

Chapter 3

Bankruptcy Litigation

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3.1 Record Filings In Bankruptcy

The bankruptcy news in 2001 was one of **records being set** - in numbers of individual cases being filed, and in the December 2, 2001 filing of the largest bankruptcy case ever, Enron Corp., with its asserted \$60 billion in assets. Total bankruptcy filings reached more than the 1,442,549 record set in 1998, by more than three percent. Individual Chapter 7 cases exceeded one million filings in 2001.

Likewise, the California Pacific Gas & Electric bankruptcy had the dramatic potential to revise public utilities throughout the country, the KMart January 2002 filing was the largest retail bankruptcy case, the January 2002 filing by Global Crossing was the largest telecommunications bankruptcy filing, and the number of public companies going to bankruptcy as the proverbial "bank of last resort" set new records as well.

The year 2001 was a year of political paralysis in passing the long-awaited bankruptcy legislation. As these materials are being prepared, a Congressional conference committee had been named in 2001 and staffers had begun to meet to finalize hundreds of pages of changes in new bankruptcy laws that have passed both houses of Congress in somewhat differing forms. No date for the political logjam to break has been set, and Congress seems adrift in the problems of the economy, elections, terrorism and other more pressing agendas.

Throughout 2001, the bankruptcy practice has continued to grow in all geographic areas of the country, and in particular, the numbers of individual bankruptcy cases filed continued to grow in almost every jurisdiction.

3.1.1 Record Numbers Of Cases

In 1998 bankruptcy filings peaked at an all-time high. ABI Member e-mail, Nov. 23, 1998, "Bankruptcies Break Another Record," citing statistics from the Administrative Office of the U.S. Courts. This represented over a 50% increase over the 900,874 individual cases filed in 1992, the height of the previous recession. One in every 70 US households filed for bankruptcy in 1997; these numbers increased in 2001.

The bankruptcy filings slacked off a little in 1999-2000, but only a little - and came roaring back in 2001. Final statistics are not yet in, but clearly will be all-time records.

Public Companies

On the other hand, Chapter 11 business filings of public companies remained strong, with 145 public companies filing by September 1999, compared with only 122 in all of 1998 and 83 in all of 1997. "Sandberg, "Chapter 11 filings increasing," Natl. L. J. Feb. 28, 2000, citing "high debt loads, intensified competition, and the increasing use of bankruptcy as a tool to help restructure a business." Segments affected include health care, telecommunications, high tech and retail. Twenty companies with more than \$1 billion in assets filed bankruptcy in 1999, totaling four times as many billion-dollar filers as the previous year. Michel and Shaked, "The Paradox of Corporate Bankruptcy in a Robust Economy," ABI J. Nov. 2000, pp. 26-27.

A more recent statistic from BankruptcyData.com of July 2, 2001, is that the year 2000 saw assets of publicly held companies filing Chapter 11 bankruptcy totaling \$94,786 billion, which was promptly exceeded in only the first six months of 2001, with 127 public companies filing bankruptcy with \$110 billion in assets. According to TheDeal.com, Dec. 26, 2001, there were 32 bankruptcies in 2001 with assets of \$1 billion or more.

Dot Coms Go Bust Bigtime

At least 537 internet companies folded in 2001, compared to 225 in 2000, according to Webmers.com. ABI, Dec. 28, 2001.

Literally billions of dollars and millions of claims are routinely dealt with in the bankruptcy process, far more than in the federal district and appellate courts and state courts of all levels, combined.

The Administrative Office of the U.S. Courts reported August 24, 2001, that **bankruptcy filings were up 24.5% in the second quarter of 2001**, as compared to the same quarter a year before, with a record 400,394 cases being filed in the second quarter, following a record for the first quarter as well. Business filings totaled 10,330 in the second quarter. Overall the economy weakened, with Merrill Lynch reporting to its shareholders in late April 2001: "The robust growth of late summer has given way to an abrupt decline in economic activity," citing high energy costs, weakened corporate earnings, a fall-off in consumer activity and consumer confidence, and stressed equity markets. Dotcom closings and bankruptcies became epidemic.

