	2,549	20,664	17,983	399	4,780	10,234	6	1,706
12/31/1994	21,692	2,395	19,297	16,603	320	4,729	8,976	6	1,496
12/31/1995	24,119	2,450	21,669	19,045	236	4,801	8,641	6	1,440
12/31/1996	31,211	2,598	28,673	26,318	186	4,662	9,618	6	1,603
12/31/1997	36,976	2,624	34,352	31,552	180	5,204	10,948	6	1,825
12/31/1998	39,345	2,012	37,333	34,147	142	5,029	10,062	6	1,677
12/31/1999	34,750	1,144	33,606	29,675	92	4,959	9,359	6	1,560
12/31/2000	29,756	1,139	28,617	24,989	110	4,640	8,336	6	1,389
12/31/2001	32,259	1,273	30,986	27,568	117	4,549	8,228	6	1,371
12/31/2002	31,497	1,232	30,265	26,680	117	4,665	8,415	6	1,403
12/31/2003	31,166	1,111	30,055	26,177	83	4,867	9,748	6	1,625
12/31/2004	28,985	964	28,021	24,550	94	4,336	7,468	6	1,245
12/31/2005	37,402	914	36,488	33,743	71	3,581	7,525	7	1,075
12/31/2006	9,323	408	8,915	6,779	66	2,469	4,053	7	579
3/31/2007	11,446	514	10,932	8,297	73	3,063	4,416	7	631
6/30/2007	13,411	573	12,838	9,694	73	3,630	5,076	7	725
9/30/2007	15,594	691	14,903	11,328	84	4,170	5,756	7	822
12/31/2007	18,052	786	17,266	13,364	89	4,587	6,178	7	883
3/31/2008	20,970	865	20,105	15,900	98	4,962	7,895	7	1,128
6/30/2008	24,670	988	23,682	19,293	120	5,249	8,472	7	1,210
9/30/2008	28,613	1,075	27,538	22,860	131	5,616	9,727	7	1,390
12/31/2008	32,154	1,208	30,946	26,103	141	5,903	10,697	7	1,528
3/31/2009	35,622	1,322	34,300	29,278	160	6,177	11,447	7	1,635

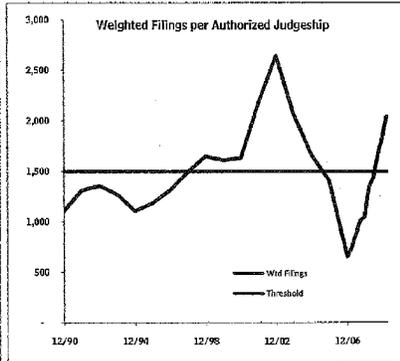
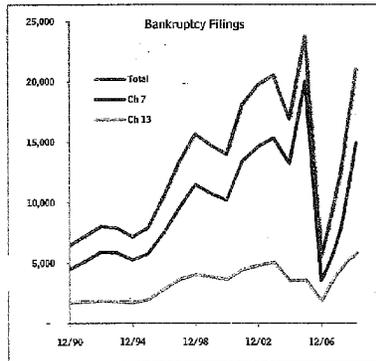


District of Nevada

Authorized Judgeships	
Permanent:	3
Temporary:	1
Total Authorized:	4

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Chapters			Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
				Ch 7	Ch 11	Ch 13			
12/31/1990	6,468	354	6,114	4,507	224	1,734	3,324	3	1,108
12/31/1991	7,268	480	6,788	5,157	294	1,816	3,932	3	1,311
12/31/1992	8,047	540	7,507	5,926	282	1,838	4,073	3	1,358
12/31/1993	7,921	494	7,427	5,862	237	1,820	3,810	3	1,270
12/31/1994	7,170	391	6,779	5,256	175	1,737	3,324	3	1,108
12/31/1995	7,912	390	7,522	5,782	166	1,959	3,561	3	1,187
12/31/1996	10,531	429	10,102	7,515	170	2,842	3,957	3	1,319
12/31/1997	13,427	399	13,028	9,596	157	3,671	4,476	3	1,492
12/31/1998	15,708	428	15,280	11,514	164	4,028	4,952	3	1,651
12/31/1999	14,743	309	14,434	10,767	114	3,857	4,830	3	1,610
12/31/2000	14,010	332	13,678	10,219	137	3,652	4,903	3	1,634
12/31/2001	18,102	419	17,683	13,429	230	4,442	6,537	3	2,179
12/31/2002	19,736	462	19,274	14,615	316	4,803	7,930	3	2,643
12/31/2003	20,561	321	20,240	15,371	137	5,052	6,204	3	2,068
12/31/2004	16,912	257	16,655	13,265	100	3,547	4,900	3	1,663
12/31/2005	23,786	333	23,453	20,059	117	3,610	5,629	4	1,407
12/31/2006	5,517	178	5,339	3,552	93	1,872	2,621	4	655
3/31/2007	6,805	199	6,606	4,268	89	2,448	2,946	4	737
6/30/2007	8,148	234	7,914	4,968	96	3,084	3,480	4	870
9/30/2007	9,445	273	9,172	5,747	103	3,595	4,041	4	1,010
12/31/2007	10,953	321	10,632	6,740	107	4,106	4,187	4	1,047
3/31/2008	12,393	358	12,035	7,790	116	4,486	5,381	4	1,345
6/30/2008	14,403	395	14,008	9,356	141	4,905	5,740	4	1,435
9/30/2008	16,756	436	16,320	11,264	166	5,324	6,645	4	1,661
12/31/2008	18,716	505	18,211	13,039	185	5,489	7,305	4	1,826
3/31/2009	21,054	637	20,417	14,947	267	5,838	8,174	4	2,043

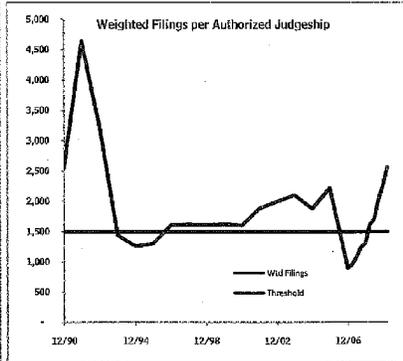
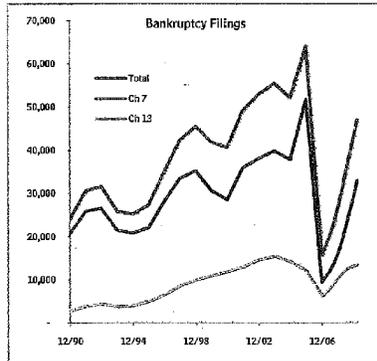


Middle District of Florida

Authorized Judgeships	
Permanent:	8
Temporary:	-
Total Authorized:	8

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	24,154	1,756	22,398	20,661	713	2,770	10,185	4	2,546
12/31/1991	30,638	1,863	28,775	25,889	836	3,889	18,566	4	4,642
12/31/1992	31,546	1,700	29,846	26,481	726	4,310	25,928	8	3,241
12/31/1993	25,715	1,375	24,340	21,386	583	3,733	11,526	8	1,441
12/31/1994	25,180	1,225	23,955	20,792	481	3,900	10,088	8	1,261
12/31/1995	27,332	1,192	26,140	22,008	418	4,886	10,454	8	1,307
12/31/1996	35,109	1,183	33,926	28,216	405	6,470	12,862	8	1,608
12/31/1997	42,388	1,217	41,171	33,465	323	8,587	12,936	8	1,617
12/31/1998	45,472	1,090	44,382	35,248	320	9,898	12,866	8	1,608
12/31/1999	41,855	1,008	40,847	30,646	278	10,919	12,955	8	1,619
12/31/2000	40,551	777	39,774	28,512	252	11,783	12,811	8	1,601
12/31/2001	49,187	1,048	48,139	35,914	313	12,956	15,068	8	1,883
12/31/2002	52,923	852	52,071	38,069	244	14,604	15,970	8	1,996
12/31/2003	55,511	646	54,865	39,869	237	15,398	16,825	8	2,103
12/31/2004	52,207	542	51,665	37,842	212	14,153	15,041	8	1,880
12/31/2005	64,094	939	63,155	51,829	211	12,051	17,746	8	2,218
12/31/2006	15,756	521	15,235	9,437	129	6,187	7,151	8	894
3/31/2007	18,017	620	17,397	10,779	147	7,088	7,666	8	958
6/30/2007	20,248	766	19,482	12,019	181	8,044	8,699	8	1,080
9/30/2007	23,027	883	22,144	13,657	202	9,162	9,910	8	1,239
12/31/2007	26,437	1,109	25,328	15,825	229	10,374	10,455	8	1,307
3/31/2008	30,031	1,305	28,726	18,407	279	11,337	12,882	8	1,610
6/30/2008	34,471	1,543	32,928	21,911	297	12,256	13,582	8	1,698
9/30/2008	38,725	1,968	36,757	25,432	425	12,863	16,159	8	2,020
12/31/2008	42,611	2,230	40,381	28,904	520	13,185	17,993	8	2,249
3/31/2009	47,042	2,516	44,526	32,967	559	13,509	20,451	8	2,556

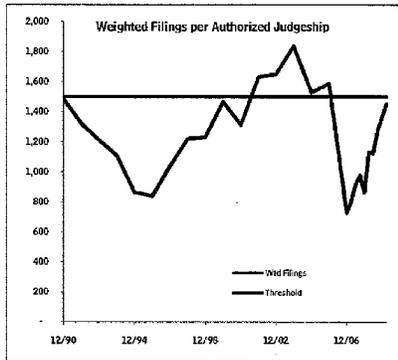
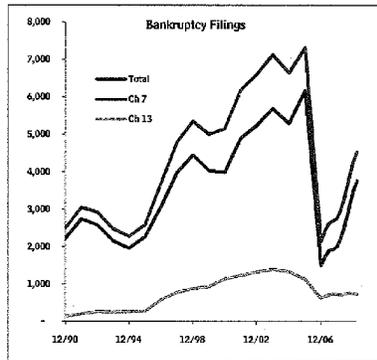


Northern District of Florida

Authorized Judgeships	
Permanent:	1
Temporary:	-
Total Authorized:	1

Judgeship Recommendation(s)	
Additional Judgeships:	1
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	2,488	238	2,250	2,214	119	138	1,482	1	1,482
12/31/1991	3,050	185	2,865	2,741	99	197	1,320	1	1,320
12/31/1992	2,922	148	2,774	2,582	74	263	1,212	1	1,212
12/31/1993	2,475	150	2,325	2,150	71	245	1,108	1	1,108
12/31/1994	2,276	116	2,160	1,958	50	261	864	1	864
12/31/1995	2,583	94	2,489	2,270	31	278	840	1	840
12/31/1996	3,688	97	3,591	3,070	39	575	1,039	1	1,039
12/31/1997	4,787	129	4,658	3,979	33	775	1,220	1	1,220
12/31/1998	5,344	91	5,253	4,446	18	875	1,231	1	1,231
12/31/1999	5,002	74	4,928	4,031	38	929	1,464	1	1,464
12/31/2000	5,148	66	5,082	3,986	24	1,138	1,311	1	1,311
12/31/2001	6,182	91	6,091	4,897	52	1,230	1,629	1	1,629
12/31/2002	6,598	73	6,525	5,242	33	1,321	1,650	1	1,650
12/31/2003	7,121	72	7,049	5,686	43	1,392	1,835	1	1,835
12/31/2004	6,641	73	6,568	5,284	22	1,335	1,528	1	1,528
12/31/2005	7,310	108	7,202	6,161	22	1,127	1,585	1	1,585
12/31/2006	2,143	86	2,057	1,504	19	620	728	1	728
3/31/2007	2,422	103	2,319	1,730	18	674	801	1	801
6/30/2007	2,628	120	2,508	1,896	23	708	914	1	914
9/30/2007	2,688	119	2,569	1,927	21	737	976	1	976
12/31/2007	2,753	121	2,632	2,001	21	728	863	1	863
3/31/2008	3,000	139	2,861	2,245	33	718	1,132	1	1,132
6/30/2008	3,354	157	3,197	2,578	35	738	1,124	1	1,124
9/30/2008	3,808	193	3,615	3,009	40	758	1,278	1	1,278
12/31/2008	4,240	239	4,001	3,461	38	740	1,361	1	1,361
3/31/2009	4,533	271	4,262	3,759	36	737	1,450	1	1,450

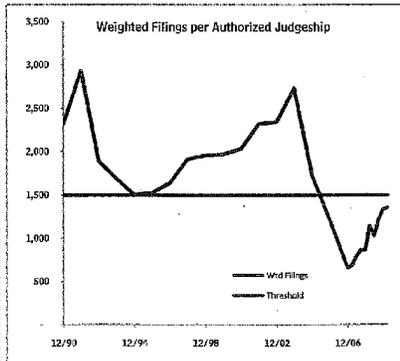
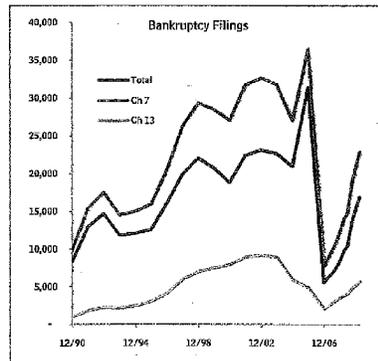


Southern District of Florida

Authorized Judgeships	
Permanent:	5
Temporary:	2
Total Authorized:	7

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	2
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	9,910	846	9,064	8,354	525	1,027	6,939	3	2,313
12/31/1991	15,499	983	14,456	12,966	631	1,836	8,809	3	2,936
12/31/1992	17,535	1,138	16,397	14,707	539	2,282	9,435	5	1,887
12/31/1993	14,521	1,074	13,447	11,846	486	2,179	8,420	5	1,684
12/31/1994	15,019	877	14,142	12,139	383	2,494	7,510	5	1,502
12/31/1995	15,984	757	15,227	12,592	281	3,103	7,628	5	1,526
12/31/1996	20,557	746	19,811	16,052	313	4,182	8,205	5	1,641
12/31/1997	26,308	816	25,492	19,948	331	6,025	9,569	5	1,914
12/31/1998	29,379	686	28,687	22,065	262	7,040	9,789	5	1,958
12/31/1999	28,500	641	27,859	20,747	229	7,520	9,844	5	1,969
12/31/2000	27,032	604	26,428	18,813	236	7,979	10,160	5	2,032
12/31/2001	31,743	757	30,986	22,423	346	8,972	11,593	5	2,319
12/31/2002	32,656	878	31,778	23,138	291	9,221	11,722	5	2,344
12/31/2003	31,792	816	30,976	22,647	249	8,891	13,660	5	2,732
12/31/2004	27,041	568	26,473	20,964	155	5,919	8,600	5	1,720
12/31/2005	36,468	575	35,893	31,457	137	4,870	8,436	7	1,205
12/31/2006	7,801	384	7,417	5,603	101	2,096	4,589	7	656
3/31/2007	8,862	479	8,383	6,265	126	2,470	4,802	7	686
6/30/2007	9,789	569	9,220	6,778	183	2,826	5,583	7	798
9/30/2007	10,857	669	10,188	7,451	230	3,172	6,041	7	863
12/31/2007	12,272	799	11,473	8,419	272	3,578	6,060	7	866
3/31/2008	13,930	990	12,940	9,688	345	3,892	8,001	7	1,143
6/30/2008	14,840	1,059	13,781	10,455	301	4,079	7,208	7	1,030
9/30/2008	18,562	1,314	17,248	13,424	323	4,809	8,545	7	1,221
12/31/2008	20,798	1,454	19,344	15,289	300	5,201	9,334	7	1,333
3/31/2009	22,837	1,453	21,384	16,907	239	5,684	9,479	7	1,354

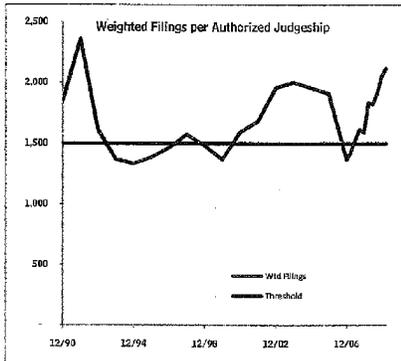
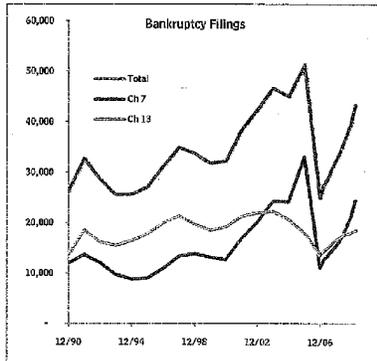


Northern District of Georgia

Authorized Judgeships	
Permanent:	8
Temporary:	-
Total Authorized:	8

Judgeship Recommendation(s)	
Additional Judgeships:	2
Conversions:	-
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	26,171	1,974	24,197	12,000	484	13,681	11,056	6	1,843
12/31/1991	32,714	2,417	30,297	13,682	509	18,520	14,155	6	2,359
12/31/1992	28,708	1,691	27,017	12,153	392	16,160	12,882	8	1,610
12/31/1993	25,530	1,359	24,171	9,742	294	15,491	10,947	8	1,368
12/31/1994	25,560	1,246	24,314	8,844	227	16,488	10,648	8	1,331
12/31/1995	27,035	1,199	25,836	9,008	216	17,809	11,086	8	1,386
12/31/1996	31,109	1,188	29,921	10,956	204	19,947	11,706	8	1,463
12/31/1997	34,946	1,130	33,816	13,379	207	21,357	12,580	8	1,573
12/31/1998	33,763	834	32,929	13,895	152	19,712	11,835	8	1,479
12/31/1999	31,871	650	31,221	13,217	116	18,537	10,929	8	1,366
12/31/2000	32,242	727	31,515	12,798	203	19,238	12,739	8	1,592
12/31/2001	38,437	908	37,529	16,920	188	21,327	13,446	8	1,681
12/31/2002	42,437	1,055	41,382	20,146	237	22,054	15,640	8	1,955
12/31/2003	46,756	1,239	45,517	24,275	178	22,299	16,004	8	2,000
12/31/2004	45,115	1,825	43,290	24,219	238	20,657	15,627	8	1,953
12/31/2005	51,324	1,928	49,396	33,176	194	17,950	15,262	8	1,908
12/31/2006	25,035	899	24,136	11,130	188	13,717	10,925	8	1,366
3/31/2007	27,536	992	26,544	12,726	209	14,601	11,411	8	1,426
6/30/2007	28,863	1,049	27,814	13,552	212	15,099	12,201	8	1,525
9/30/2007	30,768	1,096	29,672	14,535	222	16,011	12,920	8	1,615
12/31/2007	32,320	1,154	31,166	15,423	222	16,673	12,715	8	1,589
3/31/2008	33,819	1,232	32,587	16,410	252	17,154	14,681	8	1,835
6/30/2008	35,866	1,330	34,536	17,887	283	17,693	14,574	8	1,822
9/30/2008	37,839	1,499	36,340	19,718	318	17,800	15,347	8	1,918
12/31/2008	40,122	1,748	38,374	21,577	373	18,171	16,406	8	2,051
3/31/2009	43,414	1,999	41,415	24,530	369	18,515	16,928	8	2,116

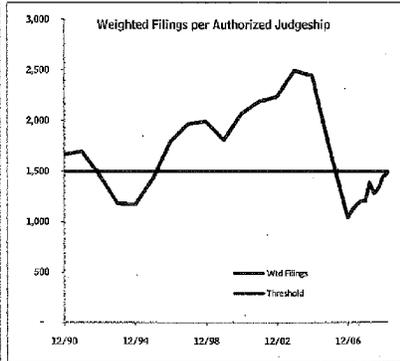
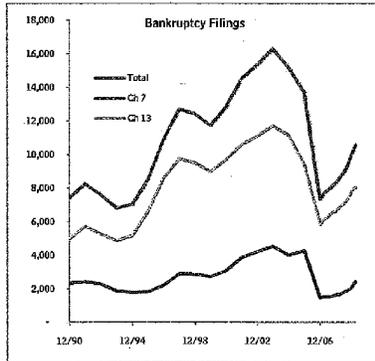


Southern District of Georgia

Authorized Judgeships	
Permanent:	2
Temporary:	1
Total Authorized:	3

Judgeship Recommendation(s)	
Additional Judgeships:	-
Conversions:	1
Extensions:	-

12 Months Ended	Total	Business	Non-business	Ch 7	Ch 11	Ch 13	Weighted Filings	Authorized Judgeships	Weighted Filings per Judgeship
12/31/1990	7,423	164	7,259	2,350	69	4,986	3,394	2	1,667
12/31/1991	8,255	332	7,923	2,446	62	5,721	3,386	2	1,693
12/31/1992	7,623	607	7,016	2,292	52	5,263	3,644	3	1,458
12/31/1993	6,827	419	6,408	1,894	49	4,877	2,953	3	1,181
12/31/1994	7,019	361	6,658	1,794	46	5,172	2,920	3	1,168
12/31/1995	8,489	379	8,110	1,830	34	6,615	3,566	3	1,426
12/31/1996	10,880	453	10,427	2,220	55	8,596	4,487	3	1,795
12/31/1997	12,707	310	12,397	2,919	40	9,739	4,919	3	1,968
12/31/1998	12,441	202	12,239	2,890	43	9,502	4,975	3	1,990
12/31/1999	11,741	123	11,618	2,739	22	8,977	4,518	3	1,807
12/31/2000	12,852	172	12,680	3,101	36	9,713	5,174	3	2,070
12/31/2001	14,526	114	14,412	3,888	33	10,600	5,471	3	2,188
12/31/2002	15,344	139	15,205	4,214	31	11,095	5,592	3	2,237
12/31/2003	16,307	153	16,154	4,544	37	11,721	6,232	3	2,493
12/31/2004	15,191	141	15,050	4,013	28	11,148	6,107	3	2,443
12/31/2005	13,704	144	13,560	4,288	34	9,376	5,153	3	1,718
12/31/2006	7,333	111	7,222	1,485	18	5,820	3,116	3	1,039
3/31/2007	7,702	115	7,587	1,544	18	6,129	3,335	3	1,112
6/30/2007	7,879	120	7,759	1,540	22	6,306	3,498	3	1,166
9/30/2007	8,119	142	7,977	1,562	25	6,523	3,603	3	1,201
12/31/2007	8,326	141	8,185	1,661	26	6,635	3,619	3	1,206
3/31/2008	8,618	141	8,477	1,695	32	6,888	4,153	3	1,384
6/30/2008	8,921	154	8,767	1,817	37	7,063	3,833	3	1,278
9/30/2008	9,312	145	9,167	1,923	39	7,347	4,005	3	1,335
12/31/2008	9,975	176	9,799	2,087	46	7,837	4,325	3	1,442
3/31/2009	10,572	229	10,343	2,463	48	8,049	4,436	3	1,479



ATTACHMENT 3**Actions to Maximize the Use of Existing Bankruptcy Judgeships**

One of the factors examined by the Judicial Conference before proposing additional bankruptcy judgeships is whether alternative resources for handling a court's caseload are being employed or could be employed. The judiciary uses different programs to efficiently and effectively utilize its judicial resources, several of which are discussed herein. Although the judiciary strives to identify and use alternative and innovative programs to fully use existing resources, districts with heavy caseloads may eventually outgrow the usefulness of the programs and require more permanent judgeships.

Intercircuit and Intracircuit Assignment

One tool used by the judiciary is inter and intra circuit assignment of bankruptcy judges. In the twelve month period ending December 31, 2008, bankruptcy judges reported spending a total of hours 3,989 hours assisting other bankruptcy courts, including courts for which the Conference now recommends additional judgeships and conversion of temporary judgeships. Interjurisdictional assistance is restricted, however, due to the limited ability of other districts to loan resources. As case filings and workload increases, some districts that previously provided intercircuit and intracircuit assistance are no longer in a position to do so.

Recall

The judiciary also uses retired bankruptcy judges to assist in overburdened districts. A retired bankruptcy judge who wishes to serve may be recalled to active service in any district for a period up to 3 years. As of April 30, 2009, 23 retired bankruptcy judges are serving on recall status. Because recall service is only available to bankruptcy judges age 65 and older, however, there are many judges who will not meet the age and service requirements for retirement and recall. In those districts where temporary judgeships are in danger of lapsing, the need for recalled judges will be even greater if the judgeship lapses. If the judges in those districts are not eligible for retirement and recall prior to the lapse dates, those districts are likely to be faced with resource shortages.

Cross-Designation

The Judiciary also has the authority to designate a bankruptcy judge to serve in more than one district pursuant to 28 U.S.C. § 152(d), which permits designation of a bankruptcy judge to serve in any district adjacent to or near the district for which the judge was appointed. For example, judges from the District of Maryland and the District of the District of Columbia (a single judge court) are cross-designated. This is helpful to both districts, for workload assistance and court coverage when the one judge is unavailable due to vacation, illness or other matters.

