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# The Consumer Bankruptcy Fee Study Final Report

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While I was the sole Reporter and Principal Investigator, this Study and Report are the collaborative efforts of many. References to "we" throughout this Report refer to the Consumer Bankruptcy Fee Study Team. I could not have had a finer, more dedicated group of professionals to work with. Any mistakes are mine and mine alone.

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## **Foreword**

### **The Consumer Bankruptcy Fee Study Background**

The 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA” or the “Act”) fundamentally altered the consumer bankruptcy system. During the eight-year run up to the eventual enactment date, October 17, 2005, there was much political, social, and academic commentary and speculation on the impact these amendments would have on the operation of the system and on the system participants: attorneys, trustees, bankruptcy judges, and of course, debtors. A number of thorough and important empirical studies have been conducted which have examined and analyzed the effects of the Act’s changes on debtors and debtors’ behavior. Up until now, however, there has not been a comprehensive national study of the impact of BAPCPA on the bankruptcy system’s operation, on its professionals, and ultimately on the system users. It is in this context that the Consumer Bankruptcy Fee Study was developed. The Consumer Bankruptcy Fee Study (the “Fee Study,” the “National Study” or the “Study”) provides the most comprehensive, independent look at the cost of access, including attorney fees, in Chapter 13 and Chapter 7 consumer cases to date.<sup>1</sup>

### **Study Support**

This Study was funded with generous contributions from the American Bankruptcy Institute Anthony H.N. Schnelling Endowment Fund and the National Conference of Bankruptcy Judges Endowment for Education.

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<sup>1</sup> In 2004, the American Bankruptcy Institute commissioned a study of professional fees in Chapter 11 cases. As noted by Reporter and Principal Investigator Stephen J. Lubben, “The central objective of the study is to gather data from a sufficient number of chapter 11 cases across the United States so that valid conclusions can be drawn concerning practices and procedures used by bankruptcy courts in awarding fees in bankruptcy cases.” Stephen J. Lubben, *ABI Chapter 11 Professional Fee Study*, Seton Hall Public Law Research Paper No. 1020477 (December 1, 2007).

## **Disclaimer**

In funding this research, neither the American Bankruptcy Institute Anthony H.N. Schnelling Endowment Fund nor the National Conference of Bankruptcy Judges Endowment for Education endorses or expresses any opinion with respect to any conclusions, opinions, or reports of any research funded by these grants.

## **Replication**

The databases developed and used as part of this Study are available with source identifying data redacted for replication purposes or for those wishing to draft a response to this Report. Interested parties should contact the Principal Investigator. In addition, the databases will be made publicly available for all purposes in 36 months (December 2014).

## **Scope of Final Report**

This Report summarizes the central findings of the Consumer Bankruptcy Fee Study. It does not attempt to fully analyze all of the gathered data in order to reach conclusions and to make specific policy recommendations regarding the operation of the consumer bankruptcy system, and in particular, professional fees in consumer bankruptcy cases. While the Principal Investigator expects to draw specific conclusions and recommendations in separate articles based on the Study's findings, this Report is primarily descriptive.

This Report does not provide a review of case law that has developed on the topic of attorney fees and professional compensation. The reader is directed to other sources for this information.

## Introduction

The 2005 Bankruptcy Abuse Prevention and Consumer Protection Act had as one of its stated goals the reduction of consumer bankruptcy filings, and failing that, a decline in consumer cases filed under Chapter 7 of the Bankruptcy Code.<sup>2</sup> Another declared purpose of the Act was to stop the perceived abuse of the bankruptcy system by consumer debtors who could pay their debts but instead opted to file for bankruptcy protection.<sup>3</sup> A theme that ran through the Congressional debates preceding BAPCPA's enactment was the suspicion that the consumer bankruptcy system was an institution that meted out extravagant benefits to undeserving debtors.<sup>4</sup> On this view, thousands of opportunistic debtors had to be halted from taking advantage of this generous and accessible system.<sup>5</sup>

The ordnance chosen to eradicate this scourge was leveled at the professionals laboring in the bankruptcy system; swords were sharpened and arrows aimed at debtors' attorneys, trustees and bankruptcy judges. Within this rhetorical framework, the way to keep both debtors and bankruptcy professionals from reaping unmerited and lavish gains from an

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<sup>2</sup> See David Gray Carlson, *Means Testing: The Failed Bankruptcy Revolution of 2005*, 15 AM. BANKR. INST. L. REV. 223, 318-19 (2007); 152 Cong. Rec. S10647-48 (daily ed. Sept. 29, 2006) (statement of Sen. Grassley) ("We have seen bankruptcy rates fall dramatically from about 2 million bankruptcies in 2005 to the point where I doubt there will be over 1 million bankruptcies in 2006, if current trends continue . . . . For now, almost one year later, bankruptcy reform seems to have been a success.")

<sup>3</sup> "[A significant] factor motivating comprehensive reform is that the present bankruptcy system has loopholes and incentives that allow and—sometimes—even encourage opportunistic personal filings and abuse . . . . Some bankruptcy debtors are able to repay a significant portion of their debts, according to several studies. Current law, however, has no clear mandate requiring these debtors to repay their debts." H.R. Rep. No. 109-031, (I), at 92 (2005) (statement of Rep. Gekas).

<sup>4</sup> See 144 Cong. Rec. S10471 (1998) (remarks of Sen. Hatch) ("Bankruptcy has become a routine financial planning device used to unload inconvenient debts, rather than a last resort for people who truly need it."); 144 Cong. Rec. S10787 (1998) (remarks of Sen. Grassley) ("The fact is that some people use bankruptcy as a convenient financial planning tool to skip out on debts they could repay.")

<sup>5</sup> When President George W. Bush signed BAPCPA into law on April 20, 2005, he remarked, "Too many people have abused the bankruptcy laws. They've walked away from debts even when they had the ability to repay them . . . . Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts." President George W. Bush, Remarks at the Signing of Bankruptcy Abuse Prevention and Consumer Protection Act (Apr. 20, 2005), available at [http://www.whitehouse.gov/news/releases/2005/04/2005\\_0420-5.html](http://www.whitehouse.gov/news/releases/2005/04/2005_0420-5.html).

accommodating system was to erect barriers to access.<sup>6</sup> These barriers take the form of procedural hurdles that were designed to affect the ease and cost of navigating the consumer bankruptcy system.

The primary objective of this Study is to identify and monetize these costs of bankruptcy access through the analysis of quantitative and qualitative data gathered from court dockets and from professionals working within the bankruptcy system. We began the quantitative section with the hypothesis that following BAPCPA's enactment, the cost of access to the consumer bankruptcy system increased.<sup>7</sup> We did not begin the qualitative component of the Study with an explicit hypothesis, however, because we wanted the process of theory development to be iterative and incremental. We set out to determine the degree of increased costs, as well as to identify the specific policies and practices affecting these costs. Additionally, we endeavored to evaluate, with specificity, how diverse local procedures and guidelines impact the system's processes and outcomes. Our focus throughout the Study was on the consumer bankruptcy system and its principal stakeholders.

Until now, empirical study of BAPCPA's impact has focused primarily on the system's demand side, gathering and analyzing financial and sociological data with respect to debtor households.<sup>8</sup> The effect of

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<sup>6</sup> "Today, many lawyers who specialize in bankruptcy view bankruptcy as an opportunity to make big money for themselves. This profit motive causes bankruptcy lawyers to promote bankruptcy as the only option even when a financially troubled client has an obvious ability to repay his or her debts. In other words, this profit motive creates a real conflict of interest where bankruptcy lawyers push people into bankruptcy who don't belong there simply because they want to make a quick buck." 144 Cong. Rec. S10649 (1998) (remarks of Sen. Grassley); *See* 144 Cong. Rec. S12140 (1998) (remarks of Sen. Grassley) ("[T]he bankruptcy bar is not adequately counseling people as to whether or not they should be in bankruptcy, let alone discouraging them from being in chapter 7 when they should be in chapter 13."); ("I think we need to be very cautious about [the proposed *in forma pauperis* provision] . . . . [Bankruptcy] can be a smart financial move. You can just walk away from [your debts], as this [lawyer advertisement] says, 'For \$350 total.' And the truth is, that is why we have increased filings of these kinds of ads in phone books, in newspapers, in magazines, in the yard sale publications that are [passed out] . . . free in this country.") 144 Cong. Rec. S10572 (1998) (Statement of Sen. Feingold).

<sup>7</sup> Testing this hypothesis was one of the objectives of the Pilot Study. *See infra* notes 66–75 and accompanying text.

<sup>8</sup> Robert M. Lawless, Angela K. Littwin, Katherine M. Porter, John A. E. Pottow, Deborah K. Thorne & Elizabeth Warren, *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 352 (2008) [hereinafter *Did Bankruptcy Reform Fail?*]; Melissa Jacoby, *Bankruptcy Reform and Homeownership Risk*, 2007 U. ILL. L. REV. 323 (2007); Melissa Jacoby, *Bankruptcy Reform and the Costs of Sickness: Exploring the Intersections*, 71 MO. L. REV. 903, 914–915 (2006); Ronald J. Mann & Katherine Porter, *Saving Up for Bankruptcy*, 98 GEO. L.J. 289 (2010); Katherine



BAPCPA on debtors, however, cannot be fully assessed without an examination of the architecture that surrounds a consumer's decision to file, coupled with an account of the complexity of factors that inform and influence the consumer's experience in the bankruptcy system. This Study addresses issues related to the institutional framework of consumer bankruptcy by not only measuring and monetizing the cost of access, but by also examining the incentives and constraints imposed by the system.<sup>9</sup>

A unique feature of this Study is its scope. The Study examines a national random sample of 11,221 Chapter 7 and Chapter 13 consumer cases (approximately 0.12% of the consumer bankruptcy cases filed). The data set includes cases filed in 90 judicial districts between 2003 and 2009. Analysis of quantitative data was conducted at the circuit, state and district level. In addition, four separate survey instruments were administered in an effort to examine and appraise the experiences, perspectives, attitudes, and behaviors of frontline bankruptcy providers. Qualitative data was also collected from interviews and focus groups comprised of bankruptcy professionals: consumer debtors' attorneys, Standing Chapter 13 Trustees, Chapter 7 Panel Trustees, U.S. Trustees, and bankruptcy judges. Through the use of multiple quantitative and qualitative data sources, complementary facets of the consumer bankruptcy system emerged. In using method triangulation to develop and analyze the Study data, we are able to examine, from a 360-degree perspective, the operation and cost of the consumer bankruptcy system.<sup>10</sup>

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Porter & Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67 (2006); John A. E. Pottow, *The Rise in Elder Bankruptcy Filings and the Failure of U.S. Bankruptcy Law*, 19 ELDER L.J. 119, 124 n.17 (2011); Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213, 213-214 (2006).