3.1.2 Downturn In The Economy And Further Increase In Bankruptcy Filings

Effects of the terrorist attacks. - The tragic events of September 11, 2001 have accelerated the bankruptcy filing numbers soon to be reported for the third quarter of the calendar year. Consumer confidence is reported on November 27, 2001 by Reuters to be at the lowest level in seven years. "Rising unemployment and continuing layoff announcements are dampening confidence," said Lynn Franco, director of the Conference Board's Consumer Research Center.

The proposed new bankruptcy law will encourage individual Chapter 7 filings

If the proposed new bankruptcy legislation becomes law, individual Chapter 7 filings are expected to soar in the six months between final passage and its effective date because of the burdens expected to be created on such cases by the new creditor-friendly statute.

The economy's downturn.

The general economy showed signs of slowing in some sectors well before September 11, 2001, and the current recession seems to have existed from March 2001 onwards. Business filings because of undercapitalization, lack of proper management, or occasional fraud will continue. See Penn, "Prepare for the Next Wave - 'Whole Lot of Shakin' Goin' On'," ABI Journal, Dec.-Jan. 1999, pp. 34-35, citing the Asian economic crisis and stricter credit guidelines by some banks: "all signs point to more business bankruptcies on the horizon."

Don Lee in "Boom Expected for Bankruptcy Professionals," Dec. 7, 1998, commented about "the impending insolvencies of health maintenance organizations struggling with Medicare budget cuts, ...weakening agricultural firms...the sagging oil

industry...deteriorating manufacturers, credit-crunched lenders, and overpriced real estate investment trusts.” In addition, the article mentions as contributing “the Asian woes, plunging oil prices, faltering HMOs, the year 2000 problem.” It further notes:

“Mega-dollar bankruptcy filings have already risen notably this year, approaching a level not seen since early this decade. Such failures often presage personal bankruptcy as jobs are wiped out.

In the meantime, personal bankruptcies continue to increase steadily every year.” The ABI reported in early 2001:

Slowing growth prompts US law firms to beef up bankruptcy teams:

- Now that the economy is slowing, lawyers are preparing quietly to play another role for their clients - by building up their bankruptcy departments.
- Law firms and legal recruiters say that demand for lawyers with experience in bankruptcy is soaring.
- And while firms indicate that they are already busy, many foresee a sharp increase in bankruptcy filings soon, because companies that are not yet in critical financial trouble - but expect to be soon - have begun to reserve lawyers in advance.
- ‘A huge wave is coming, and we want to make sure that we catch the wave,’ said Mr. Luc Despains, who joined the New York office of Milbank, Tweed, Hadley & McCloy in 1998 to build up its bankruptcy practice. ...
- Part of the reason for the scramble for lawyers with bankruptcy experience is scarcity: Not that many lawyers have honed bankruptcy skills in recent years....
- But lawyers said the statistics hide the fact that more large firms are seeking protection from creditors.
- The pickup in the pace of business does not mean simply that more companies will be filing for bankruptcy and will need legal help to do it. Bankruptcy lawyers are also retained to represent creditors, investors, employees - anyone who stands to be affected by a company's filing.
- In some industries, evidence is mounting that a variety of companies will be in need of restructuring soon, said Mr. Peter Antoszyk, a partner at Brown, Rudnick, Freed & Gesmer in Boston.
- In retailing, for example, the lenders his firm represents were calling even before the weak holiday shopping season with concerns about borrowers' financial performance, he said. Rising costs are exposing signs of weakness in the health-care industry, he added. --

NYT News Service.

3.1.3 Changes Continue in Law and Procedure

You should be aware that a notable measure of procedural and substantive chaos in bankruptcy practice seemed to persist in 1998-2001:

- That effective in 1997 and thereafter there were new and renumbered **local bankruptcy rules**, including **the national bankruptcy rules** have changed,

effective each December 1, in 1998, 1999, 2000, and 2001, with more scheduled for 2002,