Shared Judgeships

Shared judgeships are another effective use of judicial resources. When districts share a judgeship, the judge who occupies the position serves in two districts. The judiciary turns to shared judgeships when possible to meet the resource needs of more than one district, while avoiding the cost of an additional judgeship. Even with these shared resources, however, some districts are now in need of additional judgeships based upon their increased workload.

Technology

The judiciary also employs various technologies to help overburdened courts to efficiently manage judges' time, thus reducing the number of additional judgeships needed. For example, bankruptcy judges regularly use video-conference and tele-conference technology to reduce travel time between the judge's official duty station and additional places of holding court within the district. Use of these technologies saves hundreds of hours of travel time a year, and permits the judge to attend to other matters before the court when otherwise the judge would be in a car or on a plane. In addition, bankruptcy courts use the Case Management and Electronic Case Files system ("CM/ECF"). CM/ECF enables judges to remotely access dockets, pleadings, calendars and other material that was formerly retained only physically in the case file. Judges can therefore access and work on matters before the court from remote locations, while holding hearings at other places of holding court within their district, or from home and vacation. This means that when the judges leave the courthouse, the work does not necessarily stop.

ATTACHMENT 4

Bankruptcy Judgeship Recommendation Survey Process

The following process is used by the Judicial Conference of the United States (“Judicial Conference”) for its survey of bankruptcy judgeship needs:

1. **Local Court Request:** The chief judges of all appellate, district, and bankruptcy courts are asked to assess the need for additional bankruptcy judgeships (and conversions of existing temporary judgeships to permanent status or extensions of existing temporary judgeships) within their bankruptcy courts based on the criteria of the Judicial Conference and its Committee on the Administration of the Bankruptcy System (“Bankruptcy Committee”). To assist the chief judges in this matter, they are provided with the latest available information on the weighted filings per authorized judgeship in their bankruptcy courts.

Based on this assessment, bankruptcy courts may initiate judgeship requests to the district court or district courts may initiate judgeship requests on behalf of their bankruptcy courts. The district court’s recommendation on the request is forwarded with the initiating request to the judicial council of the circuit.

2. **Circuit Judicial Council Action:** The circuit judicial council considers each district court request/recommendation and approves, disapproves, or modifies it. A report of the judicial council’s action is forwarded to the Judicial Conference’s Bankruptcy Committee and its Subcommittee on Judgeships.

3. **Subcommittee on Judgeships Review and Recommendation:**

a. The Subcommittee on Judgeships conducts a preliminary review to determine whether on-site surveys are needed to assess the requesting districts’ judgeship needs. If an on-site review is necessary, a survey team consisting of a bankruptcy judge member (or former member) of the

Bankruptcy Committee or a member (or former member) of the AO Director's Bankruptcy Judges Advisory Group, along with staff of the Bankruptcy Judges Division, conducts the survey and prepares a report of its findings. The survey reports are forwarded to the requesting appellate, district, and bankruptcy courts for additional comment.

b. The Subcommittee on Judgeships reviews each request and all reports and documents prepared, and makes recommendations to the Bankruptcy Committee.

4. Bankruptcy Committee Review and Recommendation: The Bankruptcy Committee reviews and considers all requests for additional judgeships and conversion and extension of existing temporary judgeships, along with accompanying recommendation documents and additional comments, and forwards its recommendations to the Judicial Conference for consideration. In the event that any requests require additional information prior to recommendation, those requests may be held over pending additional study.

5. Judicial Conference Consideration and Recommendation: The Judicial Conference considers and determines whether to adopt or modify the recommendations of the Bankruptcy Committee. The Judicial Conference recommendation is then transmitted to Congress.

ATTACHMENT 5

Assessing the Need for Bankruptcy Judgeships

In assessing a court's need for additional judicial resources, the Bankruptcy Committee will review a number of workload factors. The first factor considered will be the weighted caseload of the bankruptcy court, as derived from the Bankruptcy Judge Time Study. Also considered will be the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; the availability of alternative solutions and resources for handling the court's workload; the impact that approval of requested additional resources would have on the court's per judgeship caseload; and any other pertinent factors. Generally, it is expected that, in addition to other judicial duties, a bankruptcy court should have a [weighted] caseload of 1,500 annual case-related hours per judgeship to justify additional judicial resources.

JCUS-MAR 91, pp. 12-13.

In the late 1980's, encouraged by urging from Congress, the Bankruptcy Committee requested that the Federal Judicial Center conduct a detailed, quantitative study of the bankruptcy judges' workloads and recommend a comprehensive case measurement system. Based on records of the activities of 97% of all bankruptcy judges recorded over a 10-week time frame, staggered throughout a one-year period, the Federal Judicial Center designed a work measurement system consisting of a case weight for each of the 17 specific case types within the jurisdiction of the bankruptcy courts.

These case weights categorized bankruptcy cases filed under chapters 7, 9, 11, 12, and 13 of the Bankruptcy Code; adversary proceedings, *i.e.*, a lawsuit within a case usually initiated by filing a complaint; and contested matters, *i.e.* controversies usually initiated by the filing of a motion or an objection. The cases or proceedings are generally grouped by type and by the amount of assets or scheduled debts. For example, chapter 13 cases are categorized into subgroups according to the amount of liabilities — one subgroup applies to cases in which the liabilities are less than \$50,000 and another to those with scheduled liabilities of \$50,000 or more. While the chapter 13 case weights are based on liabilities, case weights for chapter 11 cases and both the business and non-business chapter 7 cases are based on assets.

Through this comprehensive work measurement system, the “weighted judicial caseload” in the United States bankruptcy courts can be determined and analyzed. Based upon the case weight assigned to each of the 17 categories of case types before the bankruptcy courts and the actual cases pending before the bankruptcy courts, a quantitative measurement of the judicial caseload can be made per district. This thorough system helps the judiciary ascertain the minimum number of bankruptcy judges needed in each district and throughout the country.

At its January 1991 session, the Judicial Conference carefully reviewed the Federal Judicial Center’s Study and adopted the proposed case weighting system. The Judicial Conference acknowledged the Center’s determination that a weighted caseload of 1,280 was the “average” for bankruptcy courts. It noted that this figure excludes an accounting of all the other activities that must be conducted by bankruptcy judges, such as handling general office-chambers matters, addressing personnel issues, traveling to divisional locations, attending meetings and seminars, conducting general research, etc. The Judicial Conference determined, however, that a district should have an even higher weighted judicial caseload than recommended by the Center, a

minimum of 1,500 annual "case related" hours per bankruptcy judge, before that district's request for an additional bankruptcy judge should be considered.

The weighted judicial caseload is not the sole determinant of whether the Judicial Conference endorses or denies a judgeship request. The Conference's 1991 policy includes consideration of:

- 1) the nature and mix of the court's caseload;
- 2) historical caseload data and filing trends;
- 3) geographic, economic, and demographic factors;
- 4) the effectiveness of the court's case management efforts;
- 5) the availability of alternative resources for handling the court's caseload; and
- 6) any other relevant factors.

An "on-site survey" generally consists of a review at the requesting district by a survey team composed of a judge member or former member of the Bankruptcy Committee, or a bankruptcy judge member or former member of the Administrative Office of the United States Courts Director's Bankruptcy Judges Advisory Group, and one or more members of the Bankruptcy Judges Division from the Administrative Office. The survey team reviews the court's policies and practices, focusing particularly on the court's calendaring procedures and docket sheets. Interviews are held with key court personnel, members of the local bar, the U.S. Trustee's office, panel trustees, and judges of the bankruptcy, district, and circuit courts. Before completing the on-site survey, the judge member of the survey team often meets with the judges of the bankruptcy court and furnishes a candid evaluation of that court's practices. Suggestions for improvements and ways to achieve greater efficiencies and productivity are discussed. This form

of "peer review" has proven to be extremely helpful both to the courts and the Bankruptcy Committee in determining whether additional judges or better case management is the solution to the court's heavy workload.

Continuous improvements and enhanced efficiencies are a constant goal and the Bankruptcy Committee recognized that periodic refinements to the case weighting and assessment system are necessary. Thus, the Bankruptcy Committee asked the Center to re-examine and to attempt to quantify more precisely the judicial work required by chapter 11 "mega cases" -- an area that the Center had acknowledged at the outset of their report that the system may have undervalued. The Federal Judicial Center responded to this request by developing a prototype for adjustment to the case weight system in districts with a number of the mega cases, which the Bankruptcy Committee accepted and authorized at its June 1996 meeting.

After waiting several years to see whether bankruptcy legislation would be enacted, the Bankruptcy Committee finally determined that the system could not wait much longer for an updated bankruptcy judge case weight study and determined to proceed. In 2002, the Bankruptcy Committee requested that the Center plan and conduct a new study. The study design, approved by the Committee, included five 10-week reporting periods during which judges would report their judicial activities. The second of five reporting periods was nearly complete when BAPCPA was enacted. The Committee decided to suspend the study at the end of the second reporting period (May 2005) in anticipation that BAPCPA would dramatically change the nature of bankruptcy judges' work, and the resulting case weights would not accurately reflect the judicial resources needed to process bankruptcy cases and proceedings.

The Center has conducted extensive analyses of the data collected from the first two reporting periods, including analyses of the working patterns of bankruptcy judges and the

development of case weights for the case types used in the 1988-89 Bankruptcy Time Study. The weights from the suspended study follow the same pattern as those in the 1988-89 study, and the weights for non-business are very similar; however, the weights for business cases are higher. Data from the suspended study provide an important baseline from which to assess the impact of BAPCPA on judicial workload. That data reflects the increases in judicial workload that occurred between 1989 and early 2005.

In suspending the study, the Committee intended to conduct another study once the courts had sufficient experience with cases filed under BAPCPA and filing patterns normalized. The Federal Judicial Center amended its study design to capture BAPCPA related workload, and commenced data collection for the 2008-2009 bankruptcy case weighting study in May 2008. The purpose of the study is to compute new post-BAPCPA case weights for bankruptcy cases and proceedings to be used in assessing judgeship needs.

The new case weights will address certain limitations identified in the earlier weights. They will also reflect changes in the bankruptcy system since the last study caused by BAPCPA, new case management procedures, improvements in technology, the development of complex commercial transaction, the intricacies of international insolvency proceedings, and other developments.

The study design calls for each bankruptcy judge to record his or her judicial activities during one of five ten-week reporting periods that span 2008 and 2009. The system used to assign judges to reporting periods helps ensure participation of a nationally representative sample of judges in each reporting period and facilitates a pre- and post-BAPCPA comparison of judicial workload. Each reporting period reflects various circuits and a representative distribution of districts taking into account the number of judges (e.g., single judge or large court) and the size of

the weighted caseload (higher, average, and lower) in each district. The current study has the added benefit of assigning judges who participated in the first two waves of the halted 2005 study to later reporting periods. Once all data has been collected, the Federal Judicial Center will analyze the information and develop new case weights for the Bankruptcy Committee's review at its January 2010 meeting. Thereafter, the Bankruptcy Committee may present the new case weights and its recommendations to the Judicial Conference for consideration.

Mr. COHEN. Thank you, Judge Lynn, and we appreciate your testimony and your willingness to participate.

Our second witness is Judge David Kennedy. Chief Judge Kennedy was appointed to the bankruptcy bench for the Western District of Tennessee in November 1980, became chief judge in 1988.

He has served the United States Judicial Conference in the bankruptcy area for quite a few years, and he is an esteemed mem-

ber of the bench in my home town and the Western District of Tennessee, and it is my honor to have you here.

Will you begin your testimony, Judge Kennedy?

TESTIMONY OF THE HONORABLE DAVID S. KENNEDY, UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TENNESSEE, ON BEHALF OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES

Judge KENNEDY. Thank you, Mr. Chairman—good morning—and Members of the Subcommittee.

My name is David Kennedy. I have had the honor of serving as a United States bankruptcy judge for about 28-1/2 years in the Western District of Tennessee at Memphis, where I live and primarily hold court. Over the years, I hold court in Jackson, Tennessee from time to time on an as-needed basis.

Chairman Cohen, you are right about Memphis having some deep roots in the field of bankruptcy with the Honorable Walter Chandler having had the 1938 amendments named after him and actually created the rehabilitative features of the bankruptcy code that we now know as Chapter 11—Chapter 13, a congressional policy that has existed in America since 1938, favoring repayment plans over liquidation where possible, and I emphasize where possible, because not all individuals who are unemployed would qualify to be eligible for relief in Chapter 13.

But I greatly thank you and the Subcommittee for this opportunity and pleasure to testify before you to discuss the bankruptcy judgeship needs.

I appear before you today as a representative of the National Conference of Bankruptcy Judges. I strongly agree with everything that Judge Lynn has said regarding judgeship needs and also the standards used by the Judicial Conference in its thoughtful, deliberate, reality-based process.

I also support strongly the Judicial Conference's recommendations regarding the 13 requested new judgeships, converting the 22 temporary conversions to permanent status, and the extension of the two temporaries.

And it is my understanding that my friend Mr. William Jenkins of this panel will testify in a moment regarding the methodology used by the Judicial Conference in these matters, so I will not step on his turf either.

And since I have previously submitted a prepared written statement that really speaks for itself, I thought my oral statements instead might focus more now on how this current workload impacts the day-to-day lives of bankruptcy judges, their staffs, the court security officers, the bankruptcy trustees, debtors, creditors and other litigants in the system, and also the public as a whole and, if time allows, to just briefly discuss how very carefully the Judicial Conference evaluates a district's request for a new judgeship and—and related needs.

The work of the bankruptcy judges today is seemingly more complex and time-consuming than ever before. No doubt the attorneys and trustees are more sophisticated today. There are more pro se litigants, more pro se debtors. Additionally, case filings are increas-

ing at, I think, an alarming rate, which makes a bad situation even worse.

As you, Chairman Cohen, mentioned a moment ago, the filings for the 12-month period ending March 31, 2009 were up 33.3 percent over bankruptcy filings for that same 12-year period ending March 31, 2008.

Many are predicting that calendar year 2009 will result in approximately 1.5 million bankruptcy cases being filed. In fact, last week I heard the senior economist at the A.O. Bankruptcy Judges Division make that prediction, and others have as well.

And that is significant for a number of reasons, but it is further significant because that is almost the same level that existed the year before the enactment of this controversial 2005 bankruptcy act.

Although the 2005 bankruptcy act certainly has positive provisions, even historic provisions, nonetheless it also has many provisions that are very complicated and are very time-consuming. Approximately 35 new motions have been created by the 2005 act, and many of them are extremely time-sensitive.

Actually, there are times and days when I feel like the bankruptcy court today is more a de facto emergency room for financially distressed consumer and commercial debtors.

Costs under the 2005 act have increased, resulting in more individuals debtors and small creditors representing themselves—that is, acting pro se—and pro se litigants and debtors just ordinarily are more time-consuming, and usually it is a judge nightmare to have both parties pro se, and that is happening more and more—a real dilemma, but we just have to work our way through it.

Because of these factors and others, the judges' workload within the cases have increased. Judges faced with overcrowded dockets are having to work late hours, requiring court staff, court security officers to also work late. The attorneys, the debtors, the creditors are having to stay late. And of course, their families—at least they are not there, but they are affected by all this.

And as judges, I note that sometimes we can just get too busy. And I believe that the perception of justice is important, perhaps sometimes more important than the reality itself. But it is critical that debtors and creditors feel that they have had their full day in court.

People sometimes just need an outlet. They want to appear before a judge and be heard and have an attentive judge hear them. So I think there is a public confidence consideration involved in all this, too.

And it goes without saying that the overcrowded dockets sometimes may result in different kinds of problems. For example, because of the lack of judges, hearings may be delayed, continued, or postponed or fast-tracked, or judicial decisions may be delayed.

Although creditor distribution under Chapter 11, 12 and 13 confirmed plans and in asset Chapter 7 cases may be delayed, last calendar year in the Western District of Tennessee I am very pleased to report that over \$260 million were distributed to creditors under Chapter 13 plans.

So it could be said that a delayed distribution to creditors is, in essence, a denial of lost opportunity cost. And today's creditor may be tomorrow's debtor.

Now to very briefly discuss how carefully the Judicial Conference evaluates a district request for a judgeship, I have served on many Judicial Conference judgeship survey committees, and I can personally attest to how very carefully the conference evaluates these judgeship requests and related needs based on this personal knowledge.

And as noted a moment ago, it is a well conceived, implemented and reality-based process. That is set forth much more in detail in my written comment.

And in summary, the need for these additional judgeships, the conversion of the temporaries to permanent status, the enlargement of the two temporary positions is real and acute. And simply put, we ask for your help. The needs exist.

And please know that we greatly appreciate your time and attention. And I also would be happy to try to attempt to answer questions that you may have later.

[The prepared statement of Judge Kennedy follows:]

PREPARED STATEMENT OF THE HONORABLE DAVID S. KENNEDY

**PREPARED STATEMENT OF
DAVID S. KENNEDY**

**CHIEF BANKRUPTCY JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE
ON BEHALF OF THE NATIONAL CONFERENCE OF BANKRUPTCY JUDGES**

BEFORE

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW**

REGARDING

**2009 BANKRUPTCY JUDGESHIP RECOMMENDATIONS OF THE JUDICIAL
CONFERENCE OF THE UNITED STATES**

JUNE 16, 2009

Mr. Chairman and Members of the Subcommittee on Commercial and Administrative Law:

My name is David S. Kennedy, I am the Chief Bankruptcy Judge for the Western District of Tennessee and have been a bankruptcy judge for approximately 29 years. I appear before you today as a representative of the National Conference of Bankruptcy Judges.

I am honored to be here to discuss the federal judiciary's bankruptcy judgeship needs and thank you for the opportunity and privilege to testify to the need for additional judicial resources. Although I am here today as a representative of the National Conference of Bankruptcy Judges, my goal is to share with you my experiences and perceptions as a participant in the Judicial Conference bankruptcy judgeship process and related matters and also to provide my personal and professional observations from inside the thorough process that the Judicial Conference undertakes, performs, and carries out before making a judgeship recommendation to Congress. Having served six years on the Judicial Conference Committee on the Administration of the Bankruptcy System ("Bankruptcy Committee"), I have been a member of many judgeship onsite survey teams and currently serve as the bankruptcy judge representative to the Judicial Conference. It goes without saying that it is important that there be sufficient judicial resources to enable the bankruptcy courts to timely balance the competing and countervailing interests of debtors, creditors, and other parties in interest, and to ultimately timely adjudicate bankruptcy cases and proceedings fairly and efficiently.

More specifically, the Judicial Conference has recently recommended that Congress authorize 13 new additional bankruptcy judgeships in the following judicial districts: AR (E and W) - (1); FL (M) - (1); GA (N) - (2); MI (E) - (3); MS (N) - (1), NV - (1), CA E - (1); WV (S) - (1) FL (N) - (1); and NC (W) - (1). The Judicial Conference also has recommended that Congress convert 22 existing temporary bankruptcy judgeships to permanent status in 15 judicial districts

and extend two existing temporary bankruptcy judgeship for five years. All these recommendations are based upon criteria discussed hereinafter through a process established by the Judicial Conference and its Bankruptcy Committee with great input from the Federal Judicial Center.

Being mindful and sensitive to the fact that bankruptcy judgeships are somewhat expensive, the Judicial Conference looks seriously and thoughtfully at the number of judgeships necessary to carry out the statutory mandates of the Bankruptcy Code, its accompanying relevant Title 28 provisions of the United States Code, and the Federal Rules of Bankruptcy Procedure before making a recommendation to Congress. It is pursuant to 28 U.S.C. § 152 (b)(2), which was enacted as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, that the Judicial Conference has submitted its current recommendation to Congress concerning the number and status of bankruptcy judges now needed for various judicial districts. These judgeships are truly necessary and essential, and this recommendation is not made lightly. Moreover, it is based on a thorough quantitative analysis using the respective judicial districts' caseloads as starting points, in addition to consideration of numerous objective and subjective factors in each requesting district.

The applicable case weight formula currently utilized is based upon a Federal Judicial Center study that includes a detailed analysis of the amount of judicial time it takes to address all the bankruptcy cases filed in a judicial district. The judicial caseload of a district is determined under the formula by assessing the number of filings in each designated category of cases and proceedings, and multiplying that number by the "case weight" measuring system that is assigned to the matters falling within the category. The weighted caseload can be expressed as per circuit, per district, or per judgeship, and is usually provided for a 12-month

period. The Administrative Office of the U.S. Courts ("AO") recently produced the data for the time period ended March 31, 2009.

The Judicial Conference endorsed the case weighting system at its January 1991 session and at that time; the average workload for bankruptcy judges on "case-related" matters was calculated to be 1,280. That figure did not include, for example, the time that a bankruptcy judge must spend traveling to other divisions within the district to hold court or attend district meetings, administering the general court and system operations, attending educational seminars, serving on court and bankruptcy system committees, etc. (i.e., non-case related time). For example, the time I spend preparing for, traveling to, and attending the biannual Judicial Conference sessions, an important function that benefits the bankruptcy system and the judiciary, is not captured in the weighted caseload for my judicial district.

In 1991, the Judicial Conference determined that an annual weighted caseload of at least 1,500 per judgeship should be the demarcation point or threshold to commence the early stages of the examination of whether an additional judgeship is justified. This is approximately 15 to 20 percent higher than the national workload average. In other words, by the time the district requests additional judgeships, those judges ordinarily are already working beyond the level the Judicial Conference deemed to be the standard in 1991.

The work of the bankruptcy judges today is more complex and more time consuming than it was in 1991 and also the attorneys for debtors and creditors are more sophisticated. Bankruptcy judges know the increased volume of work that is reflected, on the court's dockets; and in individual bankruptcy cases, the work is significantly above the levels from almost two decades ago. Furthermore, the existing case weight formula does not take into account approximately 35 additional proceedings (i.e., new motions) that have been added by virtue of the enactment of the 2005 Bankruptcy Act. Please see "Attachment A" for a list of these new

motions.

This is an important consideration to keep in mind as many cases filed under the 2005 Bankruptcy Act result in the filing of these newly created motions that come with statutorily prescribed short time fuses (i.e., some of these motions are very time sensitive). For example, under new section 362(c)(3) and (4) of the 2005 Bankruptcy Act, an individual debtor who has had one or more cases dismissed within the prior year must file a motion to extend or impose the automatic stay, as appropriate, and the court must hear that motion within the first 30 days of the filing of the case. The automatic stay under section 362(a) is one of the main benefits to the protections of the Bankruptcy Code for debtors, creditors, and bankruptcy trustees. The section 362(c)(3) or (4) hearing determines whether or not the debtor (or bankruptcy trustee) will be granted an automatic stay or creditors will be able to take action against the debtor (e.g., pursue state court lawsuits) or the debtor's property (e.g., repossession or foreclosure). These types of motions are therefore very important and extremely time sensitive. Since other time sensitive matters cannot be delayed on the docket, many bankruptcy judges, staff, and court security officers sometimes end up in court hearings late into the evening. Many judges also are working on other matters over the weekends reading advance sheets and preparing for upcoming hearings to ensure that all participants in the bankruptcy court are afforded timely access to the court and receive prompt judicial decisions.

It has been said that it is very important that each litigant before the court believes in the fairness of the process. No one likes to lose and to that end, even in the face of an unfavorable decision, it is critical that the parties understand the judicial decision to be entirely fair and impartial. Although the appeals process exists as the safeguard to deal with the legal correctness of the bankruptcy judge's decision, if the court is overloaded and the process is perceived to be partial as a result, the entire judicial system suffers. Public confidence issues

may result. Sufficient judicial resources can ensure that the process is fair and impartial for all litigants.

The case weight formula and case filing data, however, are only starting points to determine the recommendations to Congress on the number of judgeships currently needed; the case weight is one of a number of many factors. In the last two decades I have served on a number of judgeship surveys and can readily assure the members of this Subcommittee that the process is a thoughtful, thorough, and detailed one. In addition to the raw case filing data used to determine the case weights for a district, the Judicial Conference's Bankruptcy Committee and the AO review extensively the information that is readily on hand (e.g., local rules and standing orders, and other relevant demographic and social data), before ordinarily sending an onsite survey/visit team to the requesting district for an in-depth analysis of the overall situation in the district relevant to the judgeship requirements.

Each survey team consists of a judge from the Bankruptcy Committee, in more recent years, the judge selected has sometimes been a judge from the Bankruptcy Judge's Advisory Group, the senior economist of the AO Bankruptcy Judges Division, and one or more staff attorneys from the AO Bankruptcy Judges Division. There is a significant amount of research that goes into the survey before the team ever visits the district. This research includes, for example, information of the geography, demographics, and industrial makeup of the district. In addition to information readily available from sources such as the U.S. Census Bureau and the U.S. Bureau of Labor Statistics, each court selected for an onsite visit is asked to provide specific items of information for review by the team prior to its visit. The requested information includes a detailed statement describing each judge's calendaring practices, the court's trial hours, a listing of the 10 most time-consuming chapter 11 cases on each judges' docket, and the frequency and use of status conference, etc.