<sup>9</sup> "It is notoriously difficult to obtain reliable information about how much it costs to file for consumer bankruptcy." Ronald J. Mann, *Bankruptcy Reform and the "Sweat Box" of Credit Card Debt*, 2007 U. ILL. L. REV. 375, 395 n.98 (2007). See also Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L.J. 501, 545-47 (1993).

<sup>10</sup> When a study utilizes "triangulation" it uses more than one approach to investigate a research question. The term derives from land surveying, where a series of triangles is used to map out an area. MICHAEL QUINN PATTON, *QUALITATIVE RESEARCH & EVALUATION METHODS* 247 (3rd ed. 2002).

## Summary of Findings

### *Descriptive Statistics: Attorney Fees in Chapter 13 Cases*

- There was a 24% increase in Total Direct Access Costs for post-BAPCPA dismissed Chapter 13 cases.
- There was a 27% increase in Total Direct Access Costs for post-BAPCPA discharged Chapter 13 cases.
- The national mean attorney fee in pre-BAPCPA Chapter 13 cases was \$2,061. Post-BAPCPA, the mean attorney fee increased 24% to \$2,564.
- At the state level, the highest post-BAPCPA mean attorney fees were in Maine, Nevada, and New Hampshire (\$4,950, \$4,335, and \$4,294, respectively). North Dakota had the lowest mean fee (\$1,560).
- The largest increase in mean attorney fee by state was in Idaho (a 115% increase), followed by Maryland (an 87% increase), Kentucky (an 87% increase), and Nevada (an 85% increase).
- The only jurisdictions that registered decreases in attorney fees were Wyoming and Alaska.
- Of those states that saw an increase in the mean attorney fee, the most modest increases were in Massachusetts (1%), Montana (2%), Rhode Island (2%), Oklahoma (4%), North Dakota (6%), Minnesota (7%), and Kansas (10%).

### *Descriptive Statistics: Attorney Fees in Chapter 7 Cases*

- There was a 37% increase in Total Direct Access Costs for post-BAPCPA discharged Chapter 7 asset cases.
- There was a 51% increase in Total Direct Access Costs for post-BAPCPA discharged Chapter 7 no-asset cases.
- In Chapter 7 asset cases, the national mean attorney fee increased from \$821 to \$1,072—a 30% increase.

- In Chapter 7 no-asset cases, the national mean attorney fee increased 48%, from \$654 to \$968.
- The highest average post-BAPCPA attorney fees by state were found in Arizona (\$1,530), Texas (\$1,314), Alaska (\$1,298), Montana (\$1,282), Minnesota (\$1,268), South Dakota (\$1,238), and Florida (\$1,223). The states with the lowest average fees were Idaho (\$692), Arkansas (\$698), Kentucky (\$749), Washington (\$702), Utah (\$714), and Vermont (\$781).
- The largest post-BAPCPA percentage increases in mean attorney fees were found in Montana (90%), Virginia (87%), Oregon (85%), Mississippi (82%), Tennessee (81%), and Utah (80%).
- The states with the smallest percentage increase were Vermont (10%), Arkansas (11%), and Illinois (16%).

#### *Pro se Cases*

- Two percent of post-BAPCPA Chapter 13 cases (discharged, dismissed, and open) were filed *pro se*.
- 100% of Chapter 13 cases filed *pro se* cases were filed with a petition preparer's assistance, none ending in discharge.
- In Chapter 7, 5.8% of post-BAPCPA (asset and no-asset) cases were filed *pro se*.
- 75% of all Chapter 7 *pro se* asset cases, and 97.8% of all Chapter 7 *pro se* no-asset cases filed post-BAPCPA were filed with the assistance of a petition preparer.
- Average petition preparer fee in post-BAPCPA Chapter 13 cases was \$181.
- Average petition preparer fee in post-BAPCPA Chapter 7 cases was \$184.

#### *Distributions to Unsecured Creditors*

- There was no statistically significant difference, post-BAPCPA, holding other factors constant, in distributions to unsecured creditors in Chapter 7 and Chapter 13 cases.

### *Regression Modeling*

- Holding all other factors constant, on average, attorney fees in Chapter 7 cases were \$258 higher in real terms, post-BAPCPA.
- Holding all other factors constant, on average, attorney fees in Chapter 13 cases were \$564 higher in real terms, post-BAPCPA.

### *Qualitative Findings*

- The discord between (i) complexity of the consumer bankruptcy system, (ii) the experience and resources needed to represent debtors through an often byzantine maze, and (iii) the dearth of resources available to pay for this representation.
- The irony presented by the ostensible goals of BAPCPA and the unintended consequences of these changes in practice.

# I. The Consumer Bankruptcy System

*“No area of bankruptcy law is more complex than consumer bankruptcy.”*<sup>11</sup>

Prior to BAPCPA’s enactment, a consumer seeking bankruptcy protection had to decide whether to file a bankruptcy case under Chapter 7—liquidation—or under Chapter 13—court supervised repayment.<sup>12</sup> The decision commonly turned on which chapter was more suited to meet the consumer’s specific objectives in that moment of financial distress. The factors that informed such a decision included whether the putative debtor: (i) had regular income;<sup>13</sup> (ii) owned primarily exempt assets;<sup>14</sup> (iii) was current on secured debt payments such as a note and mortgage on a house or a loan secured by a car; (iv) was current on tax obligations; (v) wanted to keep assets, such as a home or a car; (vi) was self-employed or owned a business; (vii) wanted to discharge a type of debt that was only dischargeable under Chapter 13; and (viii) filed a Chapter 7 case within the last 7 years. In the vast majority of cases, this decision was made in consultation with an attorney.<sup>15</sup>

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<sup>11</sup> NATIONAL BANKRUPTCY REVIEW COMMISSION, *BANKRUPTCY: THE NEXT TWENTY YEARS*, 79 (1997) *available at* <http://govinfo.library.unt.edu/nbrc/report/05acons.pdf>.

<sup>12</sup> Because of the limitations on how much debt a debtor may have to qualify for bankruptcy protection under Chapter 13, a growing number of consumers are filing cases under Chapter 11. In 2006, 520 consumers filed for relief under Chapter 11. By the close of 2010, the number had risen to 1939. American Bankruptcy Institute: Quarterly Non-business Filings by Chapter (1994–2011), [http://www.abiworld.org/am/template.cfm?section=bankruptcy\\_statistics1](http://www.abiworld.org/am/template.cfm?section=bankruptcy_statistics1) (follow: “Quarterly Filings”) (last visited Nov. 22, 2011). *See also* 11 U.S.C. § 109(d) (“only . . . a person that may be a debtor under chapter 7 of this title . . . may be a debtor under chapter 11 of this title.”) In 1991, the Supreme Court in *Toibb v. Radloff* announced that individual debtors not engaged in business are eligible to file under Chapter 11. 501 U.S. 157 (1991). The inclusion of many provisions in Chapter 11 that are manifestly inapplicable in individual cases “reflect an understandable expectation that Chapter 11 would be used primarily by debtors with ongoing businesses; they do not constitute an additional prerequisite for Chapter 11 eligibility beyond those established in § 109(d).” *Toibb*, 501 U.S. at 163. While the growing number of consumer Chapter 11 cases may warrant further investigation, it is beyond the scope of this study.

<sup>13</sup> Relief under Chapter 13 is available only to individuals with regular income whose debts do not exceed prescribed limits. 11 U.S.C. § 109(e).

<sup>14</sup> For example, Social Security payments, unemployment benefits, and limited values of equity in a home, car, or truck, household goods and appliances, and tools of a trade are protected. The types of assets subject to exemption as well as the dollar amount of allowed exemptions may vary from the exemption provision in the bankruptcy code, as well as from state to state. 11 U.S.C. § 522.

<sup>15</sup> Lois R. Lupica, *The Costs of BAPCPA: Report of the Pilot Study of Consumer Bankruptcy Cases*, 18 Am. Bankr. INST. L. REV. 43, 73 (2010) [hereinafter *Lupica, Costs*]. The Pilot Study found that 6% of debtors filed *pro se*, pre-BAPCPA. Given the variation in practices and costs in districts

Once the decision as to which chapter to file under was made, the attorney would work with the debtor to complete the necessary petitions and schedules, and the case would be ready for filing.<sup>16</sup> If the debtor chose to file Chapter 7, he or she would typically receive a discharge within 3 to 6 months of case filing. If the debtor had regular income and otherwise qualified for Chapter 13, a plan would be developed, confirmed, and after the repayment period was concluded (3 to 5 years from plan confirmation), the discharge would be granted.<sup>17</sup> If the bankruptcy case was filed in 2003 and 2004, in most cases, attorney fees would cost the consumer approximately \$650 for a Chapter 7 case<sup>18</sup> or approximately \$2,000 for a Chapter 13 case.<sup>19</sup>

BAPCPA's enactment changed the consumer bankruptcy system in a myriad of small and not-so-small ways. For example, there is now an income and expense standard consumer debtors must meet in order to qualify for Chapter 7.<sup>20</sup> The most critiqued of all new requirements, the means test, mandates that all debtors calculate their income and

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this statistic may not be an accurate reflection of *pro se* filings nationally. The U.S. Government Accountability Office has estimated that "11 percent of Chapter 7 consumer cases were filed *pro se* in February – March 2005." U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT NO. GAO-08-697, DOLLAR COSTS ASSOCIATED WITH THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, at 29–33 (2003), available at <http://www.gao.gov/new.items/d08697.pdf>. [hereinafter GAO REPORT]. A study of consumer cases filed in the Western District of Washington found that 18.4% of all Chapter 7 consumer cases filed between February 1, 2005 and March 31, 2005 were filed *pro se*. Rafael I. Pardo, *An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors*, 26 EMORY BANKR. DEV. J. 5, 21 n.73 (2009).