- **bankruptcy filing fees** changed, effective Dec. 29, 1999, March 2000 (most notably adding \$25 to the filing fees for Chapter 7 and Chapter 13 cases, to \$200 and \$175, respectively), and again, effective November 13, 2000 (raising Chapter 9 fees, and fees for converting a 7 or 13 to an 11 case), that the adjustment of dollar amounts in several Code provisions occurred effective April 1, 1998, and thereafter, through April 1, 2001,
- some **Official Forms** changed as well, effective March 1, 1998 and thereafter (including one effective March 1999 for reaffirmation, Form B 240), and later changes to Official Form 7, Statement of Financial Affairs, which each debtor must file either with the petition or within 15 days thereafter (now supplying more information for taxing, pension, and environmental authorities), with other forms still under review, (the Official Forms are available at www.uscourts.gov/bankform/), and other changes are likely to be effective in 2002,
- that certain civil, evidence and appellate **rules affecting bankruptcy** practice were also modified effective December 1, 1998 and thereafter,
- a **transition to electronic filing** is underway, nationwide, with implementation likely in 2001-2,
- the newly **revised Article 9 of the UCC** was passed by all 50 states and the District of Columbia, and it will have its impact in bankruptcy cases, see Pryor, "Revised Uniform Commercial Code Article 9: Impact in Bankruptcy," 7 ABI L. Rev. 465-515 (Winter 1999)(concluding it will reduce the assets available for distribution in bankruptcy). Although generally effective in 47 states on July 1, 2001, note that the Connecticut revisions became effective October 1, 2001, and Alabama, Florida, and Mississippi have a January 1, 2002 delayed effective date for their revisions. (The new Florida **centralized judgment lien statute**, changes Chapter 55 and the garnishment provisions of Chapter 77, and it became effective October 1, 2001.)

Note that the last Congress **extended Chapter 12** of the bankruptcy laws regarding family farmers to July 1, 2000, when it expired, and the law was extended again, through the end of September 2001 (HR1914, signed June 26, 2001), with a further extension likely to be made retroactively, or be made permanent, with S. 1630 now being pushed by Senator Leahy in the hope of its retroactively effective passage by April 2002.

3.1.4 A Word About The Last Bankruptcy Legislation In 2000

The "**Bankruptcy Reform Act of 1999**" was introduced February 24, 1999 and was identical to the final version of H.R. 3150 from the 106th Congress, which passed the House with 306 votes but never came up for a final vote in the Senate. Among its seven sponsors was former Representative Bill McCollum of Florida, who stated "Bankruptcy will cost consumers more than \$50 billion in 1998 alone...". The bill would shift Chapter 7 debtors to Chapter 13 if they could pay \$5,000 or 25% of their debts over five years. The needs based test would not affect those with less than the national median income (\$51,000 per year for a

family of four). The strong creditor bias of the 1998 House version may have reflected some \$6.7 million spent by the consumer credit industry in campaign contributions; Rep. Jerrold Nadler said the bill “is the purest case of why we are in need of campaign finance reform.” ABI e-mail update, Feb. 24, 1999.

The House passed its version 313 to 108 in May 1999, and the Senate passed its version 83 to 14 on Feb. 2, 2000. The conference committee wanted a “needs test” for consumer cases. The **Florida homestead exemption** was to be preempted by the national statute and capped at \$100,000 (the Senate provision) or \$250,000 and may or may not have an “opt out” provision for debtor-friendly states like Florida (the House version). (Florida is one of only five states allowing debtors to exempt the full value of their homes, while six others allow more than \$100,000; most allow \$60,000 or less.)

Both houses passed the 2000 legislation, each by veto proof margins, but President Clinton vetoed the result. The New York Times editorial of Dec. 12, 2000, said: “This bill amounts to a handout to the credit card industry, whose heavy lobbying and huge campaign contributions guaranteed big victories in both houses.

Among the many topics affected by the new legislation as it was passed in 2000 and included in the slightly revised versions of each house in passed in 2001 are the following:

Chapter 7 means testing - (for a useful explanatory flow sheet, see “Flowchart to a Fresh Start” - <http://www.doney.net/bra/flowchart.htm>)(one bankruptcy judge suggests that a debtor with even \$125,000 income a year could easily evade this test by use of the permitted deductions, even before using the 15% charitable deduction!, see ABA program, Aug. 3, 2001, “Who, What, Where and When Under the New Bankruptcy Code”)(one study suggests only 3% of cases will be directed to a Chapter 13 by the burdensome means test)

