

Bankruptcy by the Numbers

By Ed Flynn

Dead-on-Arrival Cases (at Bankruptcy Court)

Bankruptcy laws establish clear goals for debtors in each of the major chapters. Chapter 7 debtors seek discharge of certain debts after liquidation of nonexempt assets,¹ while chapter 13 debtors seek a discharge of debts after completion of a repayment plan. Chapter 11 and 12 debtors seek court approval of a reorganization plan.

There is an underlying difference in the success rate by chapter. More than 90 percent of chapter 7 debtors obtain a discharge of debts.² For chapter 13 debtors, the plan completion rate is in the 35-40 percent range. For chapter 11 cases, the plan-confirmation rate is a little below 40 percent, and about 35 percent of chapter 12 cases result in a completed plan.³

Many cases may have had a reasonable chance at success when they were filed, but ended up being dismissed or converted at a later date. Others fall into miscellaneous categories, such as cases where a discharge is not applicable, cases that are transferred within or to another judicial district, cases filed or closed in error, etc.

However, a portion of bankruptcy cases in each chapter are dead on arrival (DOA) in that they have virtually no chance at a successful outcome. How do these cases differ in key characteristics from other more successful bankruptcy cases?

First, we need to determine what constitutes a DOA case. For the purposes of this article, a DOA case is arbitrarily defined as any case dismissed within six months of filing.

Source of Data

The Federal Judicial Center, in partnership with the Administrative Office of the U.S. Courts, has recently made available an extensive Interactive Data Base (IDB) of bankruptcy cases that contains a record for every bankruptcy case filed and closed



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- 1 More than 90 percent of chapter 7 cases are closed as no-asset cases (available assets are exempted).
- 2 Of the sample of more than 240,000 chapter 7 cases studied in this article, 92.8 percent resulted in a discharge of the debtor while 5.6 percent were dismissed, and most of the remaining cases were business cases or transferred cases.
- 3 Prior articles have included information on the outcomes of cases filed under chapters 11, 12 and 13. See, e.g., Ed Flynn, "Success Rates in Chapter 13," XXXVI *ABI Journal* 8, 38-39, 56-57, August 2017; Ed Flynn, "Chapter 12: Outcomes for Family Farmers and Fishermen," XXIV *ABI Journal* 9, 36-37, 70-72, September 2015; and Ed Flynn and Phil Crewson, "Chapter 11 Filing Trends in History and Today," XXVIII *ABI Journal* 4, 14, 64-65, May 2009. These articles are available at abi.org/abi-journal.

Table 1: Sample of Chapter 7 Cases Closed During Fiscal Years 2010-16

	DOA Cases (Dismissed Within Six Months)	Discharged in Chapter 7	All Chapter 7 Cases*
Total Cases	11,130	223,505	240,751
Percent Filed <i>Pro Se</i>	50.3%	6.1%	8.5%
Percent Joint Filings	15.2%	30.5%	29.5%
Percent with 1 or More Prior Filings	21.0%	6.3%	7.1%
Filing Fees Not Paid in Full at Filing	38.3%	9.2%	10.7%
Asset and Liability Schedules Not Filed	39.7%	2.0%	4.3%
Percent with Real Property	41.9%	50.5%	50.2%
Median Real Property Amount	\$154,077	\$132,590	\$134,118
Median Personal Property	\$7,975	\$13,297	\$13,125
Median Unsecured Debt	\$39,626	\$46,530	\$46,574
Income & Expense Schedules Not Filed	50.9%	13.3%	16.0%
Median Current Monthly Income	\$2,500	\$2,996	\$2,987
Median Average Monthly Income	\$2,259	\$2,609	\$2,602
Median Monthly Expenses	\$2,545	\$2,842	\$2,837

* This total includes 6,116 cases that do not fit into the first two categories, including cases dismissed more than six months after filing, business cases in which a discharge is not applicable, transfers and other miscellaneous cases.

since 2008. This data allows researchers to work with case-level data rather than summary data.⁴ For this article, all chapter 11 and 12 cases closed between fiscal years 2010-16 were examined. For chapter 7 and 13 cases, a sample of cases closed each month during this period was selected.

Chapter 7 Cases

The chapter 7 sample used for this article consists of 240,751 cases filed that were closed in fiscal years 2010-16, as shown in Table 1. Of these cases, 11,130 (4.6 percent) were dismissed within six months of filing.

Unsuccessful chapter 7 cases are much more likely to have been filed *pro se*, involve debtors who have filed before or be solo (not joint) filings. Debtors in these cases are also much more likely to not file all their required schedules or to pay their filing fees in full at the time of filing.