Once the survey team arrives in the district, it reviews many aspects of the local court's and the individual judge's practices, from calendaring to docket management. Effective case management practices are very important. The discussions often focus on the local court's processes to handle the category of cases and proceedings that are not currently specifically addressed in the case weight formula resulting from the 2005 Bankruptcy Act or mega chapter 11 cases. The survey team generally interviews local judges, key court personnel, members of the local debtor/creditor bar, the U.S. trustee (or bankruptcy administrator), panel trustees, and others including local industry leaders and economists or academics. The interviews are usually modeled on a predetermined set of questions so that everyone addresses substantially the same issues from their various perspectives. The survey team looks at a number of factors in making an analysis including the court's filing trends; travel requirements; the nature and mix of the courts' caseload; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; the effectiveness and alternatives that technology offers the court; the availability of alternative solutions and resources for handling the court's work load; the impact that approval of requested additional resources would have on the court's per judgeship caseload; and any other pertinent factors.

Before leaving the requesting district, the judge member of the survey team meets with the judges of the local court and furnishes a candid oral preliminary evaluation of the court's practices. Suggestions for improvements and ways to achieve greater efficiencies and productivity typically may be discussed. After the onsite survey, the survey team reviews the data gathered and carefully and methodically considers all factors and all methods, which could assist in, or resolve the need for, additional assistance. After a consensus is reached, the survey team's recommendation is documented, shared with the circuit and district affected, and presented to the Bankruptcy Committee's Subcommittee on Judgeships which accepts, rejects,

or modifies the team's recommendation and forwards its decision to the members of the Bankruptcy Committee who accept, reject, or modify the judgeship subcommittee's recommendation. The Bankruptcy Committee then forwards its recommendation to the Judicial Conference. The Judicial Conference then accepts, rejects, or modifies the Bankruptcy Committee's recommendations. The recommendations of the Judicial Conference are, as you know, forwarded to Congress with the request that the judgeships be authorized, if appropriate.

While this process is well reasoned and carefully balanced, it also can at times be a difficult process for its judgeship survey team participants. For example, it is difficult to tell a court that its request for another judge is being denied, particularly when the judges in that court are working so hard. Nevertheless, the reality is that hard decisions must be made and the answer to the court's request for help sometimes must be "No."

The districts whose requests are ultimately recommended also can be frustrated in that the courts whose recommendation is approved and transmitted to Congress have and continue to struggle under a caseload too large to handle while waiting for these additional judgeships to be authorized. The reality of such a situation is extremely difficult for the bankruptcy judge and staff. Because they are dedicated to the profession and to the administration of justice, it is difficult to deal with this type situation.

Bankruptcy courts have made great strides in the efficient processing of cases and proceedings. Automation has served us well. The courts realize that efforts in this regard must never stop and the judiciary has numerous initiatives to ensure that progress in this area continues to be made. However, the reality is that, even with increased efficiency and automation, we need additional bankruptcy judges to provide for the proper administration of the bankruptcy system now. We are not just asking our bankruptcy judges to do more - it is required. In sum, the need for the bankruptcy judgeships is very real and the need is acute.

In addition to voluminous case filings and the increased Bankruptcy Code requirements for each case, in the current economic climate the courts are seeing some of the largest and most complex cases come across their dockets. Along with landmark cases, there are also many honest but unfortunate financially distressed consumer / individual and small and large business debtors who also seek the protection under the Bankruptcy Code to ensure that they are afforded an opportunity, for example, to keep their home, minimize the impact that financial stress can have on their families, and reorganize their businesses. To these debtors, the nation's bankruptcy courts are a place of last resort.

The courts' current overloaded dockets' affect more than the judges. Members of the court staff and court security officers also are overworked in their efforts to assist the judges to attend to every matter on the docket in a timely and fair manner. The full docket means that court staffs are fielding more inquiries from debtors and creditors taking their time away from processing the case work that they are each assigned. The volume of cases coupled with the increased number of pro se debtors, as well as creditors acting pro se, also increase the work for chambers and other court staff as they must field calls and without crossing into substantive territory. The court staff is prohibited from rendering legal advice; nevertheless they must deal with each pro se party on many occasions to assure them that the process they are undergoing is the usual process under the Code and Rules. Frequently, calls and inquiries from pro se parties come up with each and every entry on their individual case docket sheets. These implications of the 2005 Bankruptcy Act have not been taken into account in the measurement of the courts' workload, but the implication is clear: the pro se parties' questions and issues must be addressed.

Beyond the effect on pro se debtors and creditors, those debtors and creditors who are represented by counsel also feel the effects of a crowded docket. For example, a represented

debtor or creditor may have instituted a complaint that is set in the ordinary course within the time periods prescribed by the Code and the Federal Bankruptcy Rules, but due to the crowded dockets, and in order to give the debtor's cause proper consideration, the final ruling on the matter may be deferred for an extended period of time through multiple continuances of the original setting. Ultimately, delay for the debtors and creditors in the process makes it more difficult to achieve the judicial goal set forth in FED. R. BANKR. P. 1001 of a just, speedy, and inexpensive resolution of the many matters that arise under the Code (e.g., delayed discharges).

Creditors who participate in the bankruptcy system seeking their fair share of payments from the debtor's repayment plans also are affected. A creditor seeks to be paid in whole or in part as soon as possible given the insolvency of the debtor; any delay in rendering a final decision in matters directly affecting, for example, a secured creditor's objection to confirmation of the debtor's plan, will impact that creditor's bottom line. The time value of money plays into the picture here and though I am not an economist, the implications for all parties and most definitely creditors are impacted by not achieving the speedy resolution of the matters before the court.

There also is the perception that a litigant should be able to carry with them from the court proceedings, even though they might not have a decision that was made in their favor, that they had their day in court before an attentive judge. It is important that all parties – debtors and creditors – who are facing financial distress are able to feel that they have been able to fully express their concerns and that the court has taken those concerns into full consideration. An overcrowded docket may prevent a judge from completely addressing the litigant's needs as perceived by the litigant. In my years on the bench, I have often seen the palpable tension that is eased when a debtor or creditor is able to fully express themselves in

open court and can feel that they have had their day in court. That is, they had the attention and consideration of an impartial and attentive judge.

In conversations with fellow bankruptcy judges around the country, I consistently hear that the bankruptcy system is under stress. We bankruptcy judges need your help in order to accomplish the judicial goal set forth in FED. R. BANKR. P. 1001 "to secure the just, speedy, and inexpensive determination of every case and proceeding." Adequate judicial resources are crucial. We again are nearing historic case filing levels, and need the additional resources requested in order to continue to provide fair and accessible justice to all parties in bankruptcy cases and proceedings.

The assistance of Congress and, more particularly, this Subcommittee that has been given to the bankruptcy judiciary many times in the past is desperately needed again. In asking for your help, I assure you that this recommendation for new bankruptcy positions and the conversion of these temporary to permanent positions is made only after the bankruptcy judiciary and the Judicial Conference has taken earnest and sincere steps to maximize all other programs, resources, and alternatives to meet the judicial districts' judgeship needs before asking for your assistance.

In summary, the need for 13 additional judgeships, the 22 conversions to permanent status, and the enlargement of two temporary position is very real and acute. The bankruptcy system indeed is under stress.

Thank you for all your consideration – past, present, and future.

I am happy to attempt to answer any questions that you may have.

“Attachment A”

Federal Judicial Center
Seminar for Newly Appointed Bankruptcy Judges
July 11-12, 2005

New Motions and Additional Grounds for Motions under the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005* -- Pub. L. 109-8, Stat. 23, enacted April 20, 2005 (BAPCAP)

Prepared by:
David S Kennedy

What follows is a preliminary listing of new motions that may be raised and presented to the bankruptcy bench as a result of particular amendments made to the Bankruptcy Code by the recent enactment of BAPCAP. The preliminary list also includes particular objections that will become a part of “motion practice” as well as additional grounds for motions that already are raised and presented to the court under current law.¹ This, of course, is only a preliminary listing that may be adjusted and added to by the bench and bar’s creativity and any procedural changes promulgated by the Judicial Conference Advisory Committee on Bankruptcy Rules.²

- | | |
|---------------------|--|
| _ Section 107(c)(2) | Ex Parte Motion for release of protected information. |
| _ Section 110(h)(3) | Motion for forfeiture and turnover of fees of bankruptcy petition preparers. |
| _ Section 110(h)(5) | Motion for fines to be imposed against bankruptcy petition preparers. |
| _ Section 110(j)(3) | United States trustee (or bankruptcy administrator), case trustee, or debtor’s motion for contempt for failure to comply with court order under section 110. |

¹ As a caveat, this list is by no means exhaustive nor is it definitive. It is simply an initial preliminary overview and interpretive estimation of some of the new motions that are affected by the 2005 Act amendments to the Bankruptcy Code.

²

At the time this list was prepared, the recommended interim changes to the Federal Rules of Bankruptcy Procedure had not been finalized. It is anticipated that interim rules (and forms) will be available by late August – about 60 days prior to BAPCAP’s October 17, 2005 effective date.

- Section 110(j)(3) Motion for money judgment to satisfy fines imposed on bankruptcy petition preparers.
- Section 111(g)(2) Debtor's motion for damages by nonprofit budget and credit counselors for revealing information to credit reporting agencies.
- Section 303(l) Debtor motion for expungement or seal of bankruptcy records.
- Section 333 Motion of patient care ombudsman regarding declining care for patients at debtor's patient care facility.
- Section 341(e) Motion not to convene section 341 meeting of creditors if debtor has filed plan to which debtor has solicited acceptances prior to commencement of case.
- Section 362(b)(20) Debtor motion for imposition of section 362 relief as to property subject to secured lien for which a case was filed within the previous two years (the previous case must have relieved the stay as to this creditor).
- Section 362(c)(3)(B), (4)(B) Motion for extension of section 362 automatic stay for a subsequent case if earlier case under chapter 7, 11, or 13 was dismissed within the prior year (including section 707(b) dismissal or orders granting relief from stay in earlier cases due to a "scheme to delay, hinder, and defraud creditors").
- Section 362(c)(4)(A), (j) Motion for entry of an order confirming that no automatic stay is in effect.
- Section 362(h)(2) Trustee's motion for retention of stay as to personal property of debtor subject to secured claim or unexpired lease as the property is of consequential value to estate (by deadline set in section 523(a)(2) - this motion is due to the provision in section 362(h) that states absent a debtor statement of intention to redeem or reaffirm the secured claim or assume the lease, the section 362(a) stay is inapplicable to this property).
- Section 365(d)(4)(B) Trustee's or Lessor's motion to extend period to assume or reject lease as to non-residential property for cause.

- Section 366(c)(2)	Motion to modify the amount of assurance of payment to a utility.
- Section 502(k)	Debtor's motion to reduce unsecured consumer debt claim.
- Section 521(i)	Motion for dismissal or conversion of case because individual debtor failed to file all requisite information within 45 days after the filing of petition (Order for dismissal must be entered within 5 days after party makes request; court may grant a single 45 day extension to complete filing if requested by the debtor).
- Section 704(b)(2)	United States trustee's motion to dismiss or convert (to be filed within 30 days of filing or statement re debtor abuse).
- Section 1102(a)(4)	Motion to change membership of unsecured creditors' committee.
- Section 1104(e)	United States trustee motion for appointment of trustee because CEO, CFO, or Board of debtor in possession are suspected of fraud, dishonesty, or criminal conduct.
- Section 112(b)(3)	Motion to convert from chapter 11 to chapter 7 (Must be heard within 30 days and decided within 15 days of hearing).
- Section 1307(b)(11)	Additional cause for motion seeking to convert or dismiss a chapter 13 case - failure of debtor to pay domestic support obligation that first becomes payable after the date of the filing of the petition.
- Section 1307(e)	Additional cause for motion seeking to convert or dismiss a chapter 13 case - failure of the debtor to file a tax return under § 1308.
- Section 1308	Debtor's motion to request additional time within which to file a tax return (Standard: Debtor must demonstrate by a preponderance of the evidence that the failure is attributable to circumstances beyond the control of the debtor).
- Section 1326(a)(3)	Motion to modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

- Section 1328(h) Motion to deny discharge if (1.) section 522(g)(1) may not be applicable to the debtor; and (2.) there is a pending proceeding in which the debtor may be found guilty of a felony as described in section 522(g)(1)(A) or liable for a debt as described in section 522(g)(1)(B).
- Section 1329(a)(4) Motion to modify plan due to debtor's purchase of health insurance with conditions specified in subsections (A), (B)(i), (B)(ii), and (C).
- Section 1503 Motion to dismiss because case is being overridden by a previously signed treaty or other form of agreement with a foreign country.
- Section 1509(a) Petition for recognition of a foreign proceeding under § 1515.
- Section 1519 Motion of a foreign representative for relief as to debtor's assets (including staying execution against debtor's assets & entrusting administration of assets to foreign representative).
- Section 1521(a)(1)-(3) Foreign representative's motion for a TRO in a proceeding recognized as a foreign proceeding.
- Section 1521(a)(4) Foreign representative's motion for examination of witnesses, debtor's assets, etc.
- Section 1522(c) Foreign representative's motion for modification or termination of relief granted under sections 1519 or 1521.

New Objections Requiring Hearings:

- Section 109(h)(3)(A), (B) United States trustee's objection to debtor's exemption from credit counseling certification.
- Section 362(l)(3) Lessor's objection to debtor's certification that the debtor has deposited 30 days rent with court or the rental arrearage subject to pre-petition possessory judgment having been cured (10 days to hold hearing).
- Section 362(m) Debtor's objection to sufficiency of landlord's certification under section 362(b)(23) (10 days to hold hearing).

- _ Section 563(c) Objection to timing of measurement of damages in connection with swap agreement, securities contracts, forward contracts, repurchase agreements, and master netting agreements.
- _ Section 727(a)(12), 1329(h) Objection to the granting of a discharge (citing certain delineated conditions).

Note also the following three case management areas that will impact decisions made by the court:

1. Section 332 B specifications for the appointment of consumer privacy ombudsman in section 363(b)(1)(B) sales (sales involving the transfer of personally identifiable information about individuals).
2. Section 362(e)(2) B re: timing of section 362(d) motions B court **must** make final judgment during 60 days beginning on date of request or extend 60 day period for good cause within that time.
3. Section 522(f)(4) B re: the limitation on definition of household goods for purposes of lien avoidance under section 522(f)(1).

Mr. COHEN. Thank you, Judge Kennedy. I appreciate it.

Our third witness is William Jenkins. Mr. Jenkins joined the Government Accountability Office in 1979 as a faculty fellow. Since February 2003 he has served as director of homeland security and justice issues, with a portfolio that includes emergency preparedness and response, elections and the judiciary.

And we appreciate your testimony today, Mr. Jenkins. Will you proceed?

**TESTIMONY OF WILLIAM JENKINS, JR., Ph.D., UNITED STATES
GOVERNMENT ACCOUNTABILITY OFFICE**

Mr. JENKINS. Chairman Conyers and Chairman Cohen, Members of the Committee, I appreciate the opportunity to be here today to discuss our work reviewing the workload measures that the Judicial Conference uses to assess the need for additional bankruptcy judgeships.

These workload measures, called weighted case filings, are now 18 years old. Their accuracy has almost certainly been affected by changes in the intervening years, such as changes in the nature of the workload, case management practices and the many new requirements of the Bankruptcy Abuse and Prevention and Consumer Protection Act, some of which Judge Kennedy discussed.

Some of these changes may have increased judges' workload and some decreased it. To the extent that the current case weights understate or overstate the time demands on judges, the weights could potentially result in the Judicial Conference understating or overstating the need for new bankruptcy judgeships.

The Federal Judicial Center has a study now under way to revise and update the current case weights. The time demands on bankruptcy judges are largely a function of the number and complexity of the cases on their dockets, with some cases taking time—more time than others.

To measure these differences, the Judicial Conference uses weighted case filings, a statistical measure of the average estimated judge time that specific types of cases are expected to take.

A weight is assigned to each case filed in a bankruptcy court, and the sum of those weights divided by the number of authorized judgeships in the court results in the number of weighted filings per judgeship for that court.

The Judicial Conference considers 1,500 annual weighted filings per judgeship an indicator, and only an indicator, of the need for additional judgeships in that court.

Thus, in assessing the need for judgeships, the Judicial Conference relies on the weighted filings to be a reasonably accurate measure of a judge's case-related workload.

Whether they are, in fact, reasonably accurate depends, in turn, on the soundness of the methodology used to develop the weights. The current weights were developed using data judges recorded on the actual amount of time they were spending on cases filed in their courts over a 10-week period.

In 2003, we reported that we found first that the methodology was reasonable and, second, that the resulting case weights, as approved by the Judicial Conference in 1991 and 1996, were likely to be reasonably accurate at the time they were developed.

The Federal Judicial Center began a study in 2005 to review the current case weights but suspended it after the enactment of the Bankruptcy Reform Act. This was prudent, given the fact that the act was expected to have an impact on bankruptcy filings, at least in the short term, and that the act included many new provisions whose effect on judges' workload could not be immediately known.

And in fact, personal bankruptcy filings surged to more than 2 million in 2005 due to the surge in filings prior to the October 2005 effective date of the reform act. In calendar year 2006, filings dropped to 600,000. Filings have since grown steadily, as mentioned, and reached about 1.2 million filings for the year ending in March 2009, at roughly the same level as calendar year 2004.

The FJC began a new study in 2008 to review the current case weights. The study is designed to collect data on the time bankruptcy judges spend on cases filed during five 10-week data collection periods from May 2008 through May 2009.

Active and recalled bankruptcy judges participate in the study during one of these five reporting periods. This study design permits the development of new case weights based on the same type of objective time data as the current weights, which we found to be reasonably accurate.

Importantly, it permits the calculation of a statistical estimate of the error associated with each case weight.

Finally, the accuracy of case weights as a measure of judicial workload is dependent upon accurately assigning each case file to the appropriate case weight category.

In 2003, we identified the steps the Administrative Office takes to ensure the accurate categorization of case filings, but we did not evaluate how effectively these measures may be in ensuring data accuracy, and we have not reviewed the current judgeship request.

That concludes my statement, Mr. Chairman. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

[The prepared statement of Mr. Jenkins follows:]

PREPARED STATEMENT OF WILLIAM JENKINS, JR.

GAO

United States Government Accountability Office

Testimony
Before the Subcommittee on Commercial and
Administrative Law, House Committee on the
Judiciary

For Release on Delivery Expected
at 11:00 a.m. EDT
June 16, 2009

**FEDERAL BANKRUPTCY
JUDGES**

**Measuring Judges'
Case-Related Workload**

Statement of William Jenkins, Jr., Director
Homeland Security and Justice



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our 2003 review and assessment of bankruptcy court weighted case filings, the workload measure the Judicial Conference first considers in assessing the need for additional bankruptcy judges.¹ My statement today also briefly discusses the judiciary's ongoing study to update the current bankruptcy case weights.

Weighted filings are a statistical measure of the estimated average amount of judge time that specific types of bankruptcy cases are expected to take. For example, a business chapter 7 bankruptcy case with assets of \$50,000 to \$499,999 is expected to take about twice as much judge time as a nonbusiness chapter 7 case with assets of \$50,000 to \$499,999. We assessed whether weighted case filings were a reasonable means of measuring bankruptcy judges' case-related workload and assessed the methodology of proposals to update the current case weights.

My statement today is based on the results of our 2003 review of documentation provided by the Federal Judicial Center (FJC) and the Administrative Office of the U.S. Courts (AOUSC) and interviews with officials in each organization as well as selected updates conducted in June 2009. We conducted our work in accordance with generally accepted government auditing standards. In summary, my statement includes the following major points:

- 1 The time demands on bankruptcy judges are largely a function of the number and complexity of the cases on their dockets. Not all cases necessarily take the same amount of judge time. Some types of cases may take more judge time than others.
- 2 In assessing the need for new bankruptcy judgeships, the Judicial Conference relies on the weighted case filings to be a reasonably accurate measure of case-related bankruptcy judge workload. Whether weighted case filings are a reasonably accurate workload measure rests in turn on the soundness of the methodology used to develop the case weights.
- 3 On the basis of the documentation provided for our review and discussions with FJC and AOUSC officials, we concluded that weighted case filings, as approved by the Judicial Conference in 1991 and amended in 1996, were likely to be a reasonably accurate means of measuring the case-related

¹ *Federal Bankruptcy Judges: Weighted Case Filings as a Measure of Judges' Case-Related Workload*, GAO-03-7891 (Washington, D.C., May 22, 2003).

workload of bankruptcy judges.

- The original case weights are now about 18 years old and were based on time data that are now about 21 years old. Changes in the intervening years in such factors as case characteristics, case management practices, or new statutory and procedural requirements, such as the implementation of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (the Bankruptcy Reform Act),² may have affected whether the case weights continue to be a reasonably accurate measure of case-related judge workload. Some of these changes may have increased the time demands on bankruptcy judges and others may have reduced time demands. To the extent that the case weights may now understate or overstate time demands on bankruptcy judges, the weights could potentially result in the Judicial Conference understating or overstating the need for new bankruptcy judgeships.
- The Judicial Conference's Committee on the Administration of the Bankruptcy System has approved a revision of the current weights, a study currently underway, whose methodological design is essentially identical to that used to develop the current case weights—a methodology we concluded in 2003 was reasonable.
- The accuracy of the case weights is also dependent upon accurately assigning each case filed in each bankruptcy court to the appropriate case weight category. AOUSC said that its staff took a number of steps to ensure that individual cases were assigned to the appropriate case weight category. These steps are described in appendix I. We did not evaluate how effective these measures may be in ensuring data accuracy.

Background

Biennially, the Judicial Conference, the federal judiciary's principal policymaking body, assesses the judiciary's needs for additional judgeships.³ If the Conference determines that additional judgeships are needed, it transmits a request to Congress identifying the number, type (courts of appeals, district, or bankruptcy), and location of the judgeships it is requesting.

The demands upon judges' time are largely a function of both the number and complexity of the cases on their dockets. Some types of cases may demand

² Pub. L. No. 109-8, 119 Stat. 23 (2005).

³ The Chief Justice of the United States presides over the Conference, which consists of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year.

relatively little time, and others may require many hours of work. The federal judiciary has developed workload measures for bankruptcy judges to estimate the national average amount of a judge's time that different types of cases may require. Individual judges may actually spend more or less time than this average on specific cases within each type—such as personal chapter 7 bankruptcy cases with assets of less than \$50,000 or chapter 13 cases with liabilities of \$50,000 or more (see app. II).

In assessing the need for additional bankruptcy judgeships in a bankruptcy court, the Judicial Conference first considers the court's weighted case filings. The Judicial Conference has established 1,500 annual weighted case filings per authorized judgeship as an indicator of a bankruptcy court's potential need for additional judgeships. This represents about 1,500 annual hours of case-related judge time. The Conference's policy for assessing bankruptcy judgeship needs recognizes that judges' workloads may be affected by factors not captured in the bankruptcy-weighted case filings. Examples of such factors include historical caseload data and filing trends; geographic, economic, and demographic factors in the bankruptcy district; and the availability of alternative solutions and resources for handling a court's workload, such as assistance from judges outside the district. However, our analysis focused solely on the weighted case filings workload measure.

Each case filed in a bankruptcy court is assigned a case weight. The case weight statistically represents the national average amount of judicial time, in hours, each type of bankruptcy case would be expected to require. The case weights are based on a 1988-1989 study in which bankruptcy judges completed diaries on how many hours they spent on specific types of cases and noncase-related work. Total annual weighted case filings for any specific bankruptcy court is the sum of the weights associated with each of the cases filed in the court in a year. Total annual weighted case filings per judgeship represent the estimated average amount of judge time that would be required to complete the cases filed in a specific bankruptcy court in a year.

Weighted case filings per judgeship is the total weighted filings divided by the number of authorized judgeships. For example, if a bankruptcy court had 5,100 weighted case filings and three authorized judgeships, the weighted case filings per judgeship would be 1,700. Because this exceeds the 1,500 threshold, the Judicial Conference would consider this court for an additional judgeship. However, it should be noted that the Judicial Conference's policy is to consider additional judgeships only for those courts that request them. Thus, if a court would otherwise be eligible for an additional judgeship, but did not request one, the Judicial Conference would not request a judgeship for that court.