- Consumer credit disclosures for credit card companies required
- Credit counseling required before filing
- Changes in nondischargeable debts, luxury purchases, taxes, credit card debts, family support obligations fraud, intentional injuries, etc., and possibly for blocking abortion clinics
- Tax returns and false information or non-filing sanctions
- Reaffirmation of debts procedures
- Homestead exemption to be capped - but at what level?
- Landlord-tenant and limits on abuses of the automatic stay by tenants
- Lien stripping and cramdown - limited in Chapter 13 for personal property, motor vehicles
- Repeat filings - presumed bad faith
- Forum shopping
- Small business debt eligibility limit
- Assumptions of non-residential leases restricted
- Reclamation time extended
- Chapter 12 extended permanently
- In short, stay tuned for these and other changes likely to emerge in 2001!

3.2 Non Legislative Bankruptcy Developments 2000-2001:

The year 2000-2001 was notably uneventful in the bankruptcy area, primarily because the long-awaited bankruptcy reform legislation did not become law once again. Despite circuitous and persistent strategies by the sponsors of the legislation, President Clinton vetoed the Bankruptcy Reform Bill. The 2000 Bill came back as the starting point for the legislative process, but faced a few expected changes as it went through the process. It now hovers in conference committee, once scheduled to meet September 12, 2001. The limbo continues, so stay tuned. In light of the downturn in the economy, many in Congress have turned to other priorities, such as the economic stimulus legislation, apparently in the belief that a bankruptcy bill so harsh on individuals is better left for better economic times.

No major Supreme Court decisions in bankruptcy. In United States Supreme Court decisions in the bankruptcy area were notably missing in 2001, whereas in recent years at least a few such cases were decided each term.

Decisions in the bankruptcy courts and on appeal cover the map of legal issues, parties, courts and interests. Jack Williams, ABI's Robert M. Zinman Resident Scholar for the fall 2001 semester, recently completed his "Bankruptcy Year in Review 2001," a comprehensive review of last year's significant bankruptcy cases from the lower courts. The document, which is about 230 pages, including its 25 page table of contents, can be located at <http://www.abiworld.org/research/yearreview.pdf>. His survey demonstrates that the bankruptcy doctrine continues to evolve through the case law and reaches out to all areas of business and non-business contexts.

Given the multiplicity of rulings and the lack of binding Supreme Court authority - or even Circuit court rulings - in so many critical substantive and procedural areas, the ongoing conflicts among the decisions is inevitable. Since appeals are slow to be decided and are not often pursued from bankruptcy court decisions, divergent rulings will necessarily continue. Moreover, because many bankruptcy decisions are fact intensive, the *stare decisis* impact of these multifarious decisions is less important than might be normally expected outside of the bankruptcy forum. It may generally be expected that there exists case law authority for many seemingly contrary propositions that simply cannot be reconciled on a doctrinaire basis.

The rules changed, of course. A number of national rules changes were made to the Federal Rules of Civil Procedure, effective December 1, 2000, and again on the same date in 2001. Most notably, certain Rule 26 disclosures are now mandatory. These will apply in bankruptcy adversary cases.

Bankruptcy Rules were also amended in small particulars in 2000, most notably permitting the Court for cause to grant a timely request for extension of time to object to claimed exemptions under Bankruptcy Rule 4003 (b). Additional amendments to the bankruptcy rules became effective in 2001 as well.

3.2.1 New Bankruptcy Bills - 2001

The passed version of the 2000 Bankruptcy Reform Act, much discussed but not enacted, was given new vitality in February 2001. The Feb. 1, 2001 ABI news flash read:

“CONGRESS SUDDENLY MOVES BANKRUPTCY BILL TO FRONT BURNER; SENATE DEBATE COULD START NEXT WEEK

In a surprising development, the bipartisan leadership of the Senate has announced an agreement to bring last winter's conference report directly to the floor for debate as early as next week. The bill is scheduled to come up after consideration of President Bush's tax bill.