The differences were less marked in their financial profiles. The DOA debtors had less personal property and slight-

4 Unfortunately, the IDB does not reflect whether cases filed under chapters 11, 12 and 13 were confirmed. This imposes limits on identifying the cases that were fully successful.

ly lower monthly incomes and expenses than other chapter 7 debtors. They were also less likely to be homeowners, but among the homeowners, property values were a little higher.

States with the highest proportion of DOA chapter 7 cases include California (9.3 percent),⁵ Florida (6.9 percent), Utah (6.6 percent), Arkansas (6.1 percent) and North Dakota (5.9 percent). States with the lowest proportion of unsuccessful chapter 7 cases include Kansas (0.9 percent), Alaska (1.1 percent), Minnesota (1.2 percent), Hawaii (1.3 percent) and Maine (1.5 percent).

Chapter 11 Cases

The chapter 11 population examined here includes the 75,157 cases that were originally filed under chapter 11 and that were closed in fiscal years 2010-16, as shown in Table 2. These were divided into three groups — DOA cases, cases dismissed or converted more than six months after filing,

5 More than 30 percent of the unsuccessful chapter 7 cases are filed in California, which encompasses nearly one-third of all *pro se* filings.

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Table 2: Chapter 11 Cases Closed, Fiscal Years 2010-16

	DOA Cases (Dismissed Within Six Months)	Other Dismissed or Converted Cases	Other Cases (Mostly Confirmed)	All Chapter 11 Cases *
Total Cases	9,543	35,148	30,466	76,082
Percent of Total Cases	12.5%	46.2%	40.0%	
Filed <i>Pro Se</i>	23.4%	5.5%	0.8%	12.5%
Joint Filing	5.1%	10.1%	9.1%	9.0%
Prior Filing	17.6%	10.1%	5.1%	9.4%
Fees Not Paid	9.9%	3.1%	2.0%	3.6%
Asset and Liability Schedules Not Filed	44.5%	16.8%	37.0%	29.0%
Small Business Case	41.5%	27.8%	15.2%	24.0%
Single-Asset Real Estate	18.4%	12.5%	6.3%	11.1%

* Total includes 925 cases that do not fit into the first two categories, including cases dismissed more than six months after filing, business cases in which a discharge is not applicable, transfers and other miscellaneous cases.

Table 3: Chapter 12 Cases Closed, Fiscal Years 2010-16

	DOA Cases (Dismissed Within Six Months)	Discharged Cases	Other Cases (Mostly Dismissed or Converted)	All Chapter 12 Cases
Total Cases	285	917	1,888	3,090
Percent of Total Cases	9.2%	29.7%	61.1%	
Filed <i>Pro Se</i>	20.4%	1.9%	5.5%	6.3%
Joint Filing	25.6%	59.2%	37.0%	42.5%
Prior Filing	25.7%	8.6%	17.6%	16.3%
Fees Not Paid	7.0%	2.3%	3.4%	3.4%
Asset and Liability Schedules Not Filed	35.4%	11.0%	13.6%	15.3%
Median Real Property Amount	\$646,000	\$360,000	\$500,000	\$475,000
Median Personal Property	\$146,994	\$157,822	\$140,964	\$146,563
Median Unsecured Debt	\$99,025	\$117,218	\$112,845	\$114,104

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and all other cases — most of which presumably resulted in a confirmed reorganization plan.⁶

About one out of eight chapter 11 cases fall into the DOA category. *Pro se* debtors, single-asset real estate, debtors with one or more prior filings, small-business debtors or debtors who did not pay their fees in full at the time of filing are much more likely to fall into this category. One anomalous finding is that a higher-than-average percentage of the presumably confirmed cases were missing their asset and/or liability schedules. This did not occur with the data for cases filed in other chapters.

Chapter 12 Cases

The sample includes all 3,090 cases that had been filed under chapter 12 that were closed in fiscal years 2010-16, as shown in Table 3 on p. 59. They are sorted into three groups: DOA cases, discharged cases and other cases, most of which were converted or dismissed more than six months after filing.

The DOA chapter 12 debtors were much more likely to file *pro se*, involve a solo filer, have one or more prior filings, or not pay the full filing fee. Many of the DOA cases also had missing asset-and-liability schedules. Where the schedules were filed, the personal property and unsecured debt levels were comparable to other chapter 12 debtors, and the real

property debt levels were somewhat higher than for other chapter 12 debtors.

Chapter 13 Cases

The sample includes 123,185 cases that had been filed and that were closed in fiscal years 2010-16, as shown in Table 4. DOA chapter 13 cases were much more likely than average to have been filed *pro se*, be solo filings, to have one or more prior filings or not pay the full fees. In addition, the required schedules were often not filed in the DOA cases. In cases where the schedules were filed, DOA debtors generally had less personal property and unsecured debt and lower monthly income and expenses compared to other chapter 13 debtors.