How the Case Weights Were Developed

The Federal Judicial Center (FJC) developed the weights, adopted by the Judicial Conference in 1991, based on a 1988-1989 time study in which 272 bankruptcy judges (97 percent of all bankruptcy judges in those years) recorded the time they spent on specific cases for a 10-week period. Unlike the District Court time study, whose goal was to follow each sample case from filing to disposition—a “case tracking” study—this study was a “diary study” in which judges recorded in a time diary the hours spent on each case in the study and for other judicial work for the 10-week period. This period of time may or may not have covered the entire life of the case from filing through disposition. Appendix III includes a more detailed comparison of case-tracking and diary time studies as methods of capturing judge time spent on specific cases.

The case weights were developed using a two-step process.⁴ First, time data were collected from 272 judges (97 percent of the total of 280 bankruptcy judges at the time of the study). The judges recorded the time they spent on a sample of cases and other judgeship work over a 10-week period. The judges were subdivided into five groups and the recording time period for each group was staggered over a 1-year period. Second, the researchers assessed the relative impact on judicial workload of different types of cases—that is, which types of cases seemed to take more or less time—and developed individual case weights for specific case categories. The basic case weight computations involved calculating the average amount of time spent on cases of each type during each month of their life. These averages were then summed to determine the total amount of time for each case type.

Once the case weights had been created, total weighted case filings were calculated for each bankruptcy court. Then, weighted caseloads were transformed into initial estimates of required judgeships. These initial estimates were adjusted to account for factors other than those covered by the case weight calculation, such as the court’s case management practices and the time required to travel to divisional offices. After all adjustments, the study concluded that bankruptcy judges spent about 1,280 hours annually on direct case-related work and an average of 660 hours on matters not directly related to specific cases (e.g., on court and chambers administration, work-related travel, and other matters related to the judicial role).

⁴ The methodology is described in detail in Gordon Bermant, Patricia Lombard, and Elizabeth Wiggins, *A Day in the Life: The Federal Judicial Center’s 1988-1989 Bankruptcy Court Time Study*, *American Bankruptcy Law Journal*, Vol. 65 (Lexington, SC: 1991).

When it approved the case weights in 1991, the Judicial Conference stated that it expected that in addition to other judicial duties, a bankruptcy court should have at least 1,500 annual case-related hours per judgeship to justify additional judgeships. The federal work year is 2,080 hours per year, based on a 40-hour work week. Assuming that judges spent 1,500 hours annually on cases, there would remain 580 hours for federal holidays, annual leave, training, and noncase-related administrative tasks. Of course, the actual time that individual judges spend on case-related and non case-related work will vary.

Assessment of Case Weight Methodology

Overall, the methodology used to develop the bankruptcy case weights appears to be reasonable. The methodology included a valid sampling strategy, a very high participation rate among bankruptcy judges, and a reasonable means of adjusting for such factors as missing data. A notable strength of the methodology was the high participation rate by judges—97 percent of the bankruptcy judges at the time of the study. Thus, participating judges represented almost the entire universe of bankruptcy judges that could be included. The sampling period was not limited to a single time of year, thus minimizing potential bias due to variations in case filings by time of year. FJC researchers systematically used the reported time data to develop the case weights and made an effort to address all known limitations in the data. In computing the case weights, assumptions, and adjustments needed to be made to account for time data that were not linked to specific cases, missing data, and other factors. Both the assumptions and the methods used to make these adjustments appeared to be reasonable. It is important to note that the case weights were designed to estimate the impact of case filings on the workload of bankruptcy judges. Noncase-related time demands, such as time spent on court administration tasks, are not included in the case weights. The Judicial Conference focuses its analysis of the need for additional judges primarily on the demands that result from caseload, not noncase-related tasks and responsibilities.

Potential limitations of the methodology included the possibility of judges using different standards and definitions to record their time. Although the judges had written instructions on how to record their time, judges may have varied in how they interpreted case-related and noncase-related hours. To the extent this occurred, it may have resulted in the recording of noncomparable time data among judges. Because some cases require longer calendar time to complete than others, not all cases in the sample were completed at the end of the 10 weeks in which judges recorded their time. In particular, the study captured only a small portion of the total time required for very large business bankruptcies. Where the cases were not completed, it was necessary to estimate the judge time that would have been required to complete the case. However, the method used to make these estimates was also reasonable.

Amending the Case Weights—"Mega" Chapter 11 Cases

The size and time demands of chapter 11 business bankruptcies vary considerably. The bankruptcy case weights, which the Judicial Conference approved for use in 1991, included a weight of 11.234 hours for chapter 11 business filings involving \$1 million or more and a weight of 4.021 hours for chapter 11 business filings with assets between \$50,000 and \$99,999.

In 1996, a new method was used for measuring the workload required for very large ("mega") chapter 11 business cases. This measure was also developed by the FJC and approved by the Judicial Conference's Bankruptcy Committee. The mega cases were defined as "those involving extremely large assets, unusual public interest, a high level of creditor involvement, complex debt, a significant amount of related litigation, or a combination of such factors." The Administrative Office of the U.S. Courts defines mega chapter 11 cases as a single case or set of jointly administered or consolidated cases that involve \$100 million or more in assets and 1,000 or more creditors. Mega chapter 11 cases are distinct from other large chapter 11 cases in that they generally involve a larger number of associated filings and extend over a longer period of time.

The 1991 case weights did not fully reflect the judge time required for these very large, complex bankruptcy filings. The weighting scheme was a particular problem for the Southern District of New York and the District of Delaware, both of which have a high number of mega cases. At the time of the 1988-1989 bankruptcy time study, the highest value for chapter 11 cases in the bankruptcy administrative database was \$1 million or more. Subsequently, changes were made to the database, which now includes several subcategories for cases above \$1 million, the highest being \$100 million and above. Also, the time study estimated the judge time required by cases for the first 22 months after the case was filed, a period which may not have encompassed the entire calendar time required to dispose of the case. Both of these factors contributed to the inability to create case weights for the mega chapter 11 cases.

Beginning in 1996, the adjustment of weighted case filings to account for mega chapter 11 cases was implemented in the two districts where most of these cases have been filed—first in the Southern District of New York and later in the District of Delaware. FJC's research suggested there was no clear linear relationship between asset size and judge time in mega chapter 11 cases. Instead, FJC selected an adjustment method using data routinely collected on docketed events in bankruptcy cases, such as docketed hearings. The method used to adjust the case weights for mega chapter 11 cases consists of a preliminary weighted caseload computation, followed by a ratio adjustment step. The preliminary weighted caseload is the sum of the bankruptcy case weights for each case filing associated with the mega chapter 11 cases. For example, if a mega case consisted

of two consolidated cases, one with assets of between \$50,000 and \$99,999 (weight: 4.021) and one with assets greater than \$1 million (weight: 11.234), the preliminary case weight would be 15.255 (4.021 plus 11.234). In the Southern District of New York, this preliminary case weight is adjusted by the ratio of docketed events per weighted case-hour for mega chapter 11 cases to the docketed events per weighted case-hour for nonmega chapter 11 cases involving more than \$1 million in assets.⁵ In the District of Delaware, where mega chapter 11 cases tended to have a larger number of consolidated filings, several ranges of the number of associated filings are used to classify mega chapter 11 cases. For each range, a separate docketing ratio adjustment is calculated in the same manner as it is for the District of Southern New York. In both districts, the final step is to report these calculations over a period of several years and use the average value across the years as the adjusted weighted caseload for mega chapter 11 cases. The purpose of this final step is to moderate the effect of fluctuations in the number of mega chapter 11 cases filed from year to year.

Assessment of Mega Case Weighting Method

The methodology used to adjust the weighted caseload for mega chapter 11 cases, specifically the ratio adjustment step, cannot be thoroughly assessed because there are no objective time data to use for comparison. The FJC selected this methodology after extensive research on other possible methods. The overall strategy of applying a ratio adjustment using auxiliary information, followed by use of a multiyear average, is a reasonable approach.

2002 and 2008 Research Designs for Updating the Bankruptcy Case Weights

In June 2002, the Judicial Conference Committee on the Administration of the Bankruptcy System decided to begin a study to create new bankruptcy case weights. The preliminary design for the study had a two-phase structure. In the first phase, a diary time study would be conducted, and the time study data would be used to develop new case weights. In the second phase, research was planned to assess the possibility of developing "event profiles" that would allow future updating of the weights without the necessity of conducting a time study for each update. Future updating of the weights could include revision of case weight values and/or developing case weights for new case categories. The data from the time study could be used to validate the feasibility of the new approach. The preliminary design for this study appeared to be reasonable. In the first phase, new weights would be constructed using objective data from the time study. The second part represented experimental research to determine if it would be possible to make future revisions to the weights without the requirement of

⁵This determines "how the level of docketing in mega cases differs from the docketing in non-mega cases of one million dollars or more."

conducting a time study. If the research determined this were possible, it would then be possible to update the case weights more frequently with less cost than required by a time study.

If bankruptcy reform were enacted during the course of the new bankruptcy time study, FJC officials said they would recommend halting the time study and allowing some period of time for the implementation of the new law before restarting the study. This was a prudent plan because the law had many provisions affecting personal bankruptcy filings and personal bankruptcy filings represent the vast majority of bankruptcy filings. The FJC did begin collecting data for new case weights in 2005, but terminated the effort soon after the Bankruptcy Reform Act was enacted.

It is possible, indeed likely, that the Bankruptcy Reform Act's many new provisions have affected the time that bankruptcy judges spend on cases. For example, there are new objections that can be filed that require hearings. These include a U.S. Trustee's objection to the debtor's exemption from credit counseling certification. Under the Bankruptcy Reform Act, debtors who file for bankruptcy are required to complete credit counseling prior to filing. The extent to which new provisions in the Bankruptcy Reform Act affect bankruptcy judges workload depends, of course, on the frequency with which they are invoked and the time it takes to address them.

Although nonbusiness (personal) bankruptcy filings accounted for more than 96 percent of total bankruptcy filings both before and after the implementation of the Bankruptcy Reform Act, the Act initially had a dramatic effect on bankruptcy filings. Total personal bankruptcy filings in 2004 were 1,563,145 and in calendar year 2005 were almost a half million higher at 2,039,214. By contrast, in calendar year 2006, the first full calendar year after the Bankruptcy Reform Act became effective, personal bankruptcy filings were 597,965—a drop of about 71 percent compared to 2005 filings and about 62 percent compared to 2004 filings. Personal bankruptcy filings have since grown to 1,153,412 in the 12 month period ending March 31, 2009. Thus, it was prudent for the FJC to suspend its 2005 time study because it would likely take some time for the filings under the new law to normalize, and there would inevitably be issues about the law's implementation that would need to be addressed.

The FJC has again initiated a new case weight study that includes data collected over 5 10-week reporting periods from May 2008 through May 2009. This study, like its predecessors, is a time study in which participating bankruptcy judges record the time they spend on cases and other judicial activities during their assigned reporting period. Each active and recalled bankruptcy judge is to participate during one of the 5 reporting periods. The FJC has dropped the second

part of the 2002 design, which was to collect assess whether an event-based approach could be used to more frequently update the case weights. The FJC said that the experience in the 2005 study indicated that the supplemental information about judges' time reports—which was very detailed and keyed to specific case events—was the most burdensome to provide. These data elements were not included in the 2008 study in order to simplify the process, reduce the burden on judges, and contribute to keeping judges' participation rate in the 2008 study high, since 125 judges had already participated in the 2005 study and would be asked again to participate in the 2008 study. Moreover, the FJC said that the information from the suspended 2005 study provides the necessary foundation for the exploratory work on the event-based method, which the FJC still intends to do.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or other members of the Subcommittee may have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact William Jenkins, Jr., at (202) 512-8777. Individuals making key contributions to this testimony included David Alexander, Leyla Kazaz, and Geoffrey Hamilton.

Appendix I: Quality Assurance Steps the Judiciary Takes to Ensure the Accuracy Of Case Filing Data for Weighted Filings

All current records related to bankruptcy filings that are reported to the Administrative Office of the U.S. Courts and used for the bankruptcy court case weights are generated by the automated case management systems in the bankruptcy courts. Filings records are generated monthly and transmitted to AOUSC for inclusion in its national database. On a quarterly basis, AOUSC summarizes and compiles the records into published tables, and for given periods, these tables serve as the basis for the weighted caseload determinations.

In responses to written questions, AOUSC described numerous steps taken to ensure the accuracy and completeness of the filings data, including the following¹:

- Built-in, automated quality control edits are done when data are entered electronically at the court level. The edits are intended to ensure that obvious errors are not entered into a local court's database. Examples of the types of errors screened for are the district office in which the case was filed, the U.S. Code title and section of the filing, and the judge code. Most bankruptcy courts have staff responsible for data quality control.
- A second set of automated quality control edits are used by AOUSC when transferring data from the court level to its national database. These edits screen for missing or invalid codes that are not screened for at the court level, such as dates of case events, the type of proceeding, and the type of case. Records that fail one or more checks are not added to the national database and are returned electronically to the originating court for correction and resubmission. Monthly listings of all records added to the national database are sent electronically to the involved courts for verification.
- Courts' monthly and quarterly case filings are monitored regularly to identify and verify significant increases or decreases from the normal monthly or annual totals.
- Tables on case filings are published on the Judiciary's intranet for review by the courts.
- Detailed and extensive statistical reporting guidance is provided to courts for reporting bankruptcy statistics. This guidance includes information on general reporting requirements, data entry procedures, and data processing and

¹Given the limited time for our review, AOUSC was unable to obtain input to our questions on data quality control procedures from individual courts.

reporting programs.

- Periodic training sessions are conducted for bankruptcy court staff on measures and techniques associated with data quality control procedures.

In addition to the quality control procedures listed above, AOUSC indicated that an audit was performed in 1997 by Clifton Gunderson L.L.C., a certified public accounting firm, to test the accuracy of the bankruptcy statistical data maintained by bankruptcy courts and the AOUSC. The firm compared individual case records in 11 courts nationwide with data in the national database for cases filed in 1993, 1994, and 1995 for completeness and accuracy. Excluding problems in one district, the overall match rate of all statistical data elements captured exceeded 97 percent, and the fields with most mismatches were not relevant to the bankruptcy weighted caseload. AOUSC was unaware of any other efforts to verify the accuracy electronic data to "hard copy" case records for bankruptcy courts. AOUSC noted that it did not have time to seek detailed information from the individual bankruptcy courts on this issue within the short time available to respond to our questions.

Appendix II: Bankruptcy Case Weights and Confidence Intervals for All Cases Except “Mega” Chapter 11 Business Filings

Type of case	Case weight in hours	Confidence interval
Chapter 7—Business		
Assets less than \$50,000	0.335	0.312 - 0.359
Assets \$50,000-\$499,999	0.413	0.382 - 0.444
Assets greater than \$499,999	1.704	1.426 - 1.982
Chapter 7—Nonbusiness		
Assets less than \$50,000	0.089	0.079 - 0.099
Assets \$50,000-\$499,999	0.160	0.144 - 0.176
Assets greater than \$499,999	0.302	0.239 - 0.365
Chapter 11		
Assets less than \$50,000	5.372	5.054 - 5.690
Assets \$50,000-\$99,999	4.021	3.692 - 4.350
Assets \$100,000-\$499,999	4.285	3.991 - 4.579
Assets \$500,000-\$999,999	5.143	4.769 - 5.517
Assets of \$1 million or more	11.234	10.397 - 12.071
Chapter 12	4.040	3.558 - 4.522
Chapter 13		
Liabilities less than \$50,000	0.310	0.269 - 0.351
Liabilities at least \$50,000	0.457	0.410 - 0.504
Other cases	0.194	0.074 - 0.314
Adversary proceedings		
Dischargeability	1.346	1.232 - 1.460
Other	2.015	1.722 - 2.310

Source: Federal Judicial Center.

Appendix III: Measuring Judicial Workload Using the Collection of Time Study Data

The current Bankruptcy Court and District Court workload measures were developed using data collected from time studies. The District Court time study took place between 1987 and 1993, and the Bankruptcy Court time study took place between 1988 and 1989.

Different procedures were used in these two time studies. The Bankruptcy Court time study protocol is an example of a "diary" study, where judges recorded time and activity details for all of their official business over a 10 week period. The District Court time study protocol is an example of a "case-tracking" study, where a sample of cases were selected, and all judges who worked on a given sample case recorded the amount of time they spent on the case. Time studies, in general, have the substantial benefit of providing quantitative information that can be used to create objective and defensible measures of judicial workload, along with the capability to provide estimates of the uncertainty in the measures.

Estimating Judge Time in Diary and Case Tracking Studies

At the conclusion of a case-tracking study, total time spent on each sample case closed during the study period is readily available by summing the recorded times spent on the case by each judge who worked on the case. For a given case type, the summed recorded times can be averaged to obtain an estimate of the average judicial time per case for that case type.

For a diary study, however, it is necessary to make estimates of judicial workload for all cases that were not both opened and closed during the data collection period. This estimation step requires information from the caseload database, and thus the accuracy of estimates depends in part on the accuracy of the caseload data. Two kinds of information are required from the caseload database: case type and length of time the case has been open.

With the diary approach, the total judicial time that is required for lengthy case types is estimated by combining "snap shots" of the time required by such cases of different ages. Thus, in theory, reducing accurate weights for lengthy case types is not problematic. In practice, however, difficulties may be encountered. For example, in the 1988-1989 bankruptcy time study, the asset and liability information for cases older than 22 months was inadequate and appropriate adjustments had to be made. In addition, difficulties may arise if only a small number of cases of the lengthy type are in the system. This is an issue FJC said it is considering as it finalizes how to assess the judicial work associated with mega cases in the upcoming bankruptcy case-weighting study.

Comparing Case-Tracking Studies and Diary Studies

Each study type has advantages and disadvantages. The following outlines the similarities and differences in terms of burden, timeliness of data collection, post-data collection steps, accuracy, and comprehensiveness.

Burden on Participants

Each study type places burden on judicial personnel during data collection. It is not clear that one study type is less burdensome than the other. The diary study procedure requires more concentrated effort, but data are collected for a shorter period of time.

Timeliness of Data Collection

Data collection for a diary study can be completed more quickly than for a case-tracking study.

Post Data Collection Steps

More effort is needed to convert diary study data to judicial workload estimates than case tracking study data. Also, the accuracy of estimates from diary study data depends in part on the accuracy and objectivity of the information in the caseload database.

Data Accuracy

It is not clear that one study type collects more accurate data than the other study type. Some of the Bankruptcy Court case-related time study data could not be linked to a specific case type due to misreporting errors and/or errors in the caseload database. Some error of this type likely is unavoidable because of the requirement to record all time rather than record time for specific cases only. However, it is plausible that a diary study collects higher quality data, on average, because all official time is to be recorded during the study period; judicial personnel become accustomed to recording their time. In contrast, the data quality for a case-tracking study could decline over the study's length; for example, after a substantial proportion of the sample cases are closed, judicial personnel could become less accustomed to recording time on the remaining open cases.

Comprehensiveness and Efficiency

In theory, a case-tracking study collects more comprehensive information about judicial effort on a given case than a diary study, because data for a sampled case almost always are collected over the duration of the case. (Data collection may be terminated for a few cases that remain open, or are reopened, many years after initial filing.) For case types that simultaneously stay open for a long period and require a substantial amount of judicial effort, it is possible that a diary study

would not be able to produce suitable estimates of judicial workload due to a lack of data.

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Mr. COHEN. Thank you, Mr. Jenkins. Appreciate it.

Our final witness is Carey Ebert. She is a partner in the Fort Worth law firm of Ebert Law Offices, focusing on consumer and small business bankruptcies. She was president of the National Association—or became president of the National Association of Consumer Bankruptcy Attorneys this January 1, 2009.

She served two terms previously as vice president and serves as a panel trustee in the Northern District of Texas. So three of our

four witnesses are from Conference USA, more or less—once removed, I guess, with CCU.

Thank you, Ms. Ebert, and if we can proceed with your testimony.

**TESTIMONY OF CAREY D. EBERT, EBERT LAW OFFICES, P.C.,
on behalf of the NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS**

Ms. EBERT. Thank you. Thank you. Thank you, Mr. Chairman.

Good morning. By way of background, the National Association of Bankruptcy Attorneys, or NACBA, on whose behalf I appear today, is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy.

Formed in 1992, NACBA has more than 4,000 members located in all 50 states and Puerto Rico.

Before I begin my statement in support of additional bankruptcy judgeships, I want to take just a minute to thank this Subcommittee, the full Judiciary Committee and, indeed, the entire House of Representatives for your tireless efforts on behalf of homeowners facing foreclosures.

Perhaps the single most effective thing this Congress could do to stem the rising tide of foreclosures would be to give bankruptcy judges the ability to modify mortgages on primary residences in Chapter 13, as currently can be done for vacation homes, yachts, family farms and investment property.

The House of Representatives passed legislation that makes this common-sense change to the bankruptcy code in instances where homeowners were unsuccessful in getting a sustainable loan modification from their lender. Regrettably, that provision was killed in the Senate.

I understand there is some belief the foreclosure crisis is behind us. Based on what I see every day in my practice, I can assure you that it is not, and I suspect we will be taking up this issue again in the near future. And thank you for allowing this digression.

NACBA supports the 2009 recommendation of the Judicial Conference of the United States for additional bankruptcy judges.

We agree that additional judgeships are critical to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings.

There have been no permanent judgeships authorized by Congress since 1992, despite a surge in consumer and business case loads and the increased complexity of cases since the October 2005 implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, BAPCPA.

Although bankruptcy filings initially declined in the wake of BAPCPA's implementation, there has been a tremendous increase in recent years. It is estimated that filings this year will again exceed the 1 million mark, with an increase of 27 percent in 2009, to more than 1.2 million cases.

The state of the economy, particularly as it impacts home foreclosures, rising unemployment and credit availability, is a major

factor in the rising number of personal bankruptcies, which traditionally constitute the majority of bankruptcy cases.

The economic downturn is causing an increase in small business and corporate bankruptcies, some of which are very large and complex Chapter 11 cases.

But the number of filings alone is not the sole indicator of the overall workload of the judiciary or those involved with the bankruptcy process. Perhaps the biggest impact of the 2005 law has been the enormous increase in the cost and burdens of filing an individual bankruptcy case.

While it may not have been the intention of some of those who voted for the bill, BAPCPA has increased documentation requirements, bureaucratic paperwork and other costs so much that the honest, low-income and working family, not the high rollers at whom the amendments were supposedly aimed, are deterred—are prevented from obtaining the bankruptcy relief that they need.

Consider some of the new requirements as a result of the 2005 law changes. Before a debtor can even file their petition for bankruptcy, that debtor must obtain all payment advices for the 60 days prior to filing, 4 years of their most recent tax returns or transcripts, provide their attorney with information detailing every penny of their income for the past 6 months, provide bank statements to the trustee and evidence of current income, attend a pre-petition credit counseling briefing no matter how hopeless their situation, and, regardless of whether their problems were caused by imprudent credit decisions or unavoidable medical catastrophes, attend a financial management course in order to receive a discharge. And the attorney must complete numerous additional forms, including a six-page means-test form that requires arcane calculations about which there are many different legal interpretations.

As such, bankruptcy has gone from being a low-priced proceeding that could be handled quickly and efficiently to an expensive minefield of new requirements and traps and tricks that can catch the innocent and unsuspecting debtor.

All of these provisions add to the workload of bankruptcy judges, and if there are disputes as to whether debtors have complied with many of these new requirements, this will often result in additional court hearings and judicial oversight.

In summary, BAPCPA has created new docketing, noticing and hearing requirements that make addressing the petitions far more complex and time-consuming for bankruptcy judges.

While the Federal judiciary has implemented a number of cost-containment measures and continued to identify and explore new initiatives to further streamline operations to reduce costs, the bulging case loads demand that additional judgeships be approved. Thank you.

[The prepared statement of Ms. Ebert follows:]

PREPARED STATEMENT OF CAREY D. EBERT

TESTIMONY OF CAREY D. EBERT
PRESIDENT

NATIONAL ASSOCIATION OF CONSUMER
BANKRUPTCY ATTORNEYS

"BANKRUPTCY JUDGESHIP NEEDS"

BEFORE THE SUBCOMMITTEE ON COMMERCIAL
AND ADMINISTRATIVE LAW

JUDICIARY COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

June 16, 2009

Chairman Cohen, Ranking Member Franks and Members of the Subcommittee:

My name is Carey Ebert. I am president of the National Association of Consumer Bankruptcy Attorneys (NACBA) and a practicing bankruptcy attorney in Hurst, Texas. I also serve as a chapter 7 trustee. NACBA, on whose behalf I appear today, is the only national organization dedicated to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy. Formed in 1992, NACBA has nearly 4,000 members located in all 50 states and Puerto Rico. NACBA's members represent a large proportion of the individuals who file bankruptcy cases in the United States Bankruptcy Courts.