“The Senate bill (S. 220) was introduced by Sen. Charles Grassley (R-Iowa), chief sponsor of the bill during the last two Congresses. The bill was filed after Majority Leader Trent Lott (R-Miss.) and Minority Leader Tom Daschle (D-S.D.) reached an agreement to consider the bill immediately, without further committee hearings or committee amendments. In return, Daschle received a commitment from Lott that Democrats could offer amendments without limitation and that Republicans would not file for cloture to cut off debate until at least 12 hours had elapsed on the bill. It will be up to opponents of the bill to file many amendments, insist on a full debate and try to successfully attach amendments to slow the bill down.

“The procedural shortcut caught most people on the Hill by surprise. With a 50-50 Senate, the Minority Leader could have insisted on having the bill move by the regular order, rather than bypassing the committee process. Daschle reportedly explained that the bill's long history obviated the need for further hearings. Daschle voted against the conference report in December, though 17 Democrats supported the bill, which passed 70-28.

“In the House, Rep. George Gekas (R-Pa.) also reintroduced the same bill (H.R. 333). New House Judiciary Committee Chair James Sensenbrenner, bowing to pressure from Democrats, said that there will be hearings on the bill in the Subcommittee on Commercial and Administrative Law. The subcommittee has new leadership in the 107th Congress. Rep. Bob Barr (R-Ga.) is the new chair, and Rep. Mel Watt (D-N.C.) is the new ranking member. Barr supported the bill in the past, while Watt has opposed it.

“Early action by both the House and Senate could send the bill to the president for his likely approval by this spring. The bill now has a 180-day effective date from the date of enactment.”

On Feb. 5, 2001, the ABI reported:

The bills (S. 220, H.R. 333) are virtually identical to the conference report on bankruptcy overhaul that passed Congress last year and was vetoed in December by former President Clinton. Republican leaders in both chambers had hoped to move the legislation through Congress quickly this session. In the Senate, Republican leaders wanted to bring the bill directly to the floor. But that drew protests from Democrats, who know President Bush is likely to sign the legislation. They insisted the bills go through the committee process so members have a chance to raise objections. Democrats remain worried that the hearings will be merely perfunctory. Republicans fear Democrats may attempt to attach amendments that will delay enactment of the legislation.

On Feb. 6, 2001, the ABI reported:

President Bush will endorse the credit card industry's efforts to tighten bankruptcy laws that were blocked last year by former President Clinton, according to The Wall Street Journal. "There was probably merit in the proposal — it passed with large bipartisan majorities," said Lawrence Lindsey, the president's chief economic policy advisor, in reference to last year's bankruptcy overhaul legislation. "While the president might not agree with every word or every provision, on balance it's probably a favorable bill." Mr. Lindsey said that a formal administration statement would be released shortly.

As things heat up on Capitol Hill over bankruptcy reform legislation as it perhaps emerges from the conference committee, ABI members and colleagues should keep their eyes on developments reported quickly at ABI World's Legislative News section (<http://www.abiworld.org/legis/newlegfront.html>).

As of April 5, 2001, the news was upbeat for passage, according to the ABI:

OXLEY, GRAMM CONFIDENT BANKRUPTCY BILL WILL BECOME LAW;
LEGISLATION NOW AWAITS CONFERENCE COMMITTEE

House Financial Services Committee Chairman Michael Oxley (R-Ohio) and Senate Banking Committee Chairman Phil Gramm (R-Texas) said this week at separate speaking engagements, hosted by America's Community Bankers, they are confident that the bankruptcy reform legislation (S. 420/H.R. 333) will be enacted this year. "I can't tell you how, but I know it's going to [be enacted]," Gramm said. Oxley echoed Gramm's sentiments, but acknowledged that bankruptcy reform legislation remains at an impasse as Senate leaders continue negotiations on the format for taking bills to conference. "I think it's going to pass," Oxley said. "We've got a president who's ready to sign a bankruptcy bill." He said, however, that he was uncertain what procedural means would be used to achieve that end, be it a conference "or something like a conference."

House Financial Services Committee ranking member John LaFalce (D-N.Y.), speaking with Rep. Oxley, expressed caution by saying that he was not sure how the conference committee situation would be resolved.