<sup>16</sup> Of course, this description assumes the straightforward, no-complications case—which is not the situation presented by every debtor. Often attorneys used legal assistants to help them with client intake interviews and to aid them in preparing debtors' petitions.

<sup>17</sup> Under either Chapter 7 or Chapter 13, the debtor will not be granted a discharge if he or she conceals assets, destroys or falsifies records, or commits fraud. See 11 U.S.C. § 727(a). These behaviors can be a bar to discharge even if they are not committed in connection with the bankruptcy case. See 11 U.S.C. § 727(b). Certain debts are excepted from the discharge and the debtor remains liable for them after the case is closed. See 11 U.S.C. § 523(a)(1) (some taxes); 11 U.S.C. § 523(a)(5) (domestic support obligations); 11 U.S.C. § 523(a)(8) (student loans); 11 U.S.C. § 523(a)(9) (debts for damages for death or personal injury caused by the debtor's operation of a motor vehicle, boat, or aircraft while intoxicated by drugs or alcohol).

<sup>18</sup> See *infra* Appendix III, Table A - 10; Lupica, *Costs*, *supra* note 15, at 70, Figure 4.1.

<sup>19</sup> See *infra* Appendix II, Table A - 5; Lupica, *Costs*, *supra* note 15, at 64, Figure 3.1. According to the Pilot Study data, attorney fees for a Chapter 13 case filed in 2003 and 2004 were \$2,000 at the 50th percentile, \$1,500 at the 25th percentile, and \$2,500 at the 75th percentile.

<sup>20</sup> 11 U.S.C. 707(b).

expenses using a system of complex calculations.<sup>21</sup> It requires the application of various local and IRS expense standards to the debtor's financial information, adjusted by geographic location and household size.<sup>22</sup>

The list of necessary documents and records required by a consumer debtor filing under Chapter 7 or Chapter 13 has also notably increased. In addition to a schedule of assets and liabilities,<sup>23</sup> a schedule of current income and expenditures,<sup>24</sup> and a statement of financial affairs,<sup>25</sup> a debtor must now produce: (i) evidence of payment from employers, if any, received within 60 days of filing;<sup>26</sup> (ii) a statement of monthly net income and any anticipated increase in income or expenses after filing;<sup>27</sup> (iii) a record of any interest the debtor has in a federal or state qualified education or tuition account;<sup>28</sup> and (iv) a copy of his or her tax return for the most recent tax year.<sup>29</sup>

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<sup>21</sup> See Official Bankruptcy Form B22A: Chapter 7 Statement of Current Monthly Income and Means Test Calculation, *available at* <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx> (eight page, 57 point financial questionnaire required of all Chapter 7 debtors to determine if the debtor's circumstance and his or her request for relief under Chapter 7 give rise to a presumption of abuse of the bankruptcy system); Official Bankruptcy Form B22C: Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, *available at* <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx> (eight page, 61 point financial questionnaire required of all Chapter 13 debtors to determine the length of time that they must commit to repaying their creditors under a Chapter 13 plan before receiving a discharge).

<sup>22</sup> *Id.*

<sup>23</sup> 11 U.S.C. § 521(a)(1)(B)(i).

<sup>24</sup> 11 U.S.C. § 521(a)(1)(B)(ii).

<sup>25</sup> 11 U.S.C. § 521(a)(1)(B)(iii).

<sup>26</sup> 11 U.S.C. § 521(a)(1)(iv).

<sup>27</sup> 11 U.S.C. § 521(a)(1)(v)–(vi).

<sup>28</sup> The debtor must provide a list of all creditors and the amount and nature of their claims; the source, amount, and frequency of the debtor's income; a list of all of the debtor's property; and a detailed list of the debtor's monthly living expenses, (*i.e.*, food, clothing, shelter, utilities, taxes and transportation); in order to be able to complete the schedules that must be filed with the petition. An individual filer who is married must gather this information from their spouse regardless of whether only one member of the couple is filing, both are filing a joint petition, or each is filing a separate individual petition. Where only one spouse files, the income and expenses of the non-filing spouse are required to be disclosed as part of the debtor's household's finances. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007(b).

<sup>29</sup> This includes tax returns for prior years that had not been filed when the case commenced and any tax returns filed during the course of the case. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007(b).

Two educational courses are now also required of debtors—a debtor must complete a credit counseling course prior to filing, and a debtor education course must be completed prior to discharge.<sup>30</sup>

The Act also imposed new duties and obligations on attorneys. Lawyers must prepare a § 342(b) notice, describing the debtor’s bankruptcy options and warning of the consequences of asset concealment or fraud.<sup>31</sup> Attorneys are also required to certify, “after reasonable investigation” that the information in the debtor’s petition is “well grounded in fact.”<sup>32</sup> In addition, BAPCPA now governs the conduct of “debt relief agencies” which has been held to include attorneys.<sup>33</sup> These new provisions contain prohibitions on deceptive or improper conduct, such as making misrepresentations, and counseling a client to take on more debt in contemplation of filing.<sup>34</sup> They also require attorneys to make extensive written disclosures to their clients about the need for accurate information in the petition and supporting documents, and to caution their clients about certain aspects of bankruptcy.<sup>35</sup> Finally,

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<sup>30</sup> 11 U.S.C. § 521(b)(1)-(2). It is the lawyer who directs a debtor to the credit counseling course, as well as to the pre-discharge debt management course. Many debtors complete these courses over the Internet, either at home or at computer stations, and telephone centers set up in their lawyers offices. Interview with Consumer Bankruptcy Attorney (Oct. 7, 2009) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Feb. 11, 2010) (transcript on file with Principal Investigator).

<sup>31</sup> See 11 U.S.C. § 342(b).

<sup>32</sup> Section 521 makes bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. To avoid sanctions and potential civil penalties, attorneys must verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Completing a reasonable investigation of debtors’ financial affairs and, for Chapter 7 cases, computing debtor eligibility, requires attorneys to expend additional effort. Prior to BAPCPA’s enactment, the American Bar Association predicted that this requirement would increase attorney costs by \$150 to \$500 per case. Based on the 1.6 million projected filings under Chapter 7 and Chapter 13, the Congressional Budget Office estimated that the direct cost of complying with this mandate would be between \$240 million and \$800 million in fiscal year 2007, the first full year of implementation, and would remain in that range through fiscal year 2010. The Congressional Budget Office expected that some of the additional costs incurred by attorneys would most likely be passed on to their clients. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, H.R. Rep. No. 109-31 at 33-34 (1st Sess. 2005), reprinted in 2005 U.S.C.C.A.N. 88, 89.

<sup>33</sup> See 11 U.S.C. §§ 526-528; 11 U.S.C. § 101(12A). The term “debt relief agency” means “any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration . . . .” The definition of “debt relief agency” does not expressly mention attorneys, but the Supreme Court recently held that debtors’ attorneys are debt relief agencies in *Milavetz, Gallop & Milavetz, P.A. v. United States*. 130 S. Ct. 1324, 1328 (2010).

<sup>34</sup> 11 U.S.C. § 526(a).

<sup>35</sup> 11 U.S.C. § 527.



they require the debtor and his or her attorney to execute a written contract prior to filing that clearly sets forth the services to be rendered and fees to be charged.<sup>36</sup>

Most debtors have complied and will continue to comply with the new BAPCPA conditions with the aid of an attorney.<sup>37</sup> Such compliance, however, has not been without cost. These procedural requirements have taken their toll on debtors, attorneys, trustees, and judges and have had a direct and quantifiable effect on how the bankruptcy system operates, and how bankruptcy is practiced.

## II. Bankruptcy Code and Rule Provisions Governing Attorney Compensation

Attorney fees in consumer bankruptcy cases are subject to a relatively high level of statutory, administrative, and judicial scrutiny.<sup>38</sup> Because they are typically the largest expense associated with a consumer debtor's bankruptcy case, there is considerable tension between the potentially competing goals of keeping bankruptcy affordable for those who need it, and ensuring a highly competent, professional, and sustainable consumer bankruptcy bar.<sup>39</sup>

The starting point for understanding the regulatory oversight of attorneys' fees is § 329. Section 329 requires lawyers who represent debtors to disclose all compensation received in a case within the

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<sup>36</sup> 11 U.S.C. § 528. In addition, even debtors who meet the standards and fulfill the requirements to file for bankruptcy will receive less relief overall. The discharge provisions under both Chapter 7 and Chapter 13 have been contracted, with for-profit student loans, some credit card debts, credit card cash advances, and property settlements not in the nature of support, to name a few, now presumptively, or absolutely non-dischargeable. *See* 11 U.S.C. §§ 523(a)(2)(C), 523(a)(8)(B), 523(a)(14)(A), 523(a)(15), 523(a)(18). Moreover, the Chapter 13 "super-discharge" has been truncated and the time between permitted receipt of a discharge has been extended. 11 U.S.C. §§ 1328(a), 727(a)(8).

<sup>37</sup> The Study found that 94.2% of Chapter 7 consumer cases and 97.9% of Chapter 13 consumer cases filed after BAPCPA's effective date were filed with the assistance of counsel. *See infra* Appendix II, Table A – 2 and Appendix III, Table A – 7.

<sup>38</sup> Attorney fees may be subject to challenge by a trustee, client, bankruptcy judge, or any other party in interest. *See* Fed. R. Bankr. P. 2017.