Thank you for the opportunity to provide testimony on the need for additional bankruptcy judgeships. NACBA supports the 2009 recommendations of the Judicial Conference of the United States for additional bankruptcy judges. NACBA agrees with the Judicial Conference that additional judgeships are critical to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings. The proposal before you today calls for a modest increase by extending 22 temporary positions to permanent judgeships, adding nine new judgeships and extending one temporary position for another five years.

New bankruptcy judgeships have not been authorized by Congress since 1992, despite a surge in consumer and business caseloads and the increased complexity of cases since the October 2005 implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Although bankruptcy filings initially declined in the wake of BAPCPA's implementation, there has been a tremendous surge in recent years. The Judicial Conference estimates that filings will again exceed the one million mark, with an increase of 27 percent in 2009 to 1,226,100 cases.¹ The state of the economy, particularly as it impacts home foreclosures, rising unemployment, and credit availability, is a major factor in the rising number of personal bankruptcies – which traditionally constitute the majority of bankruptcy cases. The economic downturn also is causing an increase in small business and corporate bankruptcies, some of which are very large, complex chapter 11 cases.

The number of filings alone is not the sole indicator of the overall workload of the judiciary or those involved with the bankruptcy process. BAPCPA created new docketing, noticing and hearing requirements that make addressing the petitions far more complex and time-consuming for bankruptcy judges. According to the Honorable Julia Gibbons, testifying on behalf of the Judicial Conference of the United States, before the House of Representative's Appropriations Subcommittee on Financial Services and General Government, "the actual per-case work required of the bankruptcy courts has increased significantly under the new law, and a new work

¹ Statement of Honorable Julia Gibbons, Chair, Committee on the Budget of the Judicial Conference of the United States, before the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the United States House of Representatives, March 19, 2009, available at http://appropriations.house.gov/Witness_testimony/FS/Julia_Gibbons_3_19_09.pdf. Others estimate that there may be as many as 1.5 million bankruptcy filings this year.

measurement formula that reflects this additional work was used to develop the fiscal year 2010 budget request.”²

While the federal judiciary has implemented a number of cost-containment measures and continues to identify and explore new initiatives to further streamline operations to reduce costs, the bulging caseload demands that additional judgeships be approved.

Rising Bankruptcy Caseload

The changes made to the Bankruptcy Code in 2005 as a result of BAPCPA were premised upon the belief that there was widespread abuse in the bankruptcy system and that many people who filed chapter 7 bankruptcy cases could afford to pay a significant portion of their debts. NACBA, its members, and many organizations representing consumers, seniors, minorities, working families and others disputed that allegation and made the case that bankruptcies were driven by what then was an uneven economic prosperity that failed to reach many middle- and low-income workers.

While there was a temporary decrease in the number of bankruptcy filings in the wake of the 2005 Act implementation, the rate of filings today is on pace to set new highs as the ailing economy continues to shed jobs, force workers to accept lower pay, increase the number of people without health insurance and force more people into foreclosure on their homes. At the same time, there has been a considerable tightening of credit, so that consumers are facing the day of financial reckoning much sooner than had been the case previously when home equity and credit card lines of credit could be tapped to hold creditors at bay.

And, the current economic downturn appears to be all-inclusive, sparing no age, education level or employment status demographic. Older Americans are filing bankruptcy in greater numbers than ever before. Personal bankruptcy filings among those 65 and older jumped 150 percent from 1991 through 2007, according to a study issued last year by AARP.³ Although they have been known as the most thrifty among us, today many seniors are deep in debt and without a safety net.

The number of bankruptcy filings during the month of May 2009 reached 6,020 a day, up from 5,854 in April, according to a report from the Automated Access to Court Electronic Records (AACER).⁴ The total number of U.S. bankruptcies filed during the first three months of 2009, the most recent time period for which data are available, increased 34.5 percent over the same period in 2008 nationwide, according to data released last week by the Administrative Office of the U.S. Courts. As might be expected, it was not only consumers seeking bankruptcy relief in

² *Ibid.*

³ Deborah Thorne, Elizabeth Warren and Teresa Sullivan, *Generations of Struggle*, AARP Public Policy Institute, June 2008, available at http://assets.aarp.org/occenter/consumc/2008_11_debt.pdf.

⁴ Christine Dugas, *USA Today*, Bankruptcy filings rise to 6,000 a day as job losses take toll, June 3, 2009, available at www.usatoday.com/money/economy/2009-06-03-bankruptcy-filings-unemployment_N.htm.

the first quarter of 2009. Business filings during the first quarter of 2009 soared 64.3 percent over the first quarter of 2008.⁵

The states with the highest per capita filing rate for the 12-month period ending March 31, 2009 include: Tennessee, Nevada, Alabama, Georgia, Indiana, Michigan, Ohio, Kentucky, Arkansas and Illinois. Those states include some of the states with the highest unemployment rates and the greatest number of home foreclosures.

What does all of this mean? As Jack Williams, resident scholar at the American Bankruptcy Institute and a bankruptcy professor at the Georgia State University College of Law, so aptly put it, "In a nutshell, bankruptcies happen because financial distress happens. It is hubris to think we can manage such complex system by inserting a means test here, a credit counseling requirement there."⁶ The reality is that as long as there are job layoffs, home foreclosures, uninsured or under-insured medical emergencies, divorce and other unforeseen life calamities, consumers and businesses alike will seek the protection of bankruptcy court, no matter how many obstacles are put in their way.

Increased Complexity Makes Cases More Time Intensive

Perhaps the biggest impact of the 2005 law has been the enormous increase in the costs and burdens of filing an individual bankruptcy case. While it may not have been the intention of some who voted for the bill, BAPCPA has increased documentation requirements, bureaucratic paper work, and other costs so much that honest low income and working families, not the "high rollers" at whom the amendments were supposedly aimed, are deterred or prevented from obtaining the bankruptcy relief they need. The filing fee has increased by 50 percent; there are new fees for credit counseling and education that usually total another \$100; and there has been such a great increase in the documentation required to file a case that attorneys have had to increase their fees at least 50 percent.

As such, bankruptcy has gone from being a relatively low-priced proceeding that could be handled quickly and efficiently to being an expensive minefield of new requirements, and tricks and traps that can catch the innocent and unsuspecting debtor. There is simply no reason, especially in the cases of lower income debtors, that all of the documentation demanded by the 2005 amendments is necessary.

Every consumer bankruptcy attorney has had the experience of explaining these requirements to prospective clients, only to have the clients go away, discouraged, and never return. Debtors must obtain all "payment advices" for the 60 days before the bankruptcy is filed; they must obtain a tax return or transcript for the five most recent year before the petition is filed and sometimes additional years; they must provide an attorney with information detailing every penny of their income for the six months the petition is filed; they must provide bank statements to the trustee and evidence of current income; they must attend a prepetition credit counseling

⁵ American Bankruptcy Institute, press release, *Total Bankruptcy Filings Increase Nearly 35 Percent Over First Quarter 2008; Business Filings Jump Over 64 Percent*, June 9, 2008, available at www.abiworld.org

⁶ Tara Siegel Bernard, *Downturn Pushes More Toward Bankruptcy*, *New York Times*, April 4, 2009.

briefing, no matter how hopeless their situation and regardless of whether their problems were caused by imprudent credit decisions or unavoidable medical catastrophes; they must attend a financial management course in order to receive a discharge; attorneys must complete numerous additional forms, including a six page means test form that requires arcane calculations about which there are many different legal interpretations.

According to the United States trustee program, attorneys must also provide clients with pages and pages of so-called disclosures, many of which are either irrelevant to the client's case or inaccurate, which then requires additional time spent explaining why they are irrelevant or inaccurate. Moreover, trustees in some districts demand that debtors provide even more additional documents.

And if a consumer bankruptcy debtor is subject to an audit by the United States trustee, even more is demanded. The consumer is asked to provide six months worth of income documentation, six months worth of bank statements, and an explanation of each and every deposit and withdrawal from any account over those six months. Few consumers keep such records; many consumers in financial trouble operate on a cash basis because their credit cards have been cut off and they must make numerous ATM withdrawals to meet almost all of their expenses. To account for every expense paid with the cash withdrawn is often impossible. But many bankruptcy attorneys are asking for much of this information from every client because they are so afraid of being accused, after an audit, of filing false statements by an aggressive United States trustee program, as discussed below.

And, as described in a recent report from the Government Accountability Office (GAO),⁷ the credit counseling requirement is not serving its supposed purpose. Even the credit counselors report, as did our members in a survey we conducted in 2006, that only 2-3 percent of the prospective debtors they see could even contemplate a debt management plan. The counseling requirement serves primarily as yet another barrier to bankruptcy, especially in those districts where judges have ruled that debtors, even those facing emergencies, cannot file their bankruptcy cases until the day after they receive the credit counseling briefing.

To make matters worse, most of the required documentation is unnecessary to the ostensible goals of the 2005 amendments. In the vast majority of cases, consumers are nowhere near the thresholds at which the abuse provisions come into play. It should be sufficient for a debtor to provide any one of several documents to show income - a recent paystub with a year to date figure on it, or a tax return or transcript for the prior year, or a W-2 form. The trustee is free, as has always been the case, to demand additional documents in the small percentage of close cases in which they might actually make a difference. And it should be made clear that if an auditor later finds minor discrepancies in the numbers, discrepancies that would have had no effect on the results of the case, the debtor and the debtor's attorney should not be publicly accused, as they are now, of making "material misstatements." Such a serious accusation should be reserved for cases in which the debtor's misstatement had a significant impact on how the case was handled.

⁷ Government Accountability Office, Bankruptcy Reform: Value of Credit Counseling Requirement is Not Clear," April 6, 2007. GAO-07-203, available at <http://www.gao.gov/new.items/d07203.pdf>.

Of course, these are only some of the provisions in the 2005 legislation that are having the greatest impact. Among the dozens of changes made by that law, many cause significant harm to honest debtors in particular cases, including restrictions on the discharge, new requirements for chapter 13 that make it much less attractive and make it more likely that plans will fail, and provisions that make it harder for consumers to save a home from foreclosure or a car from repossession. All of these provisions also add to the workload of bankruptcy judges. If there are disputes as to whether debtors have complied with these many new requirements, that will often result in additional court hearings and judicial oversight.

The Need for Additional Bankruptcy Judgeships

As is clear from the discussion above, the rising bankruptcy caseload and increasing complexity of consumer and business bankruptcy filings impose a tremendous workload on bankruptcy judges. At a time when more and more consumers and businesses resort to bankruptcy as a way to get back on their feet, it is critical that the system run as smoothly and efficiently as possible. The Judicial Conference has worked tirelessly to identify ways in which they can streamline operations, even in the face of more cumbersome and time consuming requirements imposed by the 2005 Act. It is critical that Congress now give the Judicial Conference the resources it needs, in the form of additional judgeships, to continue its work.

Mr. COHEN. Thank you, Judge Lynn.

We will now have questioning, and I will begin by recognizing myself.

First, Judge Lynn, I take it that if you could be king for a day—or queen, excuse me—you could be king; it is just all imaginary—would you do away with the counseling provisions in the 2005 law?

Ms. EBERT. Chairman Cohen, I think that the pre-petition counseling requirement that has been imposed on debtors is an utter waste of time and an—

Mr. COHEN. An utter waste of time.

Ms. EBERT. Utter waste of time, yes.

Mr. COHEN. Does anybody on the panel think that it is getting within—that it is within the frame of—margin of error, but at least somewhere around there? Do you all agree with that?

Judge LYNN. Well, since you asked the question of Judge Lynn, but Ms. Ebert, I think, you were intending to—

Mr. COHEN. It was a trick question.

Judge LYNN [continuing]. Have comment on it—

Mr. COHEN. But I appreciate the— [Laughter.]

Judge LYNN. I got it. I got the trick, and so I am going to respond—Judge Lynn now speaking—and respectfully punt on your question, Mr. Chairman.

From my perspective—I am a district judge, so I only hear bankruptcy matters on appeal—as a matter of policy, the Judicial Conference comes to this Committee asking for additional judgeships when there is a need based on whatever law you in your wisdom deem to be appropriate.

I do not have a personal view—

Mr. COHEN. So you don't have an opinion, but Ms. Ebert has a definite opinion.

Ms. EBERT. Absolutely.

Mr. COHEN. And, Judge Kennedy, do you have an opinion on that?

Judge KENNEDY. I do, and I think it is important to note exactly what this pre-petition credit counseling is. It is really a mere briefing that outlines the opportunities for credit counseling and, if desired, a detailed budget analysis.

But if somebody is unemployed, it serves no purpose. In fact, I don't think I have—I go to various CLE seminars, and I don't think I have heard anybody praise this pre-petition credit counseling. It has been said—is a waste of time, waste of money.

It is done over the telephone by either an individual or a group session. It lasts 30 minutes to an hour, I am told. The charge is \$50 to \$100. And it is just not serving the purpose intended.

In fact, I think Ms. Ebert's organization has done some private studies and has talked with these credit counseling agencies, and they come back and say that approximately 97 percent of the Chapter 7 debtors are unable to pay any debts under their plans.

I think it is a waste of their time.

Mr. COHEN. Is there another type of counseling at the end of the bankruptcy that might be—is worthwhile or might be worthwhile, or is not worthwhile?

Judge KENNEDY. I like what I call the post-petition instructional course better. I mean, we all support financial literacy. I have gone into schools in Memphis for many years trying to teach financial literacy and how to avoid abusive use of credit cards and the like.

So I have no great opposition to the—to the debtor completing a post-petition instructional course concerning the debtor's personal financial management, but I would hope, Chairman Cohen, that the provision could be fine-tuned a little bit to give the bankruptcy

judge some discretion as to whether or not to order that specific individual debtor to undergo post-petition instructional course training as a precondition of granting the discharge.

I have had Ph.D.s in economics that have filed bankruptcy cases, very highly literate people. And to ask them to pay a \$50 or \$100 fee and then go sit in to a course that they ought to be teaching, if anything, I think is a little insulting on a case-by-case basis.

So my response to that—yes, I do support—strongly support financial literacy, and I think the post-petition instructional course can serve some meaningful purpose, but I would like to see the bankruptcy judges have some—

Mr. COHEN. Discretion.

Judge KENNEDY [continuing]. Discretion as to whether or not to order a particular debtor to undergo that program or not.

Mr. COHEN. Thank you, Judge Kennedy.

Ms. Ebert, do you concur?

Ms. EBERT. I do, Mr. Chairman. I think that the debtor education, the post-filing—what we call the financial management course—many of my clients have felt they have really obtained something that was of a benefit to them. And it has helped them hopefully not to be back in my office in the future.

And the pre-petition counseling briefing session that Judge Kennedy referred to serves no purpose when—when they are already unemployed, facing foreclosure and they are—they have already tried all the other options that were available to them.

Mr. COHEN. Thank you.

Judge Kennedy, let me ask you a question. The issue of venue is important in our area where we border Mississippi and Arkansas. Do you believe the venue laws ought to be changed in bankruptcy?

Judge KENNEDY. Chairman Cohen, I strongly urge Congress to at least reexamine the case venue issues. I think that issues exist within bankruptcy cases where venue is technically improper. I also think that venue issues exist in cases that are technically proper.

Currently the issue of whether a bankruptcy judge, upon the filing of a timely motion, can dismiss a case or transfer it for another district or can retain this improperly venued case, if it is for the interest of justice or for the convenience of the parties, has resulted in a split of authority in the lower courts.

Since 1984, the answer has not been clear. But by way of very, very brief background, the 1978 codes accompanying Title 28 venue provisions expressly and clearly provided that a bankruptcy court could retain jurisdiction over a technically improperly venued case if it were for the convenience of the parties or the interest of justice, or it could transfer that case to another district for the convenience of the parties or the interest of justice. That was former Section 1477 of Title 28 that is entitled “Cure or Waiver of Defects.”

What the 1978 code’s venue provisions did was really to rely upon its transfer provisions, more so than its technical venue provisions, to assure a fair place to administer a bankruptcy case or a proceeding.

However, as a result of the 1984 restructuring that occurred of the bankruptcy court system, Section 1477, the one entitled “Cure

or Waiver of Defects,” was just deleted, and it is not clear whether or not the deletion was by design or whether or not it was intentional. I have my thoughts about it.

But since 1984, this split of authority has developed in the lower courts. I took the view, and I generally don't talk about cases that I get reversed in, but I will get there in a moment.

But I took the view that since there was no express statutory 28 provision, or an express Title 11 provision, or an express Federal Rule of Bankruptcy Procedure express provision prohibiting me from retaining a technically improperly venued case for the convenience of the parties or the interest of justice, I must have the inherent authority on a case-by-case basis of considering the convenience of the parties or the interest of justice. I was reversed by the Sixth Circuit Court of Appeals.

Other courts have held—the other split of authority has held that the—that since there is no express prohibition that nonetheless the per se rule must exist that the bankruptcy court can't retain these cases that are filed technically in an improper district.

In Hurley, the case that you talk about—as you know, Chairman Cohen, I could put my left foot in Southaven, Mississippi, a so-called bedroom community of Memphis. I could put my right foot in Memphis in the Western District of Tennessee.

The debtor in my case actually lived in Mississippi. He worked in Memphis, had a bank account in Memphis, had two creditors in Memphis, had eight national creditors, no Mississippi creditors.

The United States trustee for Region 8, Kentucky and Tennessee, filed a motion to dismiss or to transfer the case to another district because of the technically improperly venued case.

I looked at it. I struggled with it, and I worried with it, because there was a split of authority. And I came to the conclusion that there was no express prohibition that I had the inherent authority, and I was reversed.

But at least when the Sixth Circuit reversed, it urged Congress to fix the problem. The Sixth Circuit said in that *In re Thompson* case, the cited case at 507 F.3d 416, 1997, that fixing any perceived bankruptcy case venue problem is a job for Congress and not the courts.

And I urge Congress to accept the invitation of the Sixth Circuit and legislatively fix this problem and thereby eliminate this unfortunate split of authority which is time-consuming, it is expensive, and it also frustrates the bankruptcy goal of Bankruptcy Rule 1001 about securing the just, speedy and inexpensive determination of all these bankruptcy cases and proceedings.

I would hope that Congress would go back to the venue concept that existed in 1978 where the emphasis was on the transfer provisions and not technical traditional venue provisions.

It could be a real easy legislative fix just re-number and re-introduce former Section 1475, the “Cure or Waiver of Defects,” and that would take care of it.

Mr. COHEN. Thank you, Judge Kennedy.

And now, and most appropriate, as the Supreme Court—or the Sixth Circuit has urged a congressional fix, the man who can fix that, the Chairman of the Judiciary Committee.

Judge KENNEDY. Well, can I repeat my statements— [Laughter.]

Mr. CONYERS. You don't have to. I have been listening to them.

Mr. COHEN. The Honorable John Conyers, you are recognized for—Mr. Jordan had to leave.

Mr. CONYERS. Oh, okay. I was hoping we could continue our great relationship with him during this hearing.

But this hearing stirs up some sad memories of what happened 4 years ago in this Committee and in this Congress in terms of the bankruptcy act, and I don't know how much—well, probably counsel remembers.

The credit card people lobbied us for 8 or 9 years before they could finally persuade enough people to come in and do what we did. And that is part of the problem right now.

Much of that is the fallout from all that horrible antidebtor bias that they carefully nurtured with the K Street lobbyists to help get us into this fix. It is terrible. Counsel has gone over some of it. It is not all of it.

And then there is the problem of foreclosure relief. Now, here is a Congress—we have put the American people in hock for generations, trillions of dollars.

And when you say, "Let's help out a poor schlub who is losing his house, and he is under water, let's open it up and lower the rate, and lengthen the terms," what did they say in the other body?

They said, "Well, how do you know these people are in good faith? Didn't they read their contract? I mean, why do—why do I have to"—as she points out, everybody—the judge can do it for everything else except a home, the one last thing that most people have—the only thing that many people have. So this really gets me off to a very unhappy set of remembrances.

And then, as the President has commanded that we do something about health care reform, the number of individual bankruptcy filings keep going up in terms of what it is that brings you to the court in the first place.

Well, I would like each of you, starting with the lawyer, to either make me feel better or worse about my point of view of things.

Ms. EBERT. Mr. Conyers, I agree that the reason many, many individuals are filing for bankruptcy are due to either underinsured or have no medical insurance, and they end up in bankruptcy because they have expended all of their resources trying to pay their medical bills, or they have to use credit cards to pay for their health care costs.

And without some form of relief—obviously health care being a relief for many, many people in this country who have no health insurance or underinsured—I hope that this Congress will continue to fight for those people and allow them relief through bankruptcy that their—and to continue to push.

For them to say the only thing that they have, which is their home—not only are they filing bankruptcy but they are having to walk away from a home that they simply can no longer afford because they were victimized by mortgage lenders, brokers and unscrupulous Realtors attempting to make a sale on a home that they never could have afforded by selling them a product that was simply not financially feasible.

And I am certain that based on the numbers that I have been—there has been several reports done—that the second wave of foreclosures that will be coming through between 2009 and 2011 will be just as many as there were in the last 2 years.

This is not over, and we will need to revisit this again, and I hope that this Committee will take up our cause.

Mr. CONYERS. Your Honor, Judge Kennedy?

Judge KENNEDY. I will say the second wave—I think that is the wave it is contemplated will be not of subprime mortgages, that these have been traditionally sound, solid mortgages for years, 30-year mortgages.

Some people are 20 years into them, and now they have lost their jobs and they can't pay for the mortgage. Now they have lost their job, now they have lost their health insurance as well—that indeed, these bankruptcy laws are a safety net.

In talking about the home, one thing that I was really struck by—I know over the—since the 1800 bankruptcy act, and 1841, 1867, 1898, and 1978 code and amendments in between, it seems like there is a little “catch me if you can” going on, and the pendulum swings back and forth, this debtor, creditor, and they—going through their exercises.

But I must say, talking about this home mortgage modification, the matter—that I was particularly struck by the letter written back in January of 2009 to the congressional leadership from the attorney generals from the 22 states and the District of Columbia, whereby they thought—and they supported the mortgage modification provision—somewhat of an independent voice, I thought, that supported the legislation.

And in their opinion, in their collective opinion, in their independent view—that such legislation would actually stabilize the housing market, the financial market and also state and local tax bases, and it could be done without—without any taxpayer expense.

The bankruptcy court is already in place with personnel. There would be no need to create a new agency, create new personnel. We got courthouses, already got the facilities for it, wouldn't have to build any new buildings—with no cost to the taxpayer.

I support that.

Judge LYNN. Mr. Conyers, may I? I am not sure if I am going to be able to make you feel better about the past, but I would like to address some of the comments you made, particularly as it affects the request that we have made.

I very much respect Dr. Jenkins' comments on the case weights, and I would like to comment on that as it relates to your question. As has been mentioned, the case weights, which are in part the basis for our request, are 1991 case weights.

We considered doing a study much earlier than we did, but for the same reasons that you have mentioned—that long 8-or 9-year period when we were hearing that there might be an amendment to the bankruptcy statute—we waited, and we waited, and we waited and we concluded we couldn't wait any more, so we began the study.

It is like watering your lawn. And of course, thereafter it rained. So we were 40 percent through our new study in 2005 when BAPCPA was passed.

I think prudent administration of our Judicial Conference and of our Committee in particular caused us to think that we should stop the study, and I believe Dr. Jenkins in his comment indicated that that was prudent, and I feel that it was, to wait and see what would happen under BAPCPA.

There was a time shortly after BAPCPA was passed when we came over here with some technical amendments that we were pursuing—and I take your comments, Representative Conyers, as an indication that perhaps we should do so again.

We still have that book of technical amendments, and I think that you may be talking about more than technical amendments. But at the least, you would want the statute to read in a way that makes sense on its face, and frankly, there are some deficiencies there.

So we are at your service in assisting you if you would like to hear from us on that.

With respect to BAPCPA and its impact not only on consumers but on businesses, those who come to the bankruptcy courts for justice and disposition of their cases, they want to achieve that within a reasonable time frame, and at the least they should be able to achieve that.

And if we have overloaded courts such as in Michigan, where the case weights are 3,032 when they should be 1,500—we could come here and legitimately on those numbers ask for five new bankruptcy judgeships. We are not. We are asking for three.

And we believe that these 1991 case weights—I appreciate from an academic perspective they could either be over—they could be under. But in reality, we know that they are low.

We had to make a decision whether to come to you now and seek judgeships where there was a critical need and then come back to you again when the case weight study is fully completed and analyzed, and that is what we will do.

We are here now for urgent, critical need. We took a peek at the 40 percent study that was done immediately before the statute. We have taken a peek at the numbers we have gotten in the new case weighting study. And I feel completely confident in telling you that we come to you with a very conservative approach.

These numbers have to be low. BAPCPA requires 35 new motions that were not even present before. The workload of bankruptcy judges in these courts where we seek permanent positions and new positions is critical. It is terribly overloaded. We cannot achieve the paradigm of justice to which I know we all aspire.