By August 9, 2001, the ABI reported:

WHITE HOUSE "STRONGLY OPPOSES" SENATE HOMESTEAD LANGUAGE,
OMB SAYS

In a letter sent to the 13 Senate bankruptcy conferees on Monday, Office of Management and Budget Director Mitchell E. Daniels, Jr. wrote that the Bush administration "strongly opposes" the Senate language on homestead exemptions and "strongly urges" the conferees to instead adopt the homestead provisions included in the House-passed version of the bill, H.R. 333.

The Senate bill (S. 420) contains a number of requirements that make it more difficult for debtors to fully shield the value of their homes from bankruptcy and places a \$125,000 cap on home equity that would be beyond the reach of creditors. Rather than a fixed cap, H.R. 333 contains no value limit. Rather, it has a two-year residency requirement before the exemption value in excess of \$100,000 can be used, unless it was transferred from another homestead in the same state. This language was in the bill vetoed by President Clinton last year. President Bush's home state of Texas is one the few states that currently provides an unlimited homestead exemption.

Daniels also said the Bush administration opposes a section of H.R. 333 designed to aid a small number of U.S. underwriters of Lloyd's of London. The underwriters defaulted

on their underwriting obligations and have since tried to sue Lloyd's in U.S. court for fraud. The Senate cut out any reference to Lloyd's in its version of the bill.

The Conference Committee was to have met on September 12, 2001, but the terrorist tragedies of the day before intervened. Tentative efforts for staff members to meet followed.

On November 27, 2001, the new legislation remained in limbo, with the ABI reporting:

Leaders Say Bankruptcy Legislation Meetings Will Continue

Aides to House and Senate bankruptcy reform conferees will continue to meet this week in an effort to comply with instructions from conference leaders to craft a joint legislative proposal on the members return from their Thanksgiving break, *CongressDaily* reported. An aide to Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) said legislative discussions on the measure were ongoing yesterday, in both the House and on a bipartisan basis among Senate conferees. House Judiciary Committee Chairman James Sensenbrenner (R-Wis.), who is chairing the bankruptcy conference, said at the first meeting of conferees on Nov. 7 that he would like to see the measure completed this year.

At late January 2002, little progress had occurred towards final resolution of the abortion related and homestead provisions, among others, and no date for the meeting of the conference committee seemed immediately likely.

3.2.2 Separate Passage of the Financial Netting Bankruptcy Legislation is Possible in 2002

On November 19, 2001, the ABI reported that the netting part of the bankruptcy bill, relevant to financial institutions wanting to close out derivative accounts in the event of bankruptcy, might pass separately:

Treasury Official Says Congress Should Pass Netting Laws This Year

A senior Treasury official on Friday said that Congress should find a way to pass netting legislation, even if more broad-based bankruptcy legislation stalls, according to Dow Jones. "Whether as part of comprehensive bankruptcy reform legislation or as a stand-alone bill, we believe that Congress should enact netting legislation this year. Further delays would unnecessarily place the financial system at greater risk," Sheila Bair, assistant secretary for financial institutions, said. Bair told an American Bar Association committee that there was an immediate need for the proposal, which would make it easier for banks and businesses to settle financial contracts if one of the parties becomes insolvent.

"The relevant provisions are a non-controversial portion of broader legislation to revise the bankruptcy laws," she said. "We are concerned, however, that the controversial issues of the broader legislation may not be resolved soon enough to allow its passage this year." The proposed changes would limit market disruptions in the event of insolvency and also reduce the risks to federally regulated participants and to the overall financial system, Bair said.

By mid-January 2002, the hopes for separate passage of the netting provisions were still alive, but no clear dates for action had been set.

3.2.3 Chapter 12 May Also Receive Separate Legislative Treatment and Passage:

Chapter 12 extended: Legislative progress, at least for the family farmer, seemed possible, with Chapter 12 receiving attention, as the ABI reported June 27, 2001, that President Bush signed an extension for Chapter 12 through the end of September 2001. The pending bankruptcy legislation (S .420/H.R. 333) contains a measure making chapter 12 permanent. The November 8, 2001 statement of Senator Patrick Leahy, Chairman of the Senate Judiciary Committee, on S. 1630, to Retroactively Renew Family Farmer Bankruptcy Protection, urged separate passage. Again, by mid-January 2002, no reinstatement of the Chapter 12 provisions was given a date for passage.