<sup>39</sup> Angela Littwin, *The Affordability Paradox: How Consumer Bankruptcy's Greatest Weakness May Account for its Surprising Success*, 52 WM. & MARY L. REV. 1933, 1955-6 (2011).

preceding year. The reasonableness of such compensation is subject to judicial review and if "such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to . . . the entity that made such payment."<sup>40</sup> As such, any payment or agreement to make a payment by a debtor to his or her attorney is valid only to the extent it is of a reasonable amount.<sup>41</sup>

Section 330, also setting a "reasonable compensation" standard, applies when determining the reasonableness of services rendered pre-petition and to be rendered post-petition. With respect to debtors filing for bankruptcy protection under Chapter 13, § 330(a)(4)(B) provides further that lawyers are entitled to receive "reasonable compensation" for services rendered "in connection with a bankruptcy case"—including post-

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<sup>40</sup> 11 U.S.C. § 329 states:

"(a) any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in connection with the case by such attorney, and the source of such compensation. (b) If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to –

(1) the estate, if the property transferred –

(A) would have been property of the estate; or

(B) was to be paid by or on behalf of the debtor under a plan under chapter 11, 12, or 13 of this title; or

(2) the entity that made such payment."

<sup>41</sup> The court may reduce an attorney's fee if the court finds that the work done was excessive under the circumstances or of substandard quality. *See Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007) (errors in attorney work product justified scrutiny and disgorgement of attorney fee); *In re Gage*, 394 B.R. 184 (Bankr. N.D. Ill. 2008) (court may order return of excessive fees to the estate); *In re Laberge*, 380 B.R. 277 (Bankr. D. Mass. 2008) (court used the lodestar method to determine that \$6,000 for simple no asset chapter 7 case was excessive); *In re Irons*, 379 B.R. 680 (Bankr. S.D. Tex. 2007) (review by the court was appropriate where attorney late-filed an unsigned, blank B22 Form on behalf of debtor). "At the outset, the Court acknowledges that the undersigned shares the concern of many bankruptcy judges that the unwarranted application of § 526 could lead to oppression of debtors' counsel who zealously represent clients, often with little compensation, great risk and much compassion. Yet, this order is not about competent counsel making a simple error. The Court's concern in this case is whether counsel acted competently at all. As set forth above, the performance exhibited by counsel in this case may present a rare example that lies in stark contrast to the typical performance of attorneys practicing in this Court . . . . Nevertheless, the Congressional mandate is clear. When the Court witnesses the possible abuse of debtors by their own lawyers, the Court is compelled to act." 379 B.R. 680, 686–687.

petition services.<sup>42</sup> In Chapter 7 cases, § 327 provides that a debtor's attorney must be appointed by the trustee and approved by the court, in order to receive fees post-petition or post-conversion.<sup>43</sup> Typically, attorneys for debtors in Chapter 7 cases are paid in full pre-petition.<sup>44</sup>

Bankruptcy Rules 2016 and 2017 implement § 329 and govern the disclosure of fee arrangements by the debtor's attorney and the court's scrutiny of such arrangements. Rule 2016 requires an attorney to file a written statement of the compensation agreed to be paid or paid within one year before the filing of the bankruptcy petition, regardless of whether the attorney makes a specific application for compensation.<sup>45</sup> Rule 2017(a) authorizes bankruptcy courts to examine attorney fees paid prior to filing.<sup>46</sup> Rule 2017(b) extends courts the same authorization with respect to post-petition attorney fees.<sup>47</sup>

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<sup>42</sup> Under 11 U.S.C. § 330(a)(4)(B) in a "chapter 13 case in which the debtor is an individual, the court may allow reasonable compensation to the debtor's attorney for representing the interests of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section." These factors include: "(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title." 11 U.S.C. § 330(b).

<sup>43</sup> See *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004). A debtor may employ an attorney, post-petition, however, if the representation is for their own benefit, and not for the benefit of the estate, so long as the attorney is not paid from estate funds.

<sup>44</sup> But see notes 223-226 and accompanying text.

<sup>45</sup> See 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016(b). Rule 2016(b) further provides that the disclosure mandated by § 329 must be sent to the U.S. Trustee within fifteen days of the filing date. Fed. R. Bankr. P. 2016(b). Moreover, Rule 2016(b) imposes a continuing duty on debtors' attorneys to amend the disclosure when additional payments are made during a Chapter 13 case, or after a case converts to a Chapter 7. See *In re Whaley*, 282 B.R. 38 (Bankr. M.D. Fla. 2002) (failure to make such disclosures potentially subjects an attorney to sanctions, such as fee reduction or disgorgement). See also *McMullen v. Schultz*, 428 B.R. 4, 13 (D. Mass 2010) (where a court reduced the debtor's fees by one-fifth, because the attorney failed to completely and timely disclose all information required by Rule 2016(b).)

<sup>46</sup> It reads: "[O]n motion by any party in interest or on the court's own initiative, the court after notice and hearing may determine any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor or before the entry of the order for relief, to an attorney for services rendered or to be rendered is excessive." Fed. R. Bankr. P. 2017(a). See *In re Fricker*, 131 B.R. 932

In order to ensure compensation is reasonable, bankruptcy courts typically require attorneys to file a fee application containing an itemization of legal services performed.<sup>48</sup> In theory, the starting point for the analysis of “reasonableness” is the “lodestar method.”<sup>49</sup> Under the lodestar method,

[t]he fee-setting court first establishes a “threshold point of reference” or “lodestar,” which is the number of hours reasonably spent by the attorney multiplied by his reasonable hourly rate. The “lodestar” may then be adjusted up or down to reflect a variety of factors including, (1) the time and labor required; (2) the novelty and difficulty of the questions presented by the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee for similar work in the community; (6) whether the fee is fixed or contingent; (7) time pressures imposed by the client or the circumstances; (8) the amount involved and results obtained as a result of the attorney’s services; (9) the experience, reputation and ability of the attorney; (10) the “undesirability” of the case; (11) the nature and length of the professional relationship with the client; [and] (12) awards in similar cases. If the time expended appears duplicative, excessive or otherwise unnecessary, the lodestar should be reduced accordingly.<sup>50</sup>

Because of the high volume nature of consumer bankruptcy practice, however, many jurisdictions have formally or informally adopted a “presumptively reasonable,” “RARA,” or in some jurisdictions, a “no-look”

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(Bankr. E.D. Pa. 1991) (the court has the right to examine attorney fees, even in a dismissed Chapter 13 case). *See also In re Fox*, 140 B.R. 761 (Bankr. D. S. Dakota 1992).

<sup>47</sup> Fed. R. Bankr. P. 2017(b).

<sup>48</sup> Every bankruptcy district has unique requirements to satisfy a fee application. *See, e.g., Local Rules, Compensation of Professionals*, Bankr. D. Neb. R. 2016-1(A), available at <http://www.neb.uscourts.gov/lorule/!SSL/!WebHelp/lorules.pdf>; *Local Rules, Compensation of Professionals*, Bankr. S.D. W. Va. R. 2016-1, available at <http://www.wvsb.uscourts.gov/localrules/LocalRules.pdf>.

<sup>49</sup> The Supreme Court said in *Hensley v. Eckerhart*, “the most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” 461 U.S. 424, 433 (1983).

<sup>50</sup> *McMullen v. Schultz*, 428 B.R. 4, 11.

fee standard.<sup>51</sup> Most common in Chapter 13 cases, the “presumptively reasonable” fee is a dollar figure that, if charged by a lawyer in connection with his or her representation of a consumer debtor, will typically allow the lawyer to avoid the necessity of filing a fee application with the court.<sup>52</sup> In essence, a presumptive fee permits an attorney to charge a flat pre-approved fee for an array of professional services.<sup>53</sup> There remains the requirement, however, that the fee charged bear a relationship to the services provided in a debtor’s case.<sup>54</sup>

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<sup>51</sup> See *infra* Appendix VI. “RARA” stands for “Rights and Responsibility Agreement” entered into between a debtor and his or her attorney.

<sup>52</sup> A few, but not many, jurisdictions recognize a presumptively reasonable fee in Chapter 7 cases. See *infra* note 216 and accompanying text. A presumptively reasonable fee does not necessarily shield a lawyer from judicial scrutiny of the attorney fee and the services provide. As one court noted, “This case presents an opportunity for the Court to reiterate that [the order setting a presumptively reasonable fee] is not designed to remove the discretion of the bar in establishing a reasonable fee depending on the complexity of a particular case. Attorneys are in the first instance in the position to determine the complexity of case, and they should endeavor to propose a flat fee that bears some relationship to the work that will likely be required and which invariably depends on the unique facts and circumstances of each case. Attorneys who consistently use the flat fee . . . must expect to occasionally encounter a case with unforeseen complications, thus resulting in a lower return than cases that proceed in a routine manner. This is, however, the exception rather than the rule. Cases of increased complexity more often than not will be identified prior to the filing of the petition, such that attorneys can opt to utilize the hourly fee arrangement. The Court trusts that attorneys will exercise their best business judgment and chose the hourly fee option from the outset in a particular case if and when appropriate.” *In re Wesseldine*, 434 B.R. 31, 40 (Bankr. N.D.N.Y. 2010).

<sup>53</sup> Proponents of establishing presumptively reasonable fees argue that it is “practical and consistent with § 330 as long as there are procedures detailed in advance where an attorney can apply for additional compensation when the services provided exceed the basic services contemplated by the ‘no look’ or standard fee.” STAN BERNSTEIN, MAUREEN A. TIGHE, HENRY J. SOMMER & ALAN N. RESNICK, COLLIER COMPENSATION, EMPLOYMENT AND APPOINTMENT OF TRUSTEES AND PROFESSIONALS IN BANKRUPTCY CASES, ¶ 3.05[4] (2009).