And I urge you, Congressman Conyers and all Members of the Committee, to consider that we can achieve justice, even in the face of some provisions of BAPCPA that you think do not achieve that, if we allow people to enter our courts and get a fair disposition within a reasonable time frame. Thank you.

Mr. CONYERS. We need a considerable number of additional good bankruptcy judges. And we are tasked—our Committee is tasked to that. We need to go back to this incredible piece of so-called legisla-

tion called the 2005 bankruptcy act. I mean, we need to really go through that again.

We could hold, under our new Chairman, some tremendously important hearings that we hope will impress or impact the other body as well.

We need foreclosure relief. We can't walk away. They told us that it was hopeless, we couldn't get it in the housing bill. We have got to go back over to the Senate. House is in good shape on that.

But it is a disgrace that the same body that votes out trillions of dollars tells the little schlock that is losing his house that we can't do that, we don't have enough senators to do it, sorry. When we know there are a few good people—but how do we know that everybody is on the up and up?

I mean, the whole thing is so outrageous, and now we are passing it on to generations. They are stuck whether this bailout works or not. And the guy that loses his home—he is never going to—there is no return in an economy like this from what the system has done to him and then what the Congress has done to the homeowner after that.

So I welcome any ideas from this hearing on—that you could provide us with recommendations. We would love to continue this dialogue.

And I thank you, Mr. Chairman.

Mr. COHEN. Thank you, Mr. Chairman.

I appreciate as well the responses.

Now I would like to recognize the gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

And I am going to try to go back to the subject of the hearing itself and start by expressing a sentiment that you must have found yourself in a very difficult position trying to do what we normally do with these hearings.

Having served as a Ranking Member of this Subcommittee and some other Subcommittees on Judiciary, and now serving as a Chair of some Subcommittees—a Subcommittee and—on Financial Services, I always try to follow a policy of having both a pro and a con at a hearing.

I would almost be willing to bet that there was probably nobody you could find to give a counter view of whether we need additional bankruptcy judges. You were in an unenviable position, I—no doubt.

And so I was kind of glad when we got to Ms. Ebert that she changed the subject of the hearing, taking only 1 of her minutes to talk about the subject of this hearing, whether we need some additional judges, and taking the other 4 minutes to talk about other things. And I see that the hearing has wandered off in that direction.

But I do want to ask a serious question, because on a number of different fronts, we could probably reach a fair amount of bipartisan consensus that things are needed. Where we run into real problems is trying to figure out how to pay for them.

And so the question I want to ask is I know we need new judges, but—Ms. Lynn—Judge Lynn, I think you would probably be able—maybe Dr. Jenkins would probably be able to answer this question.

Is the fee schedule that we set up for bankruptcies paying for judges?

Is the system generating enough revenues that the taxpayers are not subsidizing the bankruptcy courts? Or do we know that?

Judge LYNN. Representative Watt, I think the fair answer to your question is in part we would pay for new bankruptcy judges and staffs associated with them out of filing fees but not in full.¹

Mr. WATT. Okay.

Judge LYNN. And let me—

Mr. WATT. What about the existing number of bankruptcy judges? Are we paying for them in full? Are we—

Judge LYNN. We are covering those out of our current budget submission to Congress, and—²

Mr. WATT. Okay. So then my next question would be should this bankruptcy system be self-sustaining, I suppose, is it—and if it should be, how can we get it self-sustaining—financially self-sustaining without imposing this cost on taxpayers and without being unfair to people who really need to be going into bankruptcy?

Who ought to be paying for this system? And I guess—

Judge LYNN. Well—

Mr. WATT [continuing]. That is the question I am asking.

Judge LYNN [continuing]. That is the \$64,000 question, or to bring it more to what you might be thinking of, that is probably the \$64 million question.

In our view, it is inappropriate to raise bankruptcy filing fees every time there is a financial need within the bankruptcy system. The taxpayers—

Mr. WATT. I happen to agree with you. And I am asking these questions genuinely, not as an adversary—

Judge LYNN. Right.

Mr. WATT [continuing]. But just because since Mr. Jordan isn't here, he can't ask these questions.

Judge LYNN. That is fine.

Mr. WATT. So I have—

Judge LYNN. I appreciate the opportunity, and I—

Mr. WATT. I have to ask him—ask them for him so we can build the record here, because I know—I mean, I know Mr. Jordan. Probably nobody on the other side of the aisle is going to raise a question about the need for judges.

¹Judge Lynn appends: Let me provide a fuller explanation of how our judiciary budgeting and appropriations work. Funding for the bankruptcy system is not directly linked to bankruptcy filing fee revenue. We tally up and justify to Congress' Appropriations Committees the total amount of money we need to operate the courts. We also tell them how much we collect in fees. They then subtract from the total amount that we need to operate the amount that we collect in fees. The difference is what they give us for our appropriation. Therefore, the amount we collect in fees offsets or lowers the amount that we need to get through our appropriation. Now, in the case of statutory bankruptcy filing fees, the judiciary does not keep the entire amount. The judiciary keeps a percentage, but a portion also goes to the U.S. Treasury, in part for deficit reduction as specified by the Deficit Reduction Act of 2005. Other portions go for other costs, including the U.S. Trustee system in the Department of Justice, and private Chapter 7 trustees. It's therefore important to realize that when the appropriators are calculating the amount of our appropriation, only the portion of the statutory filing fees that are actually kept by the judiciary is available to offset our need for appropriations. So, to the extent that our appropriation can be partially offset by the portion of the statutory filing fee that is kept by the judiciary, one might view the fees as partially paying for bankruptcy judgeships (or, for that matter, other costs of operating the bankruptcy courts), but there is no direct relationship between the two.

²Judge Lynn appends: We are covering those out of our current appropriation that Congress provides after taking into account the amount of fee revenue that the judiciary is projected to receive.

But I also know that every time we talk about a need, we also have to talk about a “pay for.”

Judge LYNN. Right. Well, let me begin—of course, our—the temporary judgeship positions are already being paid for. That is not new expense that we would—

Mr. WATT. Paid for from what source?

Judge LYNN. Well, we are paying for them now because they exist now, and—

Mr. WATT. From what source, though?

Judge LYNN. From the—

Mr. WATT. Are taxpayers paying for it, or—

Judge LYNN. From the judiciary budget and in part from bankruptcy filing fees, which are on the revenue side.³ I don’t think that we have made an effort to necessarily equate all aspects of the judiciary budget to filing fees to see what percentage of judges’ salaries and staff salaries is paid for out of filing fees.

But filing fees, in large part, support judgeships and their staffs, not in full. So part of the money for the judiciary budget, indeed, comes from the taxpayers. That is true now and will be true then.

I was simply making the limited point that with respect to temporary judgeships, making them permanent does not add to the pot of money that we would be seeking.

Mr. WATT. All right. My time actually has expired, and I am a great admirer of the 5-minute rule—

Judge LYNN. All right.

Mr. WATT [continuing]. Until they apply it to me.

I think the question I want to ask is maybe for you all to do some thinking about this and maybe give us some ideas, because there is a school of thought that the bankruptcy system ought to be a—based on a user fee system. I mean, you know, the people who use it ought to pay for it.

I am not subscribing to that notion, don’t get me wrong. I actually think there is some public benefit to having a bankruptcy system and a bankruptcy court.

There is probably public benefit to having any judicial system, but the people who never use it don’t always understand that public benefit, and they want it to pay for itself.

So I guess what I am seeking is if you—if any of you have any good ingenious ideas about we might be able to generate some revenues and who ought to be paying them, people who are—who may be going through reorganizations as opposed to people who are doing regular filings.

You know, I don’t know what would be—

Judge LYNN. Well, if I—

Mr. WATT [continuing]. What it would look like.

Judge LYNN [continuing]. If I might, let me just close by saying that the only good news about the dramatic increase in bankruptcy filings is that we are generating substantial additional bankruptcy fees. And those do contribute to the budget of the judiciary.

For the judgeships we are requesting, I believe that we can almost completely fund them out of what we have in our resources.

³Judge Lynn appends: This is because the amount the judiciary gets in appropriations is reduced by the amount of the filing fees we are projected to receive.

There may be some additional supplementals that we would have to come back to Congress about, but I think they are quite limited.

So without even raising fees, these are increased, of course, by increased filings, and I think that does cover most of it. We in our Committee look very frequently at fees as a means of revenue generation, tempering that with administering justice to those who need it in the bankruptcy courts.

Mr. WATT. Mr. Chairman, you have been generous with the time, and—as you were with your judge, I noticed.

I told him—I said, “Don’t you dare cut your judge off.” [Laughter.]

He might be practicing law before this judge again one of these days. [Laughter.]

That is a no-no. I mean, you waive the rules for the—for your judge, especially your hometown judge. See, I am trying to educate him on some of these nuances of the rules here. [Laughter.]

Mr. COHEN. Thank you. And I appreciate—

Mr. WATT. Thank you, Mr. Chairman.

Mr. COHEN. Thank you for your questioning and for your advice. I learn much from you and other more senior Members, and I will be practicing law at some time in the future, but I will be very, very, very old. [Laughter.]

I now recognize the distinguished Subcommittee Chairman from the State of Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Judge Lynn, did I understand you to say that there was essentially no additional cost for converting a temporary judgeship to a permanent judgeship?

Judge LYNN. Yes, Representative Scott. Of course, there are mandatory increases from year to year—cost of living—cost of living kinds of adjustments. But beyond that, that is correct.

Mr. SCOTT. Now, there has been a question about whether or not the need for the additional judges will continue after the economic collapse—if the economy improves, we might not need additional judges.

I know in Virginia, for our district court vacancies, we have a process that requires a certification—that is, if someone retires, we certify that the judgeship is still needed based on case loads, and if not, the judgeship is not filled. Is there such a thing for the bankruptcy judges?

Judge LYNN. Yes, sir, there is, and we have a number of positions that were authorized—I mentioned in connection with the 2005 statute Congress acted on an old judgeship request, and there were—I believe it was five judgeships that were authorized that we had not requested, and those have not been filled because there was, in fact, not a need for those.

And before we come to Congress with a request for additional judgeships, we make sure that the circuits understand that they should only come if there is a significant need.

And there are many examples that I could give you of circumstances where there was an authorized judgeship that had not been filled, or even where there might be a technical need that they have met in other ways.

Mr. SCOTT. Now, we talk about need and weighted case load. Obviously, the different cases have different needs. Some individual cases could take a judge pretty much full time and others are fairly routine.

How accurate is the case weighting formula? And how do we know that 1,500 is not too high or too low?

Judge LYNN. Well, the case weighting study takes into account the different mix of cases and the workload required to administer them. We all know that since 1991, 1992 time frame, there have been many mega bankruptcies, very large Chapter 11s which really we did not have many of back under the old case weights.

Mr. SCOTT. Well, is G.M. counted as one?

Judge LYNN. Well, it counts as one, but the amount of time that it takes to administer it is obviously more significant than a routine Chapter 7 case. All of that comes into play in formulation of the case weights.

Mr. SCOTT. Well, the formulation is whether it is a business or non-business, whether it is Chapter 7, 11 or 13. Is a G.M. bankruptcy the same as—

Judge LYNN. No.

Mr. SCOTT [continuing]. John Doe, Incorporated?

Judge LYNN. It doesn't take the same amount of time, and the case weights take that into account. All of the functions that a bankruptcy judge would perform in connection with different kinds of bankruptcy matters—that is why we have surveyed all of the bankruptcy judges of the United States, handling small cases, large cases. These adjust for that.

As I have indicated to you, it is our considered judgment that the case weights of 1991 are understated, not overstated, because of what has happened since and because many of these needs long pre-date BAPCPA. We had needs that were not related to the current economic climate. We have looked at that historically.

That is definitely true in the Eastern District of Michigan. And I keep mentioning it not just because of Representative Conyers being here—because it is the most compelling of the needs we have and has remained so for more than a decade.

Mr. SCOTT. Well, I haven't looked at the numbers, but I assume that bankruptcy reform increased the number of Chapter 13s. Is that not right? And that would be—

Judge LYNN. Yes, that is true, but I—

Mr. SCOTT [continuing]. Which would be—

Judge LYNN [continuing]. Don't have more detailed numbers.

Mr. SCOTT [continuing]. Which would mean that more judicial work needed to be done.

Judge LYNN. That is true. And BAPCPA itself requires more work on all of the matters that are handled after the reform act.

Mr. SCOTT. Now, how much of the case load problem could be solved with more trustees rather than more judges?

Judge LYNN. I am of the opinion that none of the need could be solved by more trustees. The functions that are before—being performed by judges should be performed by judges.

We need trustees. I am certainly not speaking negatively about that. But I don't think that these functions can be passed to trustees to perform.

Mr. SCOTT. Most of the kind of accounting work and getting the case together is not done by the trustees?

Judge LYNN. The trustees do that work now, and they will do that work. What I am talking about judges doing are judicial functions. I don't think you see many cases where the judges are doing routine kind of accounting work.

Mr. SCOTT. Okay, and what effect does the lack of judges have on time it takes to resolve a case?

Judge LYNN. That is a very good question, Representative Scott. I do not have that, except sort of stories I am told. We have not worked those numbers. That is a sophisticated analysis to do.

But from talking to bankruptcy judges, I believe disposition time has increased rather than decreased. Judges are working as hard as they can. They can't process things as quickly and as efficiently as they used to because they have more work to do. And that is part of what requires us to come here and ask for additional—

Mr. SCOTT. As the representative from the "rocket docket" Eastern District of Virginia, is there a standard time after filing that these things ought to be resolved?

Judge LYNN. I am not prepared to tell you that there should be a time from filing to disposition. I think the devil is in the details. For example, I am well familiar with the "rocket docket" as a former trial lawyer. But cases vary from one to one.

I don't think—you know, certain bankruptcies come out real quick when they are pre-packed. But if you have 10,000 creditors spread across the country in a medium-sized bankruptcy, you may not be able to resolve it that quickly. I don't think this is a one-size-fits-all problem.

Mr. SCOTT. Thank you.

And, Judge Kennedy, you mentioned venue. I thought there was a difference between venue and jurisdiction, that venue was permissible—if nobody complains, you could stay where you are. Who complained in the case that removed it from Tennessee to Mississippi?

Judge KENNEDY. Under 11 USC Section 307, the United States trustee has very broad standing. It can raise and appear and be heard on any issue. It was the United States trustee that filed the motion to dismiss or to transfer the West Tennessee case to the Northern District of Mississippi.

Mr. SCOTT. And your suggestion would be for good cause shown you could keep it where it is?

Judge KENNEDY. If it is for the convenience of the parties or the interest of justice, absolutely. And that is exactly, Congressman, what the former Section 1477 provided for.

It was styled "Cure or Waiver of Defects," and it expressly provided that the bankruptcy court could retain jurisdiction over a technically improperly venued case if it were for the convenience of the parties or the interest of justice, or the court could transfer it to another district if it were for the convenience of the parties or the interest of justice, again relying more on these transfer—these flexible transfer provisions to promote a fair place to administer a bankruptcy case or to try an adversary proceeding.

Mr. SCOTT. Okay. As one that doesn't like to reinvent the wheel, is there anything wrong with just recodifying the old language?

Judge KENNEDY. Not at all. It would have to be slightly remodified and renumbered and merely reintroduced and passed, and that is it. It would be a—it would be the simplest legislative fix I can think of.

Mr. SCOTT. Thank, you, Mr. Chairman.

Mr. COHEN. Thank you. Sounds like something right up my alley. [Laughter.]

Judge Kennedy, according to a recently updated Harvard study, 62 percent of bankruptcy debtors could trace the cause of their bankruptcy to medical debt.

If this Congress is successful in passing affordable health care for all people in this country, how much would that, do you believe, would relieve bankruptcy courts of the cases that they see?

Judge KENNEDY. I, of course, can't give you a definite answer, but—

Mr. COHEN. Right.

Judge KENNEDY [continuing]. But my answer would be I think it would reduce the number of filings. As you know, currently medical problems are a measure of contribution to bankruptcy filings, and if they were to be substantially eliminated, yes, indeed, I think the case filings would decrease.

Now, job losses is another problem. Marital problems, domestic problems—some people are financially illiterate. I mean, there are other causes of bankruptcy besides medical problems. But medical problems is one of the major, if not the major, contributor.

And yes, my answer is it would reduce the filings, but I don't know to what extent.

Mr. COHEN. Yeah. I was just thinking if that happened, there are so many repercussions, and if you didn't have the medical debts—there are other debts, and people wouldn't go into bankruptcy, and other debts they have they could handle, and so the medical—the affordable health care not only helps the folks with their health care but it helps a lot of creditors out there who otherwise would be paid.

Judge KENNEDY. Yes.

Mr. COHEN. Do you think that the bankruptcy judges are capable of handling—if we had the so-called cram-down provision pass, that the present bankruptcy—the judges could handle the—the case load increase?

Judge KENNEDY. I think bankruptcy judges are well qualified, Mr. Chairman, to do that. After all, as someone noted, we have been doing this for years with family farms, second homes, vacation homes, rental properties, investment properties.

Actually, I think if the mortgage modification legislation were to pass, some even say it might result in a slight reduction of cases. Some draw the analogy of being what happened in the mid 1980's regarding family farms.

You will recall that there were family farms being lost left and right in America due to foreclosures. Commodity prices were falling. Congress stepped in and responded to allow for the cram-down.

Yes, bankruptcy judges tried a few valuation hearings. Word travels real quick at the bar once the predictability factor kicks in for a bankruptcy judge. After a short period of time, the lawyers started settling many of these valuation hearings.

And after a while, they got together and said, "Well, why even file the case? We know pretty much how these judges are going to rule anyway. Let's just settle it and don't have to file at all, save the money to be paid for something else."

So yes, to be responsive to your question, I, indeed, think bankruptcy judges are very well qualified. And again, the home mortgage secured only by the debtor's principal residence is the only home that can't be subject to being modified.

Mr. COHEN. Thank you.

Judge Lynn, the conference recommended the 13 new judges and the conversion of the 22 to permanent status and the extension of two temporary judges, so that is a total of 37. Is there, in fact, a need for more judges, do you believe?

Judge LYNN. When the results of the new case weighting study are completed and analyzed, my informed judgment is that there will be some additional need shown. But we don't feel that at this moment in time we have a legitimate basis to ask you to authorize those.

So we have elected to go forward with those that we think are critical and crucial, and if the numbers and the other factors that we consider support additional judgeship requests in the future, then we will come to you with those.

Mr. COHEN. Thank you.

I believe that finishes our questioning. The second round is finished. I thank all the witnesses for their testimony today.

Without objection, Members will have 5 legislative days to submit any additional written questions which we will forward to the witnesses and ask you promptly to answer them. They will be made part of the record.

Without objection, the record will remain open for 5 legislative days for the submission of any other additional materials. Again, I thank you everyone for their time, their patience, their contribution.

I believe that this hearing will result in legislation soon introduced in a bipartisan fashion that will result in action taken by this Congress to help improve the—and remedy the problems to some extent that we have heard about.

So this hearing of the Subcommittee on Commercial and Administrative Law is therefore adjourned.

[Whereupon, at 12:35 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

RESPONSE TO POST-HEARING QUESTIONS FROM THE HONORABLE BARBARA M.G. LYNN, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

**Hearing on Bankruptcy Judgeship Needs
June 16, 2009**

**Questions for Hon. Barbara Lynn from Hon. Steve Cohen, Chairman
Followed by Judge Lynn's Answers**

Question:

How does the Judicial Conference determine whether the use of intra- and inter-district judge transfers and recalled judges has been maximized before the Conference seeks additional judicial resources?

Answer:

(**Note:** The Judiciary does not transfer judges inter-district. Congress establishes the number of judges in each district. Intracircuit and intercircuit assignments, as a result of which judges visit in a district to help handle that district's workload, are temporary and voluntary assignments for a set period of time, and do not obviate the judge's obligations to his or her home court.)

Each request for additional judgeships generates a review of the district for which additional judgeships are sought. Districts that demonstrate a preliminary justification for a judgeship, based on the Judicial Conference's standards and criteria, are surveyed. To conduct the survey, a representative of the Judicial Conference Committee on the Administration of the Bankruptcy System, along with AO staff consisting of an attorney and an economist, review the district's caseload (including the nature and mix of case filings), case processing measures, chambers procedures, and use of resources. Additionally, the survey team conducts interviews of all parties associated with the bankruptcy system in the district (judges, clerk of court, attorneys, trustees etc.).

In the course of examining the district's use of resources, the survey team looks at the district's use of recalled judges and intracircuit and intercircuit assignments of visiting judges. Based on the particular circumstances in a given district, the team can determine that the use of such resources meets the district's needs, without recommending additional judgeships.

Visiting judges from other districts and circuits are sometimes unaccustomed to local practice, or unfamiliar with state law, both of which can limit their effectiveness in providing needed relief. More importantly, as case filings and workload increase nationally, the time available for a judge to visit another district and assist is very limited. Although always willing to assist other courts, bankruptcy judges must first attend to their own dockets. If their case filings and workload have also substantially increased, as they have nationally, these judges are unable to lend significant time to another district.

Recalled judges provide a wide range of assistance to the courts to which they are recalled. These retired judges might continue to work in their original districts on a generally overburdened docket to assist with that workload. Sometimes, recalled judges, like judges on intercircuit and intracircuit assignment, might be assigned particular matters. While recalled judges provide substantial service, they typically are not expected to take on a full caseload as a new full time judge could. Moreover, the number of retired judges who are willing, or able, to come back into service to the bankruptcy system, for no additional compensation, is limited. In recent years the number of judges in recall status has hovered around 22.

Therefore, for an already overburdened court, visiting judges and recalled judges represent a stop gap measure to be used pending Congressional authorization of real relief – additional judgeships.

Question:

Please provide an example of when factors other than weighted case filing data shaped or maybe even altered your recommendations.

Answer:

In late 2008, the Northern District of Florida, which is a single-judge district, was surveyed in conjunction with its request for an additional bankruptcy judgeship. While the district's weighted filings at the time stood below the 1,500 level set for additional bankruptcy judgeships,¹ the Committee on the Administration of the Bankruptcy System concluded that an additional bankruptcy judgeship was warranted and the Judicial Conference agreed. This conclusion was based in part on geographic considerations.

The single most important factor that distinguishes the Northern District of Florida in terms of judicial resources from other single judge districts is its geography, especially when considered in light of its population. Of the 13 districts with a single authorized bankruptcy judge, the Northern District of Florida is by far the most populous. The district has four divisional offices: Gainesville, Panama City, Pensacola, and Tallahassee. From the judge's official duty station in Tallahassee, Gainesville is 150 miles to the southeast, Panama City is 120 miles to the southwest, and Pensacola is 200 miles west. (The map at Figure 1 shows the layout of the district.) The counties in which these divisional offices sit account for more than 75% of the district's population and bankruptcy filings.

Although stationed in Tallahassee, the judge regularly travels to the Pensacola Division, as well as unstaffed divisional offices in Gainesville and Panama City. The drive from Tallahassee to the unstaffed divisional office in Gainesville is just over two hours, and the judge travels there one or two days each month. The Pensacola Division is a drive of approximately three and a half hours from Tallahassee, and the judge travels to that office one or two days a month. On the way to or from Pensacola, the judge often tries to hold court proceedings in the unstaffed divisional office in Panama City (a two and a half hour

¹ Of the 12-month period ending September 30, 2009, weighted filings in the Northern District of Florida have above the Conference standard for recommending an additional judgeship.

drive from Tallahassee). Because the major sources of filings in the district are so widespread, the judge must devote a significant amount of time to travel each month. In addition to the travel time required, it is logistically difficult to schedule hearings and trials in four different locations. Because the judge must handle all pending motions, confirmations, and fee hearings the week he travels to a location, it is often impossible to schedule evidentiary hearings during the same trip. Parties may then be required to travel to Tallahassee for such hearings.

The geography of the district is such that there is no centrally located and convenient duty station for a single judge. As previously indicated, approximately half the cases are filed in Pensacola. The rest of the cases are distributed among Panama City, Tallahassee, and Gainesville, with Tallahassee receiving approximately half of the remaining chapter 11 cases and adversary proceedings. It takes approximately the same amount of time to get to Panama City from Pensacola as it does from Tallahassee. If a single judge were located in Pensacola, the other divisional offices would suffer from a lack of judicial presence.

The assistance of two judges from the Southern District of Alabama has provided Pensacola additional judicial resources over the years. One judge currently handles all chapter 11 cases filed in Pensacola and one third of the adversary proceedings filed there, while the other judge handles another third of the Pensacola adversary proceedings. As the caseload of the Southern District of Alabama has increased, however, these judges are finding it more difficult to provide the court time required. To address this issue pragmatically, Pensacola lawyers have consented to appearing in court in Mobile, Alabama, in order to get time before a judge.