Homeownership rates for DOA chapter 13 debtors were comparable to debtors whose cases were dismissed or converted, and a little lower than for debtors who completed their repayment plans. The median value of homes was also considerably higher in the DOA cases.

There was also considerable variation among the states in the frequency of DOA chapter 13 cases. States with the highest rates include California (36.4 percent), Connecticut (33.1 percent), Rhode Island (28.9 percent), Washington, D.C. (27.3 percent), Maryland (26.3 percent) and Massachusetts (25.8 percent). States with the lowest rates include Nebraska (0.7 percent), Kansas (1.2 percent), North

⁶ The IDB does not indicate whether a case has been confirmed.

Table 4: Chapter 13 Cases Closed, Fiscal Years 2010-16

	DOA Cases (Dismissed Within Six Months)	Other Dismissed or Converted Cases	Debtor Discharged (Including Hardship Discharges)	All Chapter 13 Cases*
Total Cases	17,730	56,680	48,137	123,185
Percent of Total Cases	14.4%	46.0%	39.1%	
Filed <i>Pro Se</i>	47.7%	3.2%	0.5%	8.7%
Joint Filing	12.6%	30.3%	43.2%	32.9%
Prior Filing	43.0%	34.1%	20.4%	30.8%
Fees Not Paid	37.4%	14.9%	10.7%	15.9%
Asset and Liability Schedules Not Filed	51.5%	3.2%	1.6%	10.3%
Percent with Real Property	67.9%	67.9%	75.0%	70.5%
Median Real Property Amount	\$175,000	\$132,309	\$129,705	\$133,430
Median Personal Property	\$11,600	\$15,350	\$21,330	\$17,075
Median Unsecured Debt	\$19,990	\$28,098	\$37,998	\$31,326
Income and Expense Schedules Not Filed	56.5%	8.7%	5.3%	15.2%
Median Current Monthly Income	\$3,083	\$3,353	\$4,150	\$3,634
Median Average Monthly Income	\$3,198	\$3,134	\$3,517	\$3,291
Median Monthly Expenses	\$2,540	\$2,604	\$2,954	\$2,743

* Total includes 638 cases that do not fit into the first two categories, including cases dismissed more than six months after filing, transfers and other miscellaneous cases.

Dakota (1.7 percent), Puerto Rico (3 percent) and Colorado (3.5 percent).

Rounded Amounts Listed on Schedules

Figures listed on a debtor’s schedules figures reported in the DOA cases were more likely to average to a rounded number than in other more successful cases. A few examples of this are shown in Table 5.

Discussion

A portion of filings in each of the major bankruptcy chapters are dismissed shortly after filing. Currently, approximately 66,000 are filed in bankruptcy courts each year. Most of these cases never have a realistic chance for a successful outcome. A few factors are indicative of an unsuccessful outcome.

A lack of an attorney is certainly the number one predictor of an unsuccessful case in any chapter. In every chapter,

a *pro se* case is at least five times as likely to result in early dismissal than cases in which the debtor is represented. *Pro se* chapter 13 debtors have virtually no chance of completing a repayment plan. Most *pro se* chapter 11 and 12 cases are dismissed within six months of filing, and more than one-half of DOA chapter 7 cases are filed *pro se* — about eight times the *pro se* rate for cases that result in discharge.

Whether a debtor pays the filing fee in full at the time of filing is also a strong indicator of case outcomes. Cases in which the fees are not paid up front are at least three times as likely to end up in the early-dismissal category. DOA cases also are more likely to be missing some of the required schedules or to have schedules where some of the figures were estimated or rounded off.

One or more prior filings is also a strong indicator of a DOA case. For chapter 12 and 13 debtors, a prior filing increases the likelihood of early dismissal by about one-half, for chapter 11 debtors the chances double, and for chapter 7 debtors the chances of early dismissal are more than three times as high.

Financial data from the debtors’ schedules are weaker indicators of early dismissal, but for chapter 7 and 13 debtors, monthly income and expenses, personal property amounts and unsecured debt levels are generally lower for DOA debtors.

Every debtor deserves a chance at a fresh start when they file for bankruptcy. However, a portion of them enter the process with almost no chance at success. **abi**

Table 5

	DOA Cases	Other Cases
Chapter 7 (total assets rounded off to nearest \$1,000)	3.96%	1.17%
Chapter 11 (total assets rounded off to nearest \$1 million)	2.29%	0.83%
Chapter 13 (monthly expenses rounded off to nearest \$1,000)	1.04%	0.24%

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