<sup>54</sup> Typically, presumptively reasonable fees are codified in local rules, general orders or standing orders, in case law, or are set by an unwritten practice or custom in the local district. Because there is no uniform presumptively reasonable fee enacted across district lines, the presumptive fee of each bankruptcy district varies significantly from district to district and year to year. Moreover, what is included in the “array of services” also varies by district and by court. It should be noted that some bankruptcy districts have chosen not to adopt any form of a no-look fee. See *infra* Appendix VI.

### III. Studies of the Consumer Bankruptcy System and Profiles of Consumer Debtors

The first empirical study of the bankruptcy system was conducted in the 1960s by David Stanley and Marjorie Girth.<sup>55</sup> That report provided the first detailed description and analysis of how bankruptcy operated and how debtors were faring.<sup>56</sup> Since this ground-breaking study, an increasing number of scholars have contributed to the growing body of empirical bankruptcy research.<sup>57</sup> These empirical studies have done much to shape the debate about the function, utility, accessibility and value of the consumer bankruptcy system.<sup>58</sup>

Empirical study has also provided a detailed profile of consumer debtors.<sup>59</sup> Led by the researchers of the Consumer Bankruptcy Project

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<sup>55</sup> David T. Stanley & Marjorie Girth, *Bankruptcy: Problem, Process, Reform* (Washington, D.C., Brookings Institute, 1971).

<sup>56</sup> Through the analysis of bankruptcy case filings, interviews of 400 consumer debtors, a review of 398 business bankruptcy cases, as well as discussions with troubled debtors who did not file, “[i]t . . . provided much of what is known about bankruptcy.” TERESA A. SULLIVAN, ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, *AS WE FORGIVE OUR DEBTORS* 16 (1989) [hereinafter *AS WE FORGIVE*]. In the late 1970s, Philip Shuchman engaged in a number of empirical studies in which he examined a number of demographic and economic variables in an effort to develop a picture of who was using the bankruptcy system. *Id.* (citing Philip Shuchman, *Theory and Reality in Bankruptcy: The Spherical Chicken*, 41 *LAW & CONTEMP. PROB.* 66 (1977); Philip Shuchman, *New Jersey Debtors 1982 – 83: An Empirical Study*, 15 *SETON HALL L. REV.* 541 (1985); Philip Shuchman, *The Average Bankrupt: A Description and Analysis of 753 Personal Bankruptcy Filings in Nine States*, 1983 *COMM. L. LEAGUE* 288; Philip Shuchman & Thomas L. Rorer, *Personal Bankruptcy Data for Opt-out Hearings and Other Purposes*, 56 *AM. BANKR. L.J.* 1 (1982)).

<sup>57</sup> For example, during the years preceding BAPCPA’s enactment, Marianne B. Culhane and Michaela M. White conducted an empirical study of a proposed means-testing provision. Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy for a Test Drive: Means Testing Real Chapter 7 Debtors*, 7 *AM. BANKR. INST. L. REV.* 27 (1999). Data for the means test study was originally gathered in 1996 in connection with a project studying reaffirmations in consumer bankruptcy cases. Marianne B. Culhane & Michaela White, *Debt after Discharge: An Empirical Study of Reaffirmation*, 73 *AM. BANKR. L.J.* 709 (1999). Professor Norberg and later, Norberg and Velkey sought to provide a detailed portrait of the Chapter 13 system and the extent to which Chapter 13 has fulfilled its ostensible purposes. *See* Scott F. Norberg, *Consumer Bankruptcy’s New Clothes: An Empirical Study of Discharge and Debt Collection in Chapter 13*, 7 *AM. BANKR. INST. L. REV.* 415, 456–57 (1999); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 *CREIGHTON L. REV.* 473 (2006).

<sup>58</sup> *But see* Margaret Howard, *Bankruptcy Empiricism: Lighthouse Still No Good*, 17 *AM. BANKR. DEV. J.* 425 (2001) (expressing caution about the impact of empirical data on policy debates).

<sup>59</sup> Data has been collected from consumer cases filed in 1981, 1991, 2001 and 2007. *See AS WE FORGIVE*, *supra* note 56; *Did Bankruptcy Reform Fail?*, *supra* note 8, at 352; Teresa A. Sullivan, Elizabeth Warren, & Jay Westbrook, *Folklore and Facts: A Preliminary Report from the Consumer Bankruptcy Project*, 60 *AM. BANKR. L.J.* 293 (1986); Teresa A. Sullivan, Elizabeth Warren, & Jay

(“CBP”), we now have a portrait of who is filing for consumer bankruptcy, why consumers file, their financial condition at that time, when during their period of financial crisis they file, and whether and to what extent bankruptcy provides needed relief.<sup>60</sup>

Thus far, similar empirical attention has not been paid to the post-BAPCPA bankruptcy institution itself. While there have been single jurisdiction studies,<sup>61</sup> studies based on anecdotal and limited scale

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Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 AM. BANKR. L.J. 121 (1994). See also Jay L. Zagorsky & Lois R. Lupica, *A Study of Consumers' Post-Discharge Finances: Struggle, Stasis or Fresh Start?* 16 AM. BANKR. INST. L. REV. 283 (2008) (comparing consumers post-discharge financial recovery from financial distress to consumers who had never filed for bankruptcy).

<sup>60</sup> Among other findings, the 2007 CBP study revealed that the 2005 amendments to the bankruptcy code “functioned . . . like a barricade, blocking out hundreds of thousands of struggling families indiscriminately, regardless of their individual income circumstances.” *Did Bankruptcy Reform Fail?*, *supra* note 8, at 353. Moreover, families have been trending toward ever-increasing indebtedness, with net worth shrinking, and debt-to-income ratios rising. “Families filing for bankruptcy are in ever-increasing financial distress.” *Id.* The data further show that financially troubled families are delaying bankruptcy: “struggling longer with their bills and building up bigger loads of debt before succumbing.” *Id.* Other empirical studies have focused on highly discrete issues such as bankruptcy and the health care system, bankruptcy and ethnicity, bankruptcy and geography, as well as on filing rates and trends. See e.g., Rafael Efrat, *Minority Entrepreneurs in Bankruptcy*, 15 GEO. J. ON POVERTY L. & POL’Y 95 (2008); Melissa B. Jacoby, Teresa A. Sullivan, Elizabeth Warren, *Rethinking the Debates Over Health Care Financing: Evidence From the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375 (2001); Jean M. Lown, *Serial Bankruptcy Filers No Problem*, 26-5 AM. BANKR. INST. J. 36 (2007); Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405 (2005); Rafael I. Pardo & Michelle R. Lacey, *The Real Student-Loan Scandal: Undue Hardship and Discharge Litigation*, 83 AM. BANKR. L.J. 179 (2009); Katherine Porter, *Going Broke the Hard Way: The Economics of Rural Failure*, 2005 WIS. L. REV. 969 (2005); Steven W. Rhodes, *An Empirical Study of Consumer Bankruptcy Papers*, 73 AM. BANKR. L.J. 653 (1999); Michael Simkovic, *The Effect of BAPCPA on Credit Card Industry Profits and Prices*, 83 AM. BANKR. L.J. 1 (2009); William J. Woodward, Jr. & Richard S. Woodward, *Exemptions as an Incentive to Voluntary Bankruptcy: An Empirical Study*, 57 AM. BANK. L.J. 53 (1983). See also Charles J. Tabb, *Consumer filings: Trends and indicators, Part I*, 25-9 AM. BANK. INST. J. 1 (2006); Charles J. Tabb, *Consumer filings: Trends and indicators, Part II*, 25-10 AM. BANK. INST. J. 42 (2006).

<sup>61</sup> See James J. White, *Abuse Prevention 2005*, 71 MO. L. REV. 863, 874-876 (2006). White conducted a series of interviews with half-a-dozen consumer debtor attorneys concerning the costs of consumer bankruptcy. These interview subjects unanimously concluded that the cost of consumer Chapter 7 cases rose significantly following BAPCPA’s enactment. The reasons cited for the increase in costs were related to the necessity of multiple meetings with prospective debtors prior to filing: “The first visit would be to explain the § 342 disclosures and to begin collecting information. The second might be to get additional information and to arrange the counseling briefing, commonly done by telephone in the lawyer’s office. Last, the lawyer himself will have to verify the information given by the debtor and hector the debtor for his tax return and pay stub. The lawyer will also have to do the mandated factual investigation . . . [including] getting credit reports, . . . lien searches, and checking other public records to determine if the client is listed as

interviews,<sup>62</sup> a study of the costs of the new consumer bankruptcy system to governmental parties,<sup>63</sup> and numerous predictive statements and speculation,<sup>64</sup> the costs and impact of BAPCPA on debtors, debtors' attorneys, Panel Trustees, Standing Trustees, and judges have not been quantified and analyzed on a national scale until now. This type of research has been referred to as "context studies"—an examination of the system within which a law or policy is implemented.<sup>65</sup> Particularly in light of a significantly transformed consumer bankruptcy system, the data gathered and analyzed in this Study will go a long way to inform interested law and policy makers about how well the consumer bankruptcy system is working, the extent to which it is meeting its

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the owner of real property." *Id.* at 875-876. White argued that the procedural changes would most raise the cost of bankruptcy. Specifically, he noted the costs of credit briefings and finance courses, and the higher fees that attorneys would be charging to deal with the new complexities and increased personal liability. *Id.* at 866-869.

<sup>62</sup> Robert J. Landry III & Amy K. Yarbrough, *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, 82 AM. BANKR. L. J. 331 (2008). This single-district study examined the direct access costs of filing for Chapter 7 before and after BAPCPA. The study found that costs had in fact risen. After adjusting for inflation, attorneys' fees had gone up 21.54%, and filing fees were up 24.16%. *Id.* at 335. Credit counseling and debtor education requirements had added an additional \$100 to the cost of Chapter 7 cases. *Id.* at 336. The total increase in costs in the Northern District of Alabama was an increase of 32.73%. *Id.* at 343.