However, the increasing caseload of the bankruptcy court of the Southern District of Alabama places a limit on the scope and amount of assistance that can be rendered by its judges. While the Southern District of Alabama experienced a significant reduction in caseload immediately following the effective date for the BAPCPA, filings in all chapters have increased significantly in the intervening period. Since calendar year 2006 chapter 7 filings have increased 82%, chapter 13 filings have increased 92% and chapter 11 filings have increased 178%. Chapter 11 filings for 2008 were at their highest level in a decade. With the housing crisis and the current recession, there is every indication that filings of chapter 11 cases will continue to climb, along with both chapter 7 and 13 cases.

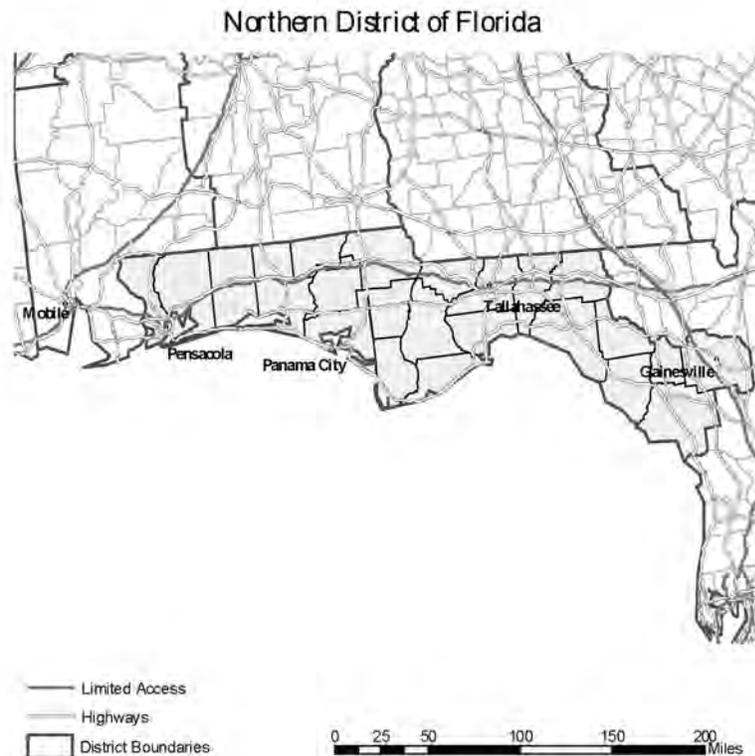
In addition, the nature and mix of the caseload in Pensacola is changing with increases in both chapter 13 and chapter 11 cases. These cases require more judicial resources at the same time that workload burdens in the Southern District of Alabama are rapidly increasing, making it more difficult for the judges of the Southern District of Alabama to assist the Northern District of Florida.

The intracircuit assignment of Alabama Southern judges is not the most efficient way to serve Pensacola as a permanent solution. The Alabama judges must take time to understand the differences between Alabama and Florida law. There are logistical and administrative problems as well. The judges try to handle matters telephonically as much

as possible, but recognize that this is not always optimal. Emergency matters have in fact sometimes been heard in Mobile rather than in Pensacola. The Alabama judges believe that the caseload pressure is becoming an obstacle to providing adequate service in both courts and that they need more time to tackle difficult issues at home.

The Judicial Conference therefore recommends an additional judgeship for the Northern District of Florida on the basis of these geographic factors and after considering the alternative of intracircuit assignments. These experiences of the bankruptcy courts in the Northern District of Florida and the Southern District of Alabama provide not only an example of where factors other than weighted caseload data shaped a bankruptcy judgeship recommendation, but also an example of why intercircuit and intracircuit assignments are not a long-term solution to the problem of overburdened courts.

Figure 1:



3. Question:

Please explain why it would not be prudent for Congress to wait to authorize new bankruptcy judgeships until the Judicial Conference adopts new case weights that may more precisely reflect the post-2005 workload of bankruptcy judges.

Answer: The current bankruptcy judgeship needs expressed in our request are critical, with filings increasing to near-record levels just as the bankruptcy courts are in peril of losing many judicial resources. The judicial districts for which the Conference has recommended additional bankruptcy judgeships have a sustained and pressing need and cannot wait longer for relief. To delay authorization of these necessary resources would only further delay justice for the creditors and debtors that appear in these courts and further overburden the entire bankruptcy system in these districts. These delays and burdens will only grow as caseloads continue to rise.

Even back in 2005, the last time that bankruptcy judgeships were authorized, the judiciary needed more bankruptcy judgeships than Congress authorized in the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”). The Conference had recommended 47 additional judgeships in 2005, but BAPCPA authorized only 28, five of which were not recommended by the Judicial Conference.) All of the judgeships authorized by BAPCPA are temporary judgeships that are now approaching their lapse dates, after which vacancies in those districts cannot be filled. With the loss of these judgeships, at the time they are needed most, these districts will revert to the level of judicial resources they had in 1992 – a level insufficient to deal with today’s near-record caseload.

The judgeship needs in the districts for which judgeships are recommended are so long-standing that many of them existed long before 2005. For example, the Conference has recommended additional judicial resources for the Eastern District of Michigan since 1993. The Conference has recommended additional judicial resources for the Western District of Tennessee for more than a decade. The Conference has recommended additional judicial resources for the Northern District of Mississippi since 2003.

While bankruptcy courts and the public served by those courts have been waiting years for adequate judicial resources, case filings have almost surpassed record pre-BAPCPA levels. Filings increased substantially since the first full year after BAPCPA took effect and continue to rise rapidly. In the 12-month period ending September 30, 2009, there were approximately 1.4 million bankruptcy petitions filed – more than double the number of petitions filed in calendar year 2006. Moreover, seasonally adjusted monthly filings for September 2009 at annual rates stood at just over 1.5 million, almost reaching the level of filings seen in late 2004, the last year prior to BAPCPA’s enactment.

Furthermore, the workload associated with these increasing filings is understated by the current case weights, partly because BAPCPA increased the work required for cases, and partly because there have been other work-enhancing changes to the bankruptcy system since the time that the current case weights were adopted. That means that the current judgeship recommendation is extremely conservative, and that our bankruptcy judges are working even harder and longer than is represented in the current weighted caseload per judgeship measures.

Under these conditions, more judgeships are needed now. To deny these districts the resources that they need in anticipation of updated data demonstrating additional needs would further overburden the system and adversely affect creditors and debtors. The current needs remain critical regardless of any future needs.



PREPARED STATEMENT OF THE FINANCIAL COUNSELING RESEARCH ROUNDTABLE

STATEMENT OF THE FINANCIAL COUNSELING RESEARCH ROUNDTABLE

BEFORE A HEARING, "BANKRUPTCY JUDGESHIP NEEDS", OF
THE SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW OF
THE HOUSE JUDICIARY COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

June 16, 2009

Chairman Cohen, Ranking Member Franks, and Members of the Subcommittee,

The Financial Counseling Research Roundtable appreciates the opportunity to provide this written statement in connection with the Subcommittee's hearing on "Bankruptcy Judgeship Needs." The Financial Counseling Research Roundtable is comprised of the nation's leading nonprofit organizations providing Americans with bankruptcy, housing, consumer credit, and financial counseling. The organizations that are members of the Roundtable provided counseling services to over 1 million consumers last year in all 50 States and the District of Columbia and employ thousands of Americans.

The Need for Additional Bankruptcy Judgeships

The Financial Counseling Research Roundtable is pleased to see that the Subcommittee is examining the need for additional bankruptcy judgeships. The Roundtable agrees that this is an important issue, and we support the efforts of the Subcommittee to ensure that our bankruptcy system has the resources it needs to serve the interests of all Americans.

The Value of Pre-Filing Bankruptcy Counseling for Consumers and the Bankruptcy Process

We welcome the opportunity to provide the Subcommittee with information on pre-filing bankruptcy counseling and credit counseling, and in particular, the positive impact that this counseling has on the bankruptcy process and Americans who are confronting or are in the midst of a personal bankruptcy.

First and foremost, we believe it is important to recognize that pre-filing bankruptcy counseling (and other forms of credit counseling) benefits consumers by providing them with the financial education needed to emerge successfully from bankruptcy. Bankruptcy is a difficult process under any circumstances, but without counseling and education, the bankruptcy process is truly daunting. Pre-filing bankruptcy counseling does not ensure a successful completion of the bankruptcy process for consumers, but it does offer the best opportunity for success. Data from a very recent and comprehensive May 2009 study by the National Bankruptcy Research Center (attached as Appendix A) makes this clear. Consumers who receive counseling are more likely to successfully complete the bankruptcy process whether their debts are discharged in a few months through a Chapter 7 bankruptcy or through a multi-year repayment plan under Chapter 13. In fact, Chapter 7 dismissal rates were 24 percent lower for counseled consumers than the national sample, and Chapter 13 dismissal rates were 31 percent lower for counseled consumers than the national average.

Consumers who receive pre-filing bankruptcy counseling also benefit from counseling and education by exhibiting better credit behavior in comparison to consumers who do not receive pre-filing bankruptcy counseling. Credit scores for pre-filing counseled consumers who filed for bankruptcy rose twice as much as for non-counseled filers (7.69% versus 3.65%). Credit scores for pre-filing counseled consumers who did not file for bankruptcy rose more than tenfold compared to a national sample with similar credit profiles (7.19% versus 0.6%). Similarly, consumers who received pre-filing bankruptcy counseling had significantly fewer delinquent accounts across all types of credit lines – a reduction of 27.5 percent for those that filed bankruptcy and reduction of 25.6 percent for those that did not file bankruptcy. Similar significant improvements also were seen in counseled consumers maintaining "current" status on their accounts and in the number of open bankcards at or above assigned credit limits.

In these difficult economic times, Americans need more financial counseling and education – not less. Americans are facing unprecedented financial difficulties with the economy in crisis, asset and home prices crashing, and record levels of household debt. The National Bankruptcy Research Center study shows that the average debt per consumer is far greater

now than before the enactment of Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA). Consumers need more help than ever navigating the current confusing and frightening economic environment and their massive debt burdens. Now is a time for policymakers to be **promoting** more financial counseling and education, **not limiting** or restricting it.

Additional Information on Bankruptcy Counseling and Its Role in the Bankruptcy Process

Clearly, pre-filing bankruptcy counseling and other forms of counseling have great educational benefits for consumers. Nonetheless, there are a misinformed few who continue to assert that the sole purpose of bankruptcy counseling is to dissuade or prevent a debtor from filing for bankruptcy. To be clear, it is not the intention of counselors to dissuade anyone from filing for bankruptcy if that is the best choice for them. In fact, nonprofit organizations that provide bankruptcy counseling spend much more of their time counseling debtors on how to emerge successfully from bankruptcy than they do discussing alternate options to bankruptcy. That being said, more than 15 percent of consumers who completed pre-filing bankruptcy counseling did not subsequently file for bankruptcy, which should be of comfort to those whose focus is on reducing the rate of bankruptcy filings.

We would like to address one other complaint that we sometimes hear from the misinformed few who attempt to criticize bankruptcy counseling – namely, that the cost of bankruptcy counseling imposes an additional undue burden on consumers confronting bankruptcy. As the discussion above indicates, it is clear that counseling has great value for consumers. In fact, the average cost of an individualized bankruptcy counseling session is quite modest – approximately \$40 per consumer. At most, providers are charging \$50, and even then, the fee is waived under certain circumstances. Some providers offer the session at much less than \$50. Rather than counseling being an undue financial burden, we all know that it is fees charged by bankruptcy attorneys that make up the bulk of costs to consumers. Alarming, these fees have grown at an extremely rapid rate. Indeed, the National Association of Consumer Bankruptcy Attorneys acknowledges that bankruptcy attorneys have increased their

average fee by more than 50 percent just since 2005. This clearly is unfortunate for the financially distressed consumers whom we counsel.

Conclusion

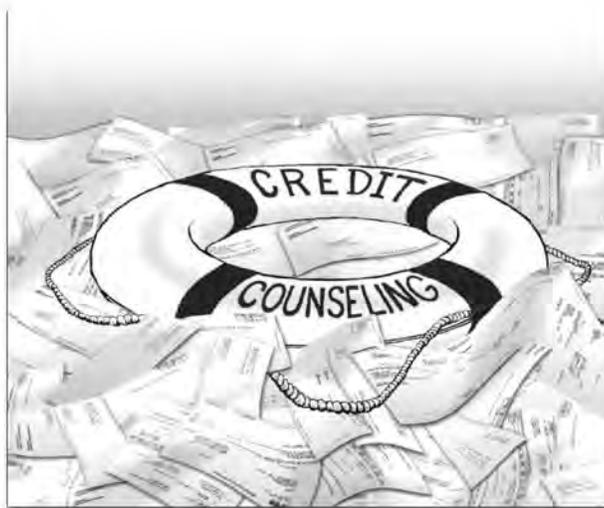
Thank you for the opportunity to present this written statement on behalf of the Financial Counseling Research Roundtable and our bankruptcy counseling clients. We appreciate the Subcommittee's thoughtful and timely examination of the needs of our bankruptcy judgeship. We believe that pre-filing bankruptcy counseling and other forms of consumer credit counseling provide valuable benefits for consumers and our bankruptcy system at large. We look forward to working with and supporting the efforts of the Subcommittee and the Congress on these initiatives.

ATTACHMENT



Credit Counseling Value Study

May 2009



About the Participants:**NBKRC**

The National Bankruptcy Research Center (NBKRC) is the premier source for the most current bankruptcy research and statistics. The NBKRC provides industry leading analytics, providing micro- and macro- level insight into the events that occur during the lifecycle of a bankruptcy case. Subscribers include analysts, financial institutions, government entities, universities, and members of the media. The NBKRC bankruptcy database contains complete information dating back to 1995.

MMI Foundation

Founded as an extension to the education and counseling Money Management International provides, the MMI Financial Education Foundation operates to educate the general public on sound personal financial skills and money management principles by partnering with national organizations that develop, deliver, and support programs that teach those skills and principles, as well as by, sponsoring research projects into personal financial issues of national importance.

Acknowledgements:

Experian contributed to Phase 2 of this study by providing expertise and detailed information about the credit profiles and behaviors of the consumers in the sample. The analysis was conducted using VantageScore as the credit scoring benchmark. VantageScore is the first single credit scoring model to be developed jointly by all three national credit reporting companies to deliver a highly predictive, consistent and easy to understand credit risk score. For more information about Experian, please visit <http://www.experian.com>.

In addition, we would like to thank the credit counseling agencies for participating in the study, further demonstrating that financial counseling makes a difference.

For further information on the study, please direct correspondence to:

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General Overview

This study provides insight into the effectiveness of counseling or briefing programs offered through credit counseling agencies, including: (1) credit counseling, (2) pre-bankruptcy filing counseling, (3) pre-discharge education, and (4) debt management programs.

These programs provided consumers with knowledge and skills to effect a change in their personal financial management, including credit behavior resulting in improved credit profiles and scores.

Specifically, an analysis of consumer Vantage scores and credit attributes demonstrated that consumers who received credit counseling or pre-bankruptcy counseling were in a better financial position two years later than those who did not.

Consumers who received pre-bankruptcy filing counseling and did not file bankruptcy also showed significant improvement in credit behavior as demonstrated by key indicators.

Background on Counseling Programs

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA), credit counseling agencies offered the following types of assistance to consumers in financial distress:

1. Credit Counseling

- Assistance with goal setting, budgeting, financial management and understanding credit.
- Assistance with mortgage, reverse mortgage and other housing issues
- A majority of those counseled took guidance from their counselor and continued to manage their debt on their own.
- Prior to BAPCPA, there was no requirement for a credit counseling or briefing session prior to filing for bankruptcy.

2. Debt Management Program (DMP)

- A DMP is a structured repayment plan offered at the conclusion of a credit counseling sessions for consumers who have significant unsecured debt and cannot meet the current minimum payments on their obligations.
- Credit counseling agencies work with creditors on behalf of their clients. The credit counseling agency may negotiate concessions with creditors that are beneficial to their clients, such as lower interest rates, reduction in fees and minimum monthly payment requirements.

BAPCPA was enacted on October 17, 2005. One of the key provisions of the legislation was to require credit briefings or credit counseling sessions for all consumers who filed for personal bankruptcy.

A consumer who is in a financially precarious position and is looking to file bankruptcy must provide evidence of having received counseling from a credit counseling agency approved by the Executive Office of the United States Trustee or seek an exemption from the counseling requirement from the bankruptcy court. In either scenario, consumers who file bankruptcy, have to complete a pre-discharge education course to get a discharge from bankruptcy.

1) Credit Briefing (Pre-filing bankruptcy counseling)

- A credit briefing session required for consumers in anticipation of filing a personal bankruptcy petition. This session must be provided by an approved non-profit budget and credit counseling agency
- Specific criteria regarding this requirement can be found at www.usdoj.gov

2) Discharge Education (Pre-discharge Education)

- An educational session to emphasize fiscal responsibility prior to debts being discharged.

Overview of Results

There were two components to this study identified as Phases 1 and 2. A high level summary of these phases is listed below:

1. Phase 1

- The goal of Phase 1 was to provide insight into the effectiveness of **pre and post** BAPCPA programs by examining changes in consumers' financial profiles and bankruptcy filing rates.
- The study collected data from 4 large credit counseling agencies which provided counseling to consumers located all across the United States. A total of 2.7 million counseling client records were collected, the majority of which were from clients who received counseling between January 1993 and February 2008.
- To determine bankruptcy filing rates and other bankruptcy related information, the consumers were matched against a national bankruptcy database.

2. Phase 2

- The goal of Phase 2 was to provide insight into the effectiveness of **post** BAPCPA programs by examining changes in consumers' credit profiles and Vantage scores.

- During this phase, the study was expanded to look at the entire lifecycle of the consumer from the time of pre-filing counseling until two years after counseling.
- Credit profile information, was obtained from a national credit bureau (Experian) which provided Vantage Scores and Stagg (Statistical Aggregate) variables.

3. Future Phases

In the future, additional phases will be considered. These include 1) analyzing other comparison groups such as pre-BAPCPA credit counseled consumers and 2) surveying consumers to collect information about their experiences with credit counseling and pre-bankruptcy filing counseling.

Phase 1 Summary of Results

1.1 The average debt per consumer was greater after 2005 than before the enactment of BAPCPA.

1.2 Filing rates for consumers seeking credit counseling increased from 20.7% pre-BAPCPA to 30.1% post-BAPCPA.

Pre-filing bankruptcy counseling consumers had a filing rate of 84.8%, i.e., 15.2% of all clients receiving pre-filing counseling did not file bankruptcy during the study period.

- The increased filing rate can be partially attributed to the larger debt burdens of consumers in post-BAPCPA.

1.3 Consumers who entered a DMP had a significantly lower incidence of bankruptcy filing.

- It appears that DMPs effectively allow consumers to resolve their financial difficulties without having to file for bankruptcy.

1.4 For those consumers who received credit counseling and subsequently filed for bankruptcy, there was a decrease in the number of Chapter 7 filings and an increase in Chapter 13 filings.

- This finding is consistent with the trends in the national bankruptcy chapter distribution. Of note: many consumers who would have otherwise filed for bankruptcy sometime after October 2005, filed prior to the enactment of BAPCPA causing a temporary shift in Chapter distribution.

1.5 Credit counseled consumers who filed for bankruptcy had lower dismissal rates in comparison to the national sample for both Chapter 7 (1.6% vs. 2.1 %) and Chapter 13 (30.9% vs. 44.6%) filings.

- Credit counseled consumers are more likely to successfully complete the bankruptcy process whether their debts are discharged in a few months through a Chapter 7 bankruptcy or they enter a multi-year repayment plan through a Chapter 13 bankruptcy.

Phase 2 Summary of Results

Consumers who received pre-bankruptcy counseling exhibited better credit behavior in comparison to consumers who did not receive pre-bankruptcy counseling.

These consumers demonstrated greater improvement in:

2.1 Vantage scores between 2006 to 2008

Credit scores for pre-filing counseled consumers, regardless of chapter filed, rose 7.69% versus 3.65% for non-counseled filers. Credit scores for pre-filing counseled consumers who did not file bankruptcy after counseling rose by 7.19%.

Credit scores for a national sample with credit profiles similar to those who filed but receiving no counseling and who did not file and were not counseled rose 0.68%.

Credit scores for pre-filing counseled consumers filing Chapter 7 rose 9.1% versus 5.5% for non-counseled filers.

- a) Vantage scores provide a cumulative snapshot of the consumers' credit behavior. In addition, higher Vantage scores generally allow consumers to access credit at lower interest rates.

2.2 Number of delinquent accounts

Pre-bankruptcy filing counseled consumers had significantly fewer delinquent accounts across all types of credit lines—a reduction of 27.5% for those that filed bankruptcy and a reduction of 25.6% for those that did not file bankruptcy.

- The lower delinquency statuses appear to indicate that consumers who receive pre-bankruptcy filing counseling are better able to

manage their credit obligations than those who did not receive counseling.

2.3 Time account maintained in “current” status

Consumers who received pre-filing bankruptcy counseling maintained their accounts in a current status for longer periods of time than non counseled consumers. The time since their last delinquency/derogatory status was 6.9 months for filers and 5.8 months for non-filers.

- Consumers who received pre-bankruptcy counseling are more likely to be able to stay current with their accounts.

2.4 Number of open bankcards at or above assigned credit limits

Consumers who received pre-filing counseling had a decrease in the total number of open bankcards with balances at or above their credit limits. Decreases were 62.2% for filers and 66.7% for non-filers.

- Pre-bankruptcy filing counseled consumers appear to exercise more restraint in their use of available credit.

IV. **Methodology**

1. **Data Sources**

Three sources of data for the study were used:

- Consumer Data..... Four large credit counseling agencies
- Bankruptcy Data National bankruptcy database
- Credit Bureau Data Experian

	Phase 1	Phase 2
Consumer data		
1. Source	▪ Four large credit counseling agencies across the United States	▪ Same as Phase 1
2. Number of records	▪ 2.7 million consumer records	▪ 322,000 consumer records
3. Use	▪ To identify clients who received counseling and pre-bankruptcy filing counseling from January, 1993 through February, 2008. (Some records fall outside this date range)	▪ To identify clients who receive credit counseling and pre-bankruptcy filing counseling between May through July of 2004 and May through July of 2006
Bankruptcy Data		
1. Source	▪ National Bankruptcy Database	▪ Same as Phase 1
2. Number of records	▪ 10.7 MM consumer records	▪ Same as Phase 1
3. Use	▪ To determine if the 2.7 million consumers had filed bankruptcy between 2000 and 2008 ▪ To obtain details of the consumers bankruptcy, if they filed.	▪ Same as Phase 1 ▪ To identify filers who did not receive both pre-bankruptcy filing counseling and pre-discharge counseling ⁽⁹⁾
Credit Bureau Data		
1. Source	▪ NA	▪ Experian national database
2. Number of records	▪ NA	▪ Vantage scores and Stagg Variables ⁽⁹⁾ were provided for: ○ 322 thousand records from the credit counseling agencies and national bankruptcy database. ○ Data and scores were pulled four times: in 2002, 2004, 2006 and 2008. ▪ 1 million randomly selected consumers for use as a national sample
3. Use	▪ NA	▪ To determine credit scores and credit profile characteristics

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(1) **Non-counseled clients**

- Generally, this group would have received an exception based on extenuating circumstances to have the pre-bankruptcy filing counseling requirement waived.

(2) **Vantage ScoresSM and Stagg VariablesSM**

- In order to assess the impact of credit counseling on the consumer's credit behavior, a national credit bureau (Experian) provided Statistical Aggregates (STAGGS) and credit scores (Vantage Score) for analysis. All personally identifiable information was masked.
- Vantage Score, which is used by lenders and available to consumers, is a credit score developed cooperatively by Experian and the other national credit reporting companies. A total of 130 STAGG variables were reviewed across different trade lines. STAGG attributes can be broadly categorized as follows:
 - Inquiries and Open Accounts (Ability to get new credit)
 - Balances (Credit behavior)
 - Delinquencies and Derogatory (Risk behavior)
 - Consumer demographics (Demographic attributes)
- STAGG variables were available at the consumer level across different trade lines such as mortgage, auto, retail, bankcard, installment, and home equity.