3.3 Effective Dates For The Proposed New Bankruptcy Law:

So it goes. What may be most important to consider is the staggered schedule for the likely effective dates of the new bankruptcy legislation if it is finally passed in 2002? The Commercial Law League released its analysis of the new legislation's likely effective dates on March 19, 2001, as follows for The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 (H.R. 333) and The Bankruptcy Reform Act of 2001 (S. 420):

Both H.R. 333 as passed by the House of Representatives, and S. 420 as passed by the Senate, provide that their respective amendments are applicable only to bankruptcy cases commenced **not earlier than 180 days from the date of enactment, unless otherwise provided.** This window will permit a special avalanche of Chapter 7's to be filed to avoid compliance with the means testing and other provisions that are punitive to individual filers. It has been suggested that maybe 250,000 accelerated case filings will occur in that window, with a roughly corresponding slacking off of later filings after the new law's effective date.

Notable exceptions to the deferred effective date. The following is a summary of the provisions of each bill that is an exception to the general effective date. Unless otherwise noted, the section numbers and text apply to both H.R. 333 and S. 420.

Section 324, concerning the district courts; exclusive jurisdiction over matters pertaining to professionals employed in bankruptcy cases, applies to cases filed after the date of enactment.

Section 434, which sets forth specific reporting requirements by small business debtors in chapter 11, takes effect 60 days after the date on which rules are prescribed under [28 U.S.C. 2075] to establish forms to be used to comply with the reporting requirements. Although the Advisory Committee on Bankruptcy Rules of the Judicial Conference is required to propose such forms for adoption under Section 435, no specific time frame has been set forth for doing so.

Section 601, requiring the compilation and reporting of various data in consumer bankruptcies, is not effective until 18 months from the date of enactment (although the first required report must be submitted to Congress by October 31, 2002).

Section 603, requiring random audits of individual chapter 7 and 13 cases, takes effect 18 months from the date of enactment.

Section 913 prescribes the effective date for Title IX, Financial Contract Provisions. The provisions of Title IX apply with respect to cases commenced or appointments made

under any Federal or State law after the date of enactment; but not with respect to cases commenced or appointments made under Federal or State law before the date of enactment;

Section 1001, permanently reenacting the provisions of chapter 12, is retroactively effective to July 1, 2000, although the language effectuating this intent varies slightly between the bills.

Section 1213, overruling the DiPrezio rule, applies to any case that is pending or commenced on or after the date of enactment.

Section 1222 of H.R. 333 and Section 1221 of S. 420, which requires that transfers made by nonprofit debtors comply with applicable nonbankruptcy law, applies to cases pending or commenced on or after the date of enactment. However, before confirming a chapter 11 plan, the court must consider whether the provisions of Section 1222 would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition.

Section 1224 of H.R. 333 and Section 1223 of S. 420, authorizing various bankruptcy judgeships, is effective as of the date of enactment. H.R. 333, but not S. 420, provides for an exception relating to the district of South Carolina, but the language employed makes the effective date unclear.

Sections 1301 through 1306 make various amendments to the Truth in Lending Act and require the Board (undefined), inter alia, to promulgate implementing regulations. Each of these sections is effective upon the later of 1) 12 months from the date of enactment, or 2) 12 months from the publication of the Board's final regulations, except Section 1301, which is effective upon the later of 1) 18 months from the date of enactment, or 2) 12 months from the publication of the Board's final regulations

3.4 Predictions For 2002

As discussed above, the proposed bankruptcy laws will not be enacted, except for the Chapter 12 continuations and perhaps the netting rules.

In the coming year, as bank liquidity seems to tighten up, business Chapter 11 filings will continue to rise sharply. The last year has demonstrated that Wilmington, Delaware, seems to be the favored situs of major corporate bankruptcies, but this trend may change as other districts become more rule-friendly to large cases, such as districts in New York, California and Texas.

Individual filings in 2002 will continue at a high and probably record levels. Tightening interest rates, loss of consumer confidence, layoffs, and problems in retail, steel, travel, entertainment, and health care may all contribute to various bankruptcy cases.

Individual problems in life, including divorce, major sickness, loss of job, and credit card abuse will continue to contribute to literally hundreds of thousands of individual cases throughout the country.