<sup>63</sup> See GAO REPORT, *supra* note 15. The GAO study examined the costs of BAPCPA on the U.S. Trustee Program, the federal judiciary, consumers, and on private trustees. *Id.* at 2. The U.S. Trustee Program was found to have incurred significant costs in connection with its role in the implementation of the means test, debtor audits, data collection and reporting as well as counseling and education requirements. *Id.* at 11. Consumer bankruptcy attorney fees incurred in Chapter 7 cases were also examined in the GAO study: a nationwide random sample of 176 Chapter 7 cases filed pre-BAPCPA was compared to 292 randomly selected Chapter 7 cases filed post-BAPCPA. *Id.* at 21-22. The GAO study found that the average attorney fee for a Chapter 7 case increased by \$366. *Id.* at 26. With respect to attorneys' fees in Chapter 13 cases, the GAO study confined its examination to a review of 48 judicial districts' "no-look" fees, and found an increase in nearly every district studied, with more than half of the districts showing an increase of 55 percent or more. *Id.* at 22. The GAO study concluded that filing for consumer bankruptcy was more costly for debtors, private trustees, and the U.S. Trustee Program following BAPCPA's enactment than before. *Id.* at 3-6.

<sup>64</sup> Henry J. Sommer, *Trying to Make Sense Out of Nonsense: Representing Consumers Under the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,"* 79 AM. BANKR. L.J. 191, 191 (2005) ("There is no doubt that bankruptcy relief will be more expensive for almost all debtors, less effective for many debtors, and totally inaccessible for some debtors as a result of the new law.")

<sup>65</sup> Jay Lawrence Westbrook, *What We Know and Do Not Know About the Impact of Civil Justice on the American Economy and Policy: Empirical Research in Consumer Bankruptcy*, 80 TEX. L. REV. 2123, 2142 (2002) (described as "issues related specifically to the bankruptcy system").



objectives, the impact it has had on the primary system stakeholders and the degree of its external effects.

## IV. The Costs of BAPCPA Pilot Study

In 2009, the Fee Study Research Team conducted a pilot study of the costs of BAPCPA (the “Pilot Study”).<sup>66</sup> The purpose of the Pilot Study was twofold: (i) to “distill the data about the bankruptcy system that is available and accessible,” and (ii) to “refine the study’s substance and process.”<sup>67</sup> The initial Pilot Study examined whether it costs a debtor more to access the consumer bankruptcy system after BAPCPA’s enactment than it did before.<sup>68</sup>

To explore the question of cost of access, we randomly selected six judicial districts,<sup>69</sup> from which a total of 1,006<sup>70</sup> consumer cases filed

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<sup>66</sup> The Pilot Study was supported by a grant from the American Bankruptcy Institute.

<sup>67</sup> Pilot Study proposal to Samuel J. Gerdano, Executive Director, American Bankruptcy Institute (Apr. 24, 2009) (on file with Principal Investigator).

<sup>68</sup> Costs of BAPCPA Pilot Study grant application letter to the American Bankruptcy Institute (Apr. 9, 2009) (on file with Principal Investigator).

<sup>69</sup> Three judicial districts from each of the eleven judicial circuits were initially selected for a total of 33 judicial districts: one from each of the high, low and medium population states in the circuit, as determined by the July 1, 2008 Population Estimate published by the U.S. Census. In states with more than one judicial district, the district with the highest population city was selected. Where there was an even number of states in a circuit, we calculated the average population for the circuit and selected the state with a population that was closest to that number; that state was identified as the “median population” state from that circuit. From these 33 judicial districts, six districts were randomly selected: (i) the Middle District of Florida, (ii) the Northern District of Illinois, (iii) the Northern District of Georgia, (iv) Maine, (v) Utah, and (vi) the Southern District of West Virginia. This stratified sampling method was used to ensure that cases from low, medium and high population states were represented in the Pilot Study sample. Lupica, *Costs*, *supra* note 15 at 57–58.

<sup>70</sup> Fifty Chapter 7 cases from each of the Pilot Study districts were randomly selected from the consumer cases filed in 2003 and 2004 (pre-BAPCPA), and fifty Chapter 7 cases from each of the same districts were randomly selected from consumer cases filed in 2007 and 2008 (post-BAPCPA). The same number of Chapter 13 cases was selected for each of the same time periods. Automated Access to Court Electronic Records (“AACER”) created a random list of bankruptcy case files that fit the criteria for the study. We are indebted to Mike Bickford, formerly of AACER, for his patience and generous support of the Pilot Study. The Pilot Study core sample included 293 Chapter 7 cases filed in 2003 and 2004, and 299 Chapter 7 cases filed in 2007 and 2008. The core sample of Chapter 13 cases studied in the Pilot Study was 414: 295 Chapter 13 cases filed in 2003 and 2004, and 119 Chapter 13 cases filed in 2007 and 2008. These numbers reflect the discarding of some cases for lack of petition information, as well as the fact that in

during pre-BAPCPA years (2003 and 2004) were examined and compared to access costs of cases filed after BAPCPA (from the years 2007 and 2008).<sup>71</sup>

Analysis of the data extracted from Chapter 13 cases revealed significant increases in attorney fees (the largest variable) between cases filed pre-BAPCPA and cases filed post-BAPCPA: 66%.<sup>72</sup> The median attorney fee in Chapter 7 cases was \$650 in 2003 and 2004. In 2007 and 2008, the median fee jumped to \$1,000—representing a 53% increase.<sup>73</sup> We also found considerable variation in costs between and among the studied districts. While these findings confirmed anecdotal evidence and hunches about increased costs, we knew a more extensive national study was needed to provide the whole story about BAPCPA’s consequences—both intended and unintended.

Moreover, the Pilot Study findings raised many “why” questions. Specifically, questions were raised with respect to the “nature and impact of the new administrative requirements, the time it takes to represent a consumer debtor, the impact of the new requirements on consumer behavior and decision-making, and the changes that have proven to be most and least significant.”<sup>74</sup> Additionally, because the BAPCPA

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some districts, an insufficient number of Chapter 13 cases were closed (but not dismissed). *Id.* at 60.

<sup>71</sup> Using the definitions developed in connection with the Harvard Bankruptcy Data Project, we examined non-commercial cases filed by actual people, not entities. The Bankruptcy Data Projects describes the classification of cases as follows:

Noncommercial: cases not classified as commercial cases.

Commercial: cases filed by legal entities, plus those with other indicia that the filing is related to a business. That is, the debtor may be an individual who indicates on the petition that she is “doing business as” another entity, or the debtor may list a Tax ID number instead of a Social Security Number.

Individual: cases filed by actual, natural people.

Entity: cases filed by legal entities (corporations, partnerships, and the like).

BANKRUPTCY DATA PROJECT AT HARVARD, <http://bdp.law.harvard.edu/filingsdb.cfm> (last visited Nov. 10, 2011). All cases studied in the Pilot Study sample were closed (discharged), but not dismissed. Joint petitions were considered to be one bankruptcy case. Lupica, *Costs*, *supra* note 15, at 53.

<sup>72</sup> The fees in the 25th percentile represent a 66% increase, and the fees in the 75th percentile increased by 40%. Lupica, *Costs*, *supra* note 15, at 65.

<sup>73</sup> Attorney fees charged at the 25th percentile and the 75th percentile each increased by 40%. Lupica *Costs*, *supra* note 15, at 66. These findings are consistent with the findings in the 2008 study of the consumer bankruptcy system conducted by the Government Accounting Office. GAO REPORT, *supra* note 15, at 4.

<sup>74</sup> Lupica, *Costs*, *supra* note 15, at 47.

amendments overhauled the consumer bankruptcy process in so many large and small ways, we wanted to know how this reconstituted system affected the professionals who had daily interaction with it. Ultimately, the question examined in the National Study is “whether the 2005 amendments to the Bankruptcy Code improved bankruptcy law and practice or whether the amendments just made the system more cumbersome and costly to use.”<sup>75</sup>

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<sup>75</sup> *Id.*

## V. The Consumer Bankruptcy Fee Study

### A. Sample and Methodology

#### 1. *Quantitative Data*

The objective of quantitative study sampling is to draw “a representative sample from the population, so that the results of studying the sample can then be generalized back to the population.”<sup>76</sup> The goal is to study a sample large enough to enable valid inferences to be made about the population as a whole.<sup>77</sup> With that objective in mind, we asked AACER to provide group identifying information for all non-commercial Chapter 7 and Chapter 13 bankruptcy cases filed from 2003 through the end of 2009—a total of 9,128,882 cases.<sup>78</sup> Given the time and resources available to us we believed that we could reasonably obtain the case files and manually code the needed information for approximately 10,000 cases. With this target in mind, we divided the sample into two groups: Chapter 7 consumer cases and Chapter 13 cases. We then stratified each group according to judicial district and the year in which each case was filed.<sup>79</sup> Within these strata, we used proportionate sampling, based on the number of cases filed in each district for each year, to randomly select the sample. Specifically, for each time period, we randomly selected approximately twice as many case numbers as required to achieve the target for each district. We then downloaded the corresponding court documents, and manually coded information on cases that had valid entries for the majority of our data fields. Successive cases within each strata were coded in this fashion until the target number for that district and year was achieved.<sup>80</sup> We performed informal robustness checks during the coding process to verify that proportionate random sampling in this fashion provided a

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<sup>76</sup> Martin N. Marshall, *Sampling for Qualitative Research*, 13 Family Practice 522 (1996).

<sup>77</sup> *Id.*

<sup>78</sup> United States Courts, *Bankruptcy Statistics, Filings*, <http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx> (last visited Oct. 16, 2011).

<sup>79</sup> For 2005, we divided the filings into pre- and post-BAPCPA periods using the date of implementation, October 17, 2005.

<sup>80</sup> In some instances, we were unable to reach our sampling target for every district, primarily due to the fact that electronic filing did not become widespread until closer to BAPCPA's effective date. See Part V.B. for more information.

representative number of cases across districts and across months within each year.

The data described below and the tables set forth in Appendix II, III, and V are average (mean) values of Total Direct Access Costs and attorney fees, with a test of the difference in means pre- and post-BAPCPA. The “difference in means” accounts for differences in sample size and variability in the two sub-samples.

Nominal dollar amounts for Total Direct Access Costs and attorney fees were deflated using a monthly implicit price deflator constructed from current dollar and inflation adjusted, chain-weighted personal consumption expenditures for legal services as reported by the U.S. Commerce Department’s Bureau of Economic Analysis. Thus, the resulting values reported in the data described below and in the tables found in Appendices are in terms of inflation-adjusted 2005 dollars.

## **2. *Qualitative Data***

Given the expansive range of issues implicated and the complexity of the system being studied, we set out to gather qualitative data from a broad range of system stakeholders. We wanted to hear detailed and varied accounts from professionals working within the system.

The qualitative portion of the Study was both iterative and open-ended. The time at which the data set reached the point of “saturation” was very clear. This was the point at which we ceased gathering *new* information. Thus, while we did not endeavor to provide a statistical estimate of the characteristics, perspectives, and experiences of a study population, we have a high confidence level that the information we gleaned from the data is not anomalous due to the unique experiences of the individuals studied.

### **a. Focus Groups**

Focus groups provide an effective and efficient way to gather qualitative data from study subjects. They can produce “concentrated

amounts of data on precisely the topic of interest.”<sup>81</sup> Focus groups can offer the opportunity for participants to respond to questions provided by the researcher, as well as to engage in and interact with other members of the group.<sup>82</sup> As has been noted, “[t]he hallmark of focus groups is their explicit use of group interaction to produce data and insights that would be less accessible without the interaction found in the group.”<sup>83</sup>

To develop this qualitative database, I conducted thirteen focus groups over a period of eighteen months: nine comprised of consumer debtor attorneys, one of Standing Chapter 13 Trustees, one of Chapter 7 Panel Trustees, one of bankruptcy judges, and one of U.S. Trustees.

Invitations to participate in a focus group were extended to potential participants in a variety of ways. In some cases, we identified the debtors’ attorneys with consumer practices who were planning to attend an upcoming bankruptcy-related conference. In other cases, we contacted the local Chapter 13 Trustee and/or bankruptcy judge in the district where a bankruptcy conference was being held to solicit their assistance in identifying bankruptcy attorneys with active consumer practices. In yet other instances, we solicited the assistance of members of the Study’s Advisory Board to suggest names of invitees. In addition to five national and regional ABI conferences,<sup>84</sup> I conducted focus group interviews at each of the following professional organizations’ meetings: the National Association of Consumer Bankruptcy Attorneys (NACBA),<sup>85</sup> the

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<sup>81</sup> There are clearly weaknesses associated with focus group interviews as a data gathering tool. As observed, “[t]he fact that focus groups are driven by the researcher’s interests can . . . be a source of weakness . . . . The fact that the researcher creates and directs the group makes them distinctly less naturalistic than participant observation so there is always some residual uncertainty about the accuracy of what the participants say. In particular, there is a very real concern that the moderator, in the name of maintaining the interview’s focus, will influence the group’s interactions.” DAVID L. MORGAN, *FOCUS GROUPS AS QUALITATIVE RESEARCH* 14 (2nd ed. 1997). There is also the concern that “the presence of the group will affect what [participants] say, and how they say it.” *Id.*

<sup>82</sup> *Id.* at 2.

<sup>83</sup> *Id.*

<sup>84</sup> ABI Northeast Consumer Bankruptcy Conference, Boston, Mass. Jan. 18, 2010; ABI Caribbean Insolvency Conference, Boca Raton, Fla., Feb. 11, 2010; ABI Northeast Bankruptcy Conference, Cape Cod, Mass. July 8, 2010; ABI Southwest Bankruptcy Conference, Las Vegas, Nev., Sept. 23, 2010; Detroit Consumer Bankruptcy Conference, Detroit, Mich., Nov. 10 2010.

<sup>85</sup> National Association of Consumer Bankruptcy Attorneys Conference, San Francisco, Cal., Apr. 1–2, 2010.

American Consumer Bankruptcy College (ACBC);<sup>86</sup> the National Association of Bankruptcy Trustees (NABT);<sup>87</sup> the National Association of Chapter 13 Trustees (NACTT);<sup>88</sup> and the National Conference of Bankruptcy Judges (NCBJ).<sup>89</sup> Additionally, I conducted a focus group with a visiting group of U.S. Trustees at the Executive Office of the United States Trustee in Washington, D.C.<sup>90</sup> In extending focus group invitations, I endeavored to invite a national cross section of bankruptcy professionals and provide the opportunity for attorneys to participate in focus groups who were not members of ABI, NACBA, or another professional bankruptcy organization.

The focus group participants were selected by a method known as “purposive” or “theoretical” sampling.<sup>91</sup> The participants were not randomly identified, but were invited because they were “information rich,” and offered useful, yet varied experiences of working within the system being studied.<sup>92</sup> Each focus group was homogenous by professional role. For example, focus groups were comprised entirely of debtors’ counsel, *or* Chapter 13 Trustees, *or* Chapter 7 Trustees, *or* bankruptcy judges, *or* U.S. Trustees; there was no integration of professionals holding different positions in a single focus group. This homogeneity within each group allowed for unrestrained conversations among participants while also facilitating later analyses that revealed differences in perspective between segmented groups.<sup>93</sup>

In each of these focus group interviews, the same series of non-directed, open-ended questions and the same series of issues were raised.<sup>94</sup> The issues raised in the focus groups informed many of the questions in the surveys.

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<sup>86</sup> American Consumer Bankruptcy College meeting, Las Vegas, Nev., Sept. 23, 2010.

<sup>87</sup> National Association of Bankruptcy Trustees Conference, Savannah, Ga., Apr. 10, 2010.

<sup>88</sup> National Association of Chapter 13 Trustees Conference, Grapevine, Tex., July 15, 2010.

<sup>89</sup> National Conference of Bankruptcy Judges, New Orleans, La., Oct. 13, 2010.

<sup>90</sup> Focus Group of U.S. Trustees, Washington, D.C., May, 3, 2011.

<sup>91</sup> Morgan, *supra* note 81, at 35.

<sup>92</sup> Marshall, *supra* note 76, at 523 (“Qualitative researchers recognize that some informants are ‘richer’ than others and that these people are more likely to provide insight and understanding for the researcher. Choosing someone at random to answer a qualitative question would be analogous to randomly asking a passer-by how to repair a broken down car, rather than asking a garage mechanic—the former might have a good stab, but asking the latter is likely to be more productive.”)

<sup>93</sup> Morgan, *supra* note 81, at 35.

<sup>94</sup> See *infra* Appendix I.

## b. Survey Instruments

One purpose of a survey is to provide statistical estimates of the characteristics of a target population.<sup>95</sup> Surveys can also be used to gather generalized and subjective information from and about a cohort of people in an effort to elicit information about an event or a program. The Study surveys were not strict probability sample surveys but were designed to gather descriptive and impressionistic data from a broad group of stakeholders so that patterns, themes, and trends would emerge. As part of the Study's qualitative data collection effort, four separate survey instruments were crafted, tailored, and administered to four different professional cohorts: (i) consumer debtors' attorneys; (ii) Standing Chapter 13 Trustees; (iii) Chapter 7 Panel Trustees; and (iv) bankruptcy judges.

The sample frame used for each surveyed cohort depended upon its respective characteristics and size. With respect to Standing Chapter 13 Trustees, Chapter 7 Panel Trustees, and bankruptcy judges, the sample frame was the finite universe of all members of each respective group. We compiled a list of individuals in each group and sent survey requests to each person.<sup>96</sup> Our response rate was 48% for Standing Chapter 13 Trustees, 23% for Chapter 7 Panel Trustees, and 29% for bankruptcy judges.<sup>97</sup>

With respect to the sample of debtors' attorneys, our objective was to survey as geographically, culturally, and economically diverse a population as possible. We ultimately decided on a multi-prong approach, accessing the cohort through multiple entry points, including the use of membership lists from professional organizations, website

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<sup>95</sup> FLOYD J. FOWLER, JR., *SURVEY RESEARCH METHODS* 11 (4th ed. 2009).

<sup>96</sup> We developed our list of Standing Chapter 13 Trustees from the Department of Justice's website. DEPARTMENT OF JUSTICE, *U.S. Trustee Program, Private Trustee Information*, [http://www.justice.gov/ust/eo/private\\_trustee/locator/13.htm](http://www.justice.gov/ust/eo/private_trustee/locator/13.htm) (last visited Nov. 14, 2011). We developed our list of Bankruptcy Judges from ABI's membership list and from individual court websites. Our list of Chapter 7 Panel Trustees was collected from the Department of Justice's website. DEPARTMENT OF JUSTICE, *U.S. Trustee Program, Private Trustee Information*, [http://www.justice.gov/ust/eo/private\\_trustee/locator/7.htm](http://www.justice.gov/ust/eo/private_trustee/locator/7.htm) (last visited Nov. 14, 2011).

<sup>97</sup> Chapter 13 Trustee Survey (data on file with Principal Investigator); Chapter 7 Trustee Survey (data on file with Principal Investigator); Bankruptcy Judges Survey (data on file with Principal Investigator).



advertising, and “chain referrals.”<sup>98</sup> In the end, we developed a pool of 1,923 potential debtors’ counsel survey respondents. The response rate was 25%.<sup>99</sup>

The survey instruments were prepared using the online survey development and administration tool, SurveyMonkey.<sup>100</sup> There was ample opportunity provided for open-ended answers or elaboration of answers to multiple-choice questions. In this way, the survey instruments tracked many of the open-ended questions, prompts, and issues raised in the focus group interviews.

### c. One-on-one In-Person, Telephone, and E-mail Exchanges

In addition to the focus group interviews and survey instrument administration, data was gathered from dozens of one-on-one in-person and telephone interviews and e-mail exchanges with bankruptcy professionals practicing and serving around the country. These interviews and correspondence exchanges offered us the opportunity to ask follow-up questions that emerged from the qualitative data, as well as to build on concepts and themes that surfaced as the Study progressed.

### d. Analysis of Qualitative Data

Initially, the raw qualitative data was in the form of focus groups and individual interview transcripts, open-ended survey response narratives, and e-mail exchanges. The analytical process involved the identification of key words, phrases, and concepts in the raw data. Once such key words, phrases, and concepts were identified, the data was coded and categorized. We used NVivo social science research software to facilitate the data analysis. NVivo enabled us to efficiently classify, sort, and arrange reams of relatively unstructured information. This in turn allowed us to target and spotlight key patterns and themes that ran through and across the data.<sup>101</sup>

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<sup>98</sup> “Chain referral sampling” is where respondent groups grow through referrals from others in the group. PATTON, *supra* note 10, at 237.

<sup>99</sup> Consumer Bankruptcy Attorney Survey (data on file with Principal Investigator).

<sup>100</sup> See *infra* Appendix I.

<sup>101</sup> See QSR INTERNATIONAL, [http://www.qsrinternational.com/products\\_nvivo.aspx](http://www.qsrinternational.com/products_nvivo.aspx), for a further description of the NVivo product.

### 3. *Study Limitations*

Every empirical study has inherent limitations, including constraints associated with time, money, personnel, tools, and techniques. This Study presents some noteworthy limitations that readers and future researchers may want to consider when interpreting and working with this Report and its databases.

With respect to the Study's quantitative data, our total sample size was calculated with the objective of drawing inferences about the population as a whole with a reasonable level of confidence. The data set, however, was divided into segments in order to answer many of the Study's fundamental questions. For example, since one of the Study's objectives was to compare the effects of variables in cases filed before BAPCPA's enactment with cases filed after, the entire sample was divided into two subsets based on the date each case was filed. Further, Chapter 7 cases were segmented into "asset" and "no-asset" cases, and for some queries, cases were divided into groups of discharged, open, converted, or dismissed cases. Moreover, descriptive queries about attorney fees were conducted at the national, as well as at the circuit, state, and district level. When the data was partitioned in this way, the size of each sub-sample of cases (*e.g.*, the sample of dismissed post-BAPCPA Chapter 13 cases in the Eastern District of Missouri) was not always sufficient to draw a reliable inference about the sub-population as a whole (*e.g.*, *all* dismissed post-BAPCPA Chapter 13 cases in the Eastern District of Missouri). Thus, if future researchers use larger sub-samples to answer narrower research questions, their results may diverge from the Study results.

What is more, the data from post-BAPCPA cases was gathered from cases filed immediately and within a few years of the date of BAPCPA's enactment. It may be the case that if the Study were replicated in a few years, after the period of adjustment has passed, both the quantitative and qualitative analysis and results would look very different. Moreover, many of the questions studied for purposes of this Report were in the context of discharged cases. Because a Chapter 13 case takes as long as five years to reach discharge, it is possible that Chapter 13 cases filed post-BAPCPA that reached discharge in years after 2009 may be

different, in any number of ways, than the cases we studied (filed from October 17, 2005 through December 31, 2009).

Missing data was also an issue with the quantitative database. As we relied on electronic data accessible via PACER, we were limited by when each district's PACER system was operational. In some jurisdictions PACER was not fully operational until BAPCPA's effective date.<sup>102</sup> In some instances, this limitation accounted for small numbers of observations in some jurisdictions.<sup>103</sup>

There are also limitations associated with respect to qualitative data collection. First, there are obvious issues with respect to self-reported surveys. Respondents may not accurately self-report, and there is no way to measure the degree of intentional deception, poor memory,

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<sup>102</sup> In those districts that did not have all records available online for 2003 and 2004, we found that generally we were able to access Chapter 13 filings for earlier years than Chapter 7 filings. For example, we were unable to access Chapter 13 cases filed in 2003 from: Alaska, Middle District of Alabama, Northern District of Alabama, Southern District of Alabama, District of Columbia, Northern District of Illinois, Southern District of Mississippi, Southern District of Ohio, Eastern District of Tennessee, and Eastern District of Wisconsin. For Chapter 13 cases filed in 2004, we were unable to access cases filed in: Eastern District of Arkansas, Western District of Arkansas, Southern District of Mississippi, Eastern District of Tennessee, and Northern District of Texas. For Chapter 7 cases filed in 2003, we were unable to access cases from: Northern District of Alabama, Arizona, Central District of California, Northern District of California, Connecticut, Northern District of Georgia, Central District of Illinois, Middle District of Louisiana, Eastern District of Michigan, Southern District of Mississippi, Eastern District of Tennessee, Middle District of Tennessee, Western District of Tennessee, Western District of Virginia, Vermont, and Eastern District of Wisconsin. Additionally, we were unable to access Chapter 7 cases from 2004 filed in: Western District of Arkansas, Eastern District of California, Southern District of Georgia, Eastern District of Michigan, Southern District of Mississippi, Eastern District of Tennessee, Eastern District of Texas, Northern District of Texas, and Vermont. Fortunately, all but a handful of districts were online in early 2005 and those remaining districts came online during 2005. All districts had all documents available online as of BAPCPA's enactment date. Despite the inability to access earlier case files in some districts, we were able to collect data from both Chapter 7 and Chapter 13 cases from every district in the Study for the pre-BAPCPA time period.

<sup>103</sup> For example, our goal was to examine a total of six Chapter 7 cases from the Western District of Virginia for 2003, 2004, and pre-BAPCPA 2005. Because of the inability to access the cases filed before mid-2004, we were only able to code two Chapter 7 cases pre-BAPCPA in that district. A similar situation arose in Vermont where we were only able to examine three Chapter 7 cases and our goal was to examine six. For Chapter 13 pre-BAPCPA, only the Southern District of Mississippi, Idaho, and Wyoming posed problems that resulted in a small number of observations. In the Southern District of Mississippi, we sought to examine five cases but were only able to examine two. In Idaho, we examined three cases and our goal was four. In Wyoming, our goal was to examine three cases but we were only able to examine two. These small numbers of observations can be attributed to a combination of the inability to access older case files and relatively few filings in those districts—which in turn sets a low goal number for a district.

or misunderstanding of questions. With respect to focus group interviews, there is always the risk that participants, in relaying experiences and perspectives, sacrifice accuracy or thoroughness for a version of an experience that offers higher entertainment value. There is also the chance that “group-think” takes over the assemblage’s discussion, thus suppressing the views of a minority of members.

These limitations however can be addressed by engaging in close textual analysis of open-ended survey responses and interview transcripts, thus allowing for patterns of information to emerge. In this way, the researcher can focus on key analytic ideas and emergent attitudes rather than merely on a transcription of the literal.

Moreover, the data gathered from our sample of survey respondents, interview subjects, and focus group participants reflects the individual professional’s perspectives and experiences. As noted, we did not endeavor to develop a random sample that would be representative of the population as a whole. While we know that we studied a diverse sample, there may be perspectives and experiences that differ in important ways that we were not able to capture. The inability to extend findings to wider populations with the same degree of certainty as quantitative analysis is always a disadvantage of qualitative research. It is the only way, however, to provide a complete, detailed description of a system in action.

## B. Descriptive Statistics

As previously described, our sample consisted of 0.12% of the population of cases filed from each of 90 districts, in proportion to the number of filings during that period. This resulted in a database of 11,221 cases. Of those cases, 3,871 were Chapter 13 cases. Of the Chapter 13 cases, 1,814 were discharged, 1,304 were dismissed, and 753 were open. Converted cases were captured in the Chapter 7 data. With respect to cases filed under Chapter 7, there were 7,350 cases; 6,603 no-asset cases, and 747 in which there were assets available for liquidation and distribution. Both the numbers of asset and no-asset cases include cases that were converted from Chapter 13.

### 1. Chapter 13 Cases

The chart below shows the distribution of cases in the sample filed under Chapter 13 by circuit.

Table 1. Distribution of Cases in the Sample Filed Under Chapter 13 by Circuit

Circuit	Pre-BAPCPA		Post-BAPCPA	
	Frequency	Percent	Frequency	Percent
1	89	6.1%	63	2.7%
2	56	3.8%	87	3.7%
3	107	7.3%	128	5.4%
4	142	9.7%	229	9.7%
5	178	12.1%	244	10.3%
6	173	11.8%	383	16.2%
7	126	8.6%	223	9.4%
8	100	6.8%	169	7.1%
9	195	13.3%	295	12.5%
10	75	5.1%	111	4.7%
11	224	15.3%	424	17.9%
D.C.	3	0.2%	8	0.3%

With respect to the pre-BAPCPA Chapter 13 cases studied, 54.9% were discharged, 42.2% were dismissed and 2.9% were open. Of the post-BAPCPA cases examined, 41.5% were discharged, 28.7% were dismissed, and 29.9% remained open. The high rate of post-BAPCPA

open cases is a consequence of the timing of the commencement of the Study; we began our data collection in early 2010, and thus there was insufficient time from BAPCPA's effective date for many of the post-BAPCPA filed cases to come to their eventual disposition.

We examined the Total Direct Access Costs ("TDAC") for Chapter 13 cases filed pre-BAPCPA, and compared them to the costs of filing comparable cases post-BAPCPA. TDAC were defined to include: (i) debtors' attorney fees and expenses, (iii) filing fees, (iv) credit counseling course fees and, (v) debtor education course fees.<sup>104</sup> As noted, BAPCPA affected filing fees, and each consumer debtor is now required to pay for two financial management and education courses.<sup>105</sup> While we added \$50 each for these courses when we calculated the TDAC in the Pilot Study, due to competition in the consumer education market, fees for these courses have declined.<sup>106</sup> As such, to calculate TDAC in this Study, \$85 was added for both mandatory courses to each debtor's case.<sup>107</sup> There was a 24% increase in TDAC for Chapter 13 cases that were dismissed.<sup>108</sup>

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<sup>104</sup> The definition of Total Direct Access Costs in the Pilot Study differs from the definition of Total Direct Access Costs in this Study. We determined that the inclusion of Trustee fees in Total Direct Access Costs was not helpful as Trustee fees