2. Study Approach

The study consisted of:

- Identifying the goal for each of the phases
- Identifying groups of consumers receiving counseling of some type
- Creating control groups to allow comparisons between consumers who received credit counseling and the general population of consumers who have filed for bankruptcy and those who did neither
- Identifying the time period for data collection

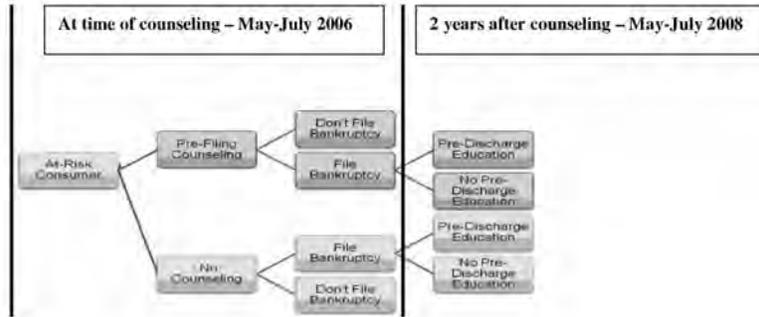
	Phase 1	Phase 2
Goal	1) The goal was to provide insight into the effectiveness of pre and post BAPCPA programs by examining changes in financial profiles and bankruptcy filing rates	1) The goal was to provide insight into the effectiveness of post BAPCPA program examining changes in credit profiles and Vantage scores.
Groups Studied	<p><u>Six groups were created and studied in Phase 1</u></p> <p>1) Pre-BAPCPA</p> <p style="margin-left: 20px;">a) Credit counseling consumers</p> <p style="margin-left: 40px;">i) Filers</p> <p style="margin-left: 40px;">ii) Non-filers</p> <p>2) Post-BAPCPA</p> <p style="margin-left: 20px;">a) Credit counseling consumers</p> <p style="margin-left: 40px;">i) Filers</p> <p style="margin-left: 40px;">ii) Non-filers</p> <p style="margin-left: 20px;">b) Pre-bankruptcy filing counseling consumers</p> <p style="margin-left: 40px;">i) Filers</p> <p style="margin-left: 40px;">ii) Non-filers</p> <p>Filers were further evaluated by ⁽¹⁾:</p> <ul style="list-style-type: none"> ▪ DMP vs. no-DMP ▪ Chapter 7 vs. Chapter 13 	<p><u>Eight groups were created and studied in Phase 2 however, only three which focus on pre-filer bankruptcy counseling are presented in this</u></p> <p>1) Pre-BAPCPA ⁽²⁾</p> <p style="margin-left: 20px;">a) Credit counseling consumers</p> <p style="margin-left: 40px;">i) Filers</p> <p style="margin-left: 40px;">ii) Non-filers</p> <p style="margin-left: 20px;">b) Not counseled—NCO ⁽³⁾</p> <p>2) Post-BAPCPA ⁽²⁾</p> <p style="margin-left: 20px;">a) Credit counseling consumers</p> <p style="margin-left: 40px;">i) Filers</p> <p style="margin-left: 40px;">ii) Non-filers</p> <p style="margin-left: 20px;">b) Pre-bankruptcy filing counseling consumers</p> <p style="margin-left: 40px;">i) Filers with pre-discharge education</p> <p style="margin-left: 40px;">ii) Filers with no pre-discharge education ⁽⁴⁾</p> <p style="margin-left: 40px;">iii) Non-filers</p> <p>c) NCO ⁽⁵⁾</p> <p style="margin-left: 20px;">i) Filers with pre-discharge education</p> <p style="margin-left: 20px;">ii) Filers with no pre-discharge education</p>

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Control group	<ol style="list-style-type: none"> 1) Source for data: <ol style="list-style-type: none"> a) National bankruptcy database 2) Size of database: <ol style="list-style-type: none"> a) 10.7 MM consumers 3) Use of data: <ol style="list-style-type: none"> a) A control group from the national bankruptcy database holding more than 10.7 million consumers was studied to allow a comparison of bankruptcy metrics between consumers who received credit counseling and the general population of consumers who filed for bankruptcy. 	<ol style="list-style-type: none"> 1) Source for data: 1 mm <ol style="list-style-type: none"> a) Experian credit bureau's national d of all US consumers 2) Size of database: 1 mm sub-sampled to <ol style="list-style-type: none"> a) 158,000 consumers matching the c profile of the pre-bankruptcy filing counseling 3) Use of data: <ol style="list-style-type: none"> a) Vantage scores and Stagg variables also provided for a control group c 158,000 consumers with similar cre profiles as those who received pre-bankruptcy filing counseling. b) Personally identifiable information removed.
Time Periods	<ol style="list-style-type: none"> 1) The time samples for each of the studied groups were before and after Oct. 17, 2005. 	<ol style="list-style-type: none"> 1) Time samples for each of the studied gr were: <ol style="list-style-type: none"> a) 2 years before filing/counseling (m the consumer's financial status befi counseling and before filing bankr. b) At time of filing/counseling (measures the consumer financial s the time of counseling/bankruptcy c) 2 years after filing/counseling (measures the consumer financial s post counseling/bankruptcy)

- (1) Additional issues that were investigated but not reported in this analysis include:
 - Whether the bankruptcy case was eventually dismissed or discharged
 - Whether the consumer had filed for bankruptcy before
- (2) These groups were evaluated but not included in this study due to the variability of the macro-economic environment.
- (3) These groups were not evaluated in this study
- (4) NCO—Not counseled consumers
 - Not counseled consumers are filers without both pre-bankruptcy filing counseling and pre-discharge education
 - To identify consumers who had not received pre-bankruptcy counseling and/or pre-discharge education, bankruptcy case dockets were analyzed.
 - Some consumers were given exemptions from either pre-bankruptcy counseling and/or pre-discharge education due to exceptional situations such as Hurricane Katrina. These consumers were therefore included in the non-counseled group. Of the 3,618 cases analyzed, 1,016 cases were from the states of Louisiana and Mississippi where exemptions were granted for all filers due to hardship caused by Hurricane Katrina. These cases were excluded from the analysis.

Figure A: Life-cycle of a Consumer At-risk

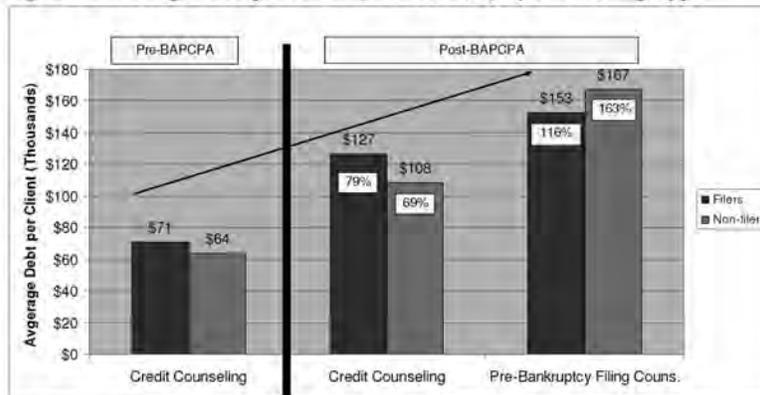


Detailed Results for Phase 1

1.1 The average debt per consumer was greater after 2005 than before the enactment of BAPCPA.

- Filers in 2006 to 2008 had an average debt increase of 79% (from \$71,000 to \$127,000) for credit counseling consumers and 116% (from \$71,000 to \$153,000) for pre-bankruptcy filing counseling consumers.
- Those consumers that did not file bankruptcy had average debt increases of 69% (from \$64,000 to \$108,000) for credit counseling consumers and 163% (from \$64,000 to \$167,000) for pre-bankruptcy filing counseling consumers.

Figure 1.1: Average Debt per Client (in thousands) by Counseling Type

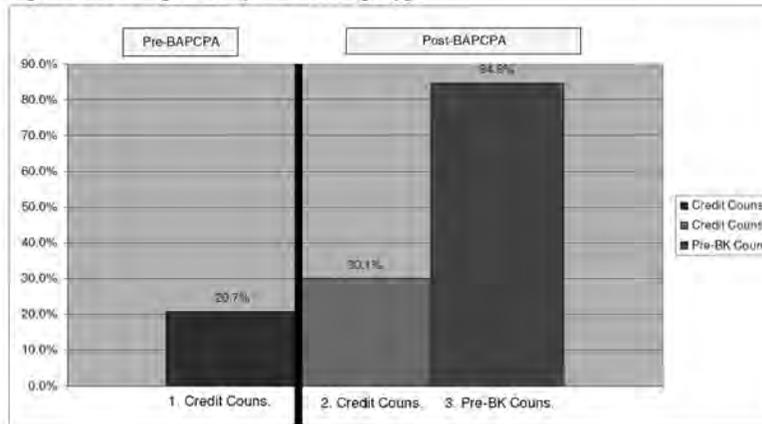


1.2 Filing rates for credit counseling consumers increased from 20.7% pre-BAPCPA to 30.1% post-BAPCPA.

Pre-filing bankruptcy counseling consumers had a filing rate of 84.8%. 15.2% of consumers who completed pre-filing counseling did not file for bankruptcy in the study period.

The increased filing rate can be partially attributed to the larger debt burdens of consumers in post-BAPCPA.

Figure 1.2: Filing Rate by Counseling Type



1.3 Consumers who entered a DMP had a significantly lower incidence of bankruptcy filing.

DMPs appear to effectively allow consumers to resolve their financial difficulties without having to file for bankruptcy.

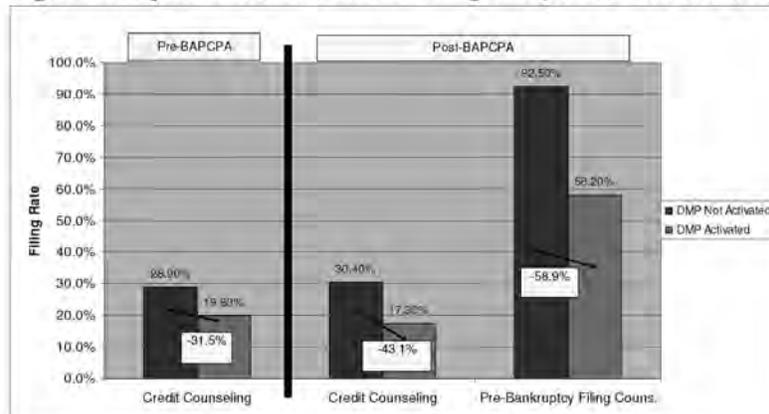
(a) **Prior to 2005:**

- Activation of a DMP decreased the filing rate by **31.5%** (28.9% to 19.8%)

(b) **Between 2006 – 2008:**

- **For credit counseling consumers:**
 - Activation of a DMP decreased the filing rate by **43.1%** (from 30.4% to 17.3%)
- **For pre-bankruptcy filing consumers:**
 - Activation of a DMP decreased the filing rate by **58.9%** (from 92.5% to 58.2%)

Figure 1.3: Impact of DMP Activation on Filing Rate (Pre and Post-BAPCPA)

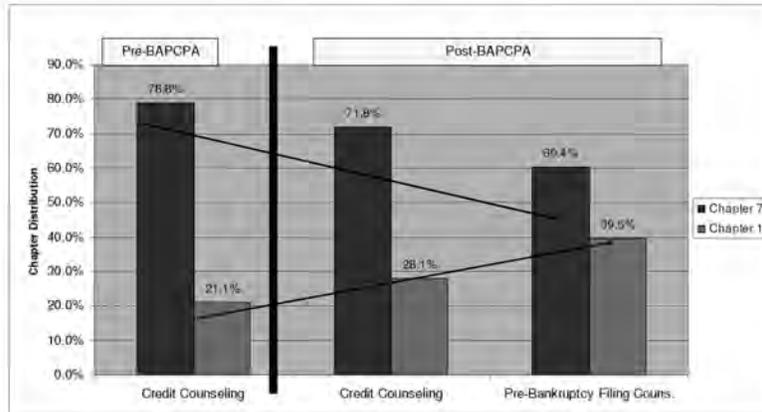


1.4 For those consumers who received credit counseling and subsequently filed for bankruptcy, there was a decrease in the number of Chapter 7 filings and an increase in Chapter 13 filings.

- (a) Between 2006 and 2008, Chapter 7 filings decreased from 78.8% to 71.8% for credit counseling consumers and 60.4% for pre-bankruptcy filing counseling consumers.
- (b) Between 2006 and 2008, Chapter 13 filings increased from 21.1% to 28.1% for credit counseling and 39.5% for pre-bankruptcy filing counseling.

This finding is consistent with the trends in the national bankruptcy chapter distribution. Of note: many consumers who would have otherwise filed for bankruptcy sometime after October 2005, filed prior to the enactment of BAPCPA causing a temporary shift in Chapter distribution.

Figure 1.4: Chapter Distribution by Counseling Type

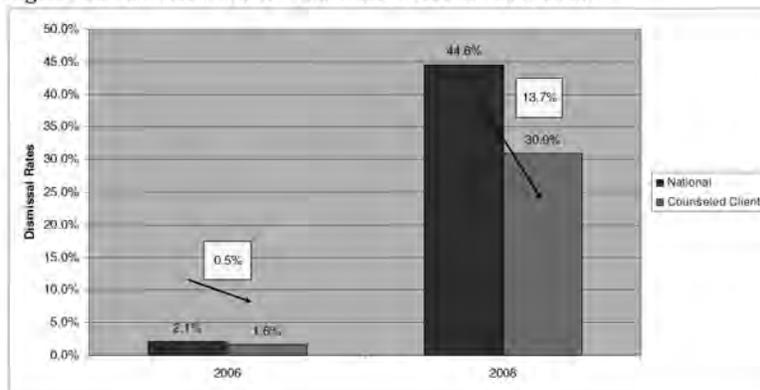


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1.5 Credit counseled consumers who filed for bankruptcy had lower dismissal rates in comparison to the national sample for both Chapter 7 (1.6% vs. 2.1 %) and Chapter 13 (30.9% vs. 44.6%) filings.

Credit counseled consumers were more likely to successfully complete the bankruptcy process whether their debts were discharged in a few months through a Chapter 7 bankruptcy or whether they entered a multi-year repayment plan through a Chapter 13 bankruptcy.

Figure 1.5: Dismissal Rates—National vs. Counseled Clients



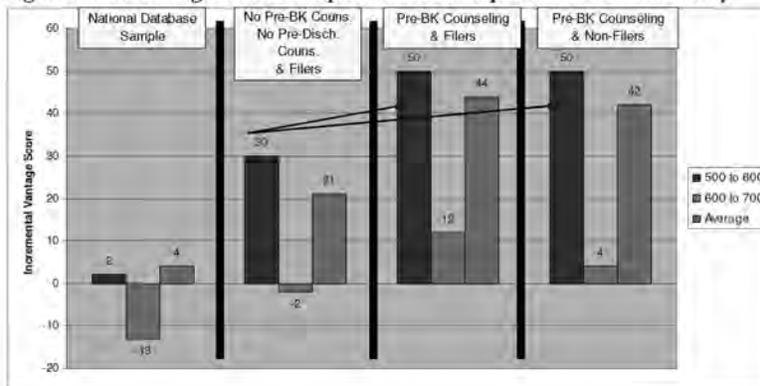
VII. Detailed Results for Phase 2

2.1 Part A - The effectiveness of pre-bankruptcy filing is evidenced by a great improvement in Vantage scores from 2006 to 2008 for counseled consumers.

Vantage scores provide a cumulative snapshot of the consumers' credit behavior. In addition, higher Vantage scores generally allow consumers to access credit at lower interest rates.

- (a) **Pre-bankruptcy counseled consumers who filed**
 - **In the worst score band (500 to 600):**
 - Improved scores by 50 points from 2006 to 2008.
 - Improved scores 20 points over consumers with no pre-bankruptcy counseling and no pre-discharge education
 - **Over all score bands:**
 - Improved average Vantage scores over all bands by 44 points from 2006 to 2008.
- b) **Pre-bankruptcy counseled consumers who did not file**
 - **In the worst score band (500 to 600):**
 - Improved scores 50 points from 2006 to 2008.
 - Improved scores 20 points over consumers with no pre-bankruptcy counseling and no pre-discharge education
 - **Over all score bands:**
 - Improved consumers' average scores over all bands by 42 points from 2006 to 2008.

Figure 2.1 A: Vantage Score Comparison for Groups Included in the Study

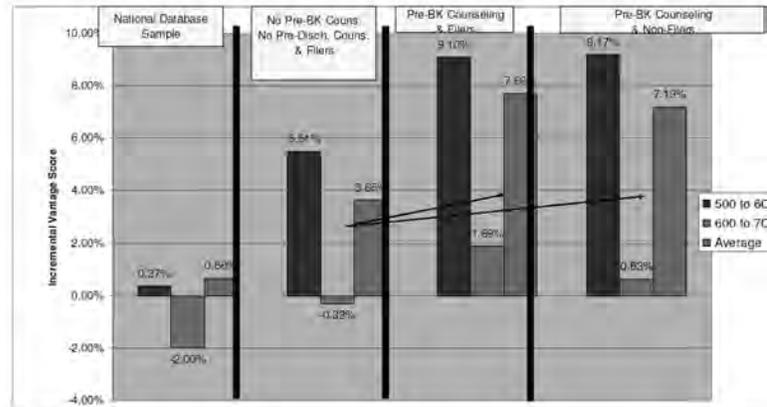


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2.1 Part B - The effectiveness of pre-bankruptcy filing is indicated by greater percentage improvements in comparison to other groups in the study

- a) Credit scores for pre-filing counseled consumers regardless of chapter filed rose 7.69% versus 3.65% for non-counseled filers.
- b) Credit scores for pre-filing counseled consumers who did not file bankruptcy after counseling rose by 7.19%.
- c) Credit scores for a national sample with credit profiles similar to those who filed but receiving no counseling and who did not file and were not counseled rose 0.68%

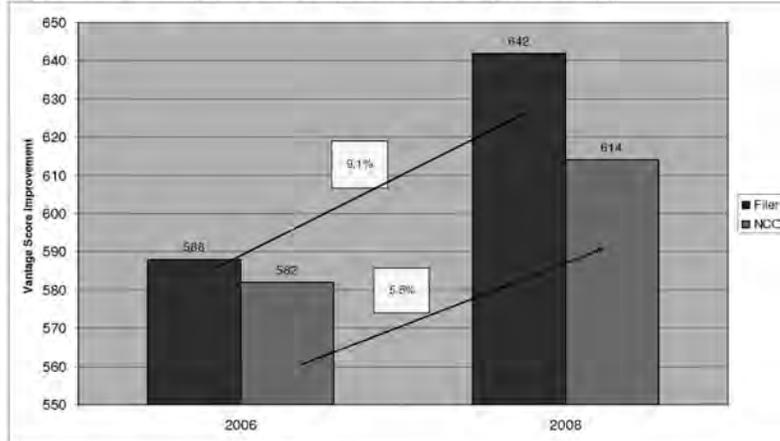
Figure 2.1 B: Vantage Score Comparison for Groups Included in the Study



2.1 Part C - Credit scores for pre-filing counseled consumers filing Chapter 7 rose 9.1% versus 5.5% for non-counseled filers.

Vantage scores for consumers who received counseling, filed Chapter 7 and completed the bankruptcy process; displayed a larger improvement in comparison to non-counseled filers.

Figure 2.1 C: Vantage Score Comparison for Chapter 7 Filings



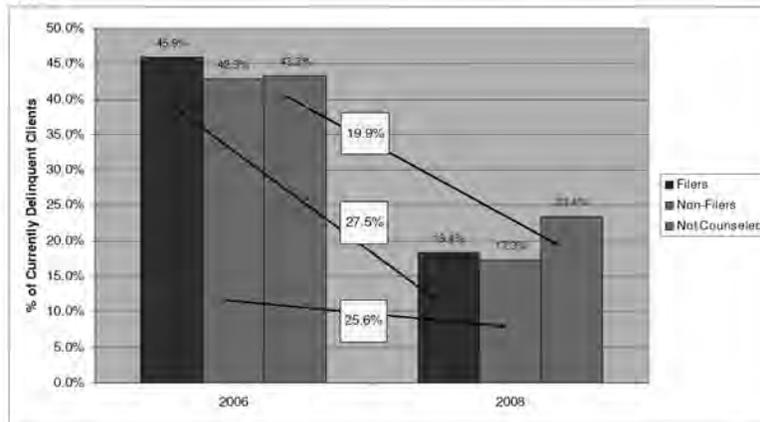
2.2 After bankruptcy, pre-bankruptcy filing counseled consumers had significantly fewer delinquent accounts across all types of credit lines --- a reduction of 27.5% for those that filed bankruptcy and a reduction of 25.6% for those that did not file bankruptcy.

The lower delinquency statuses appear to indicate that consumers who receive pre-bankruptcy filing counseling are better able to manage their credit obligations than those who did not receive counseling.

- (a) Pre-bankruptcy filing consumers showed considerable reduction in the number of accounts with delinquency status after 2 years with an overall decrease of 27.5% for filers and 25.6% for non-filers
- (b) The non-counseled group (obtained from the national bankruptcy database) only improved by 19.9%
- (c) When compared to the non-counseled group, the filers and non-filers performed better by 7.6% (27.5%-19.9%) and 5.7% (25.6%-19.9%)

Note: Delinquency status included 30 to 180 days late. Credit lines included: Auto, bankcard, installment, revolving, retail revolving, retail, and home equity.

Figure 2.2: Improvement in Delinquent/Derogatory Accounts from 2006 to 2008



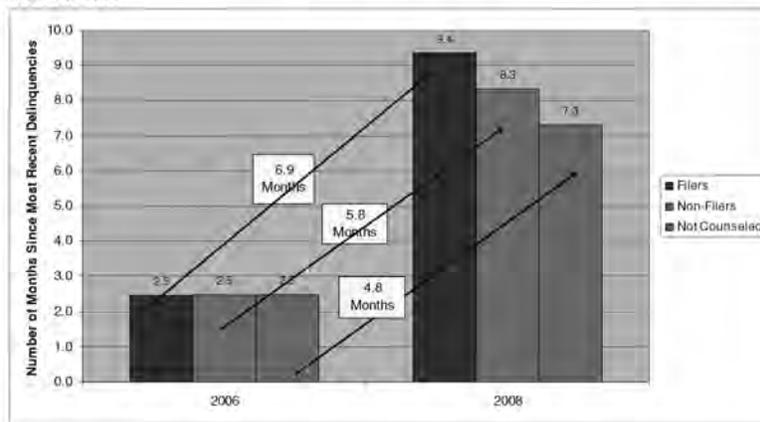
2.3 Consumers who received pre-filing bankruptcy counseling maintained their accounts in a current status for longer periods of time than non-counseled consumers. The time between their last delinquency/derogatory status was 6.9 months for filers and 5.8 months for non-filers.

Consumers who received pre-bankruptcy counseling are more likely to be able to stay current with their accounts.

- a) Pre-bankruptcy filing consumers showed considerable improvement in the months since last delinquency/derogatory status after 2 years with an overall increase in 6.9 months for filers and 5.8 months for non-filers
- b) The non-counseled group (obtained from the national bankruptcy database) only improved by 4.8 months
- c) When compared to the non-counseled group, the filers and non-filers performed better by 2.1 months (6.9-4.8) and 1.0 (5.8-4.8)

Note: Delinquency status included 30 to 180 days late. Credit lines included: mortgage, auto, retail, bankcard, installment, and home equity.

Figure 2.3: Improvement in Months since last Delinquency/Derogatory from 2006 to 2008

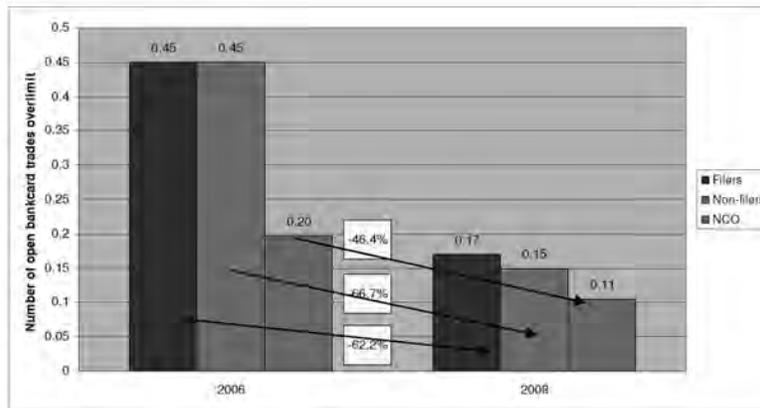


2.4 Consumers who received pre-filing counseling had a decrease in the total number of bankcards with balances at or above their credit limits. Decreases were 62.2% for filers and 66.7% for non-filers

Pre-bankruptcy filing counseled consumers appear to exercise more restraint in their use of available credit.

- a) Pre-bankruptcy filing consumers showed considerable improvement in their total number of open bankcards with balance/limit ratio greater than or equal to 100 after 2 years with an overall decrease of 62.2% for filers and 66.7% for non-filers.
- b) In addition, the non-counseled group (obtained from the national bankruptcy database) only improved 46.4%
- c) When compared to the non-counseled group, the filers and non-filers performed better by 15.8% (62.2%-46.4%) and 20.3% (66.7%-46.4)

Figure 2.4: Improvement in Over Limit Accounts from 2006 to 2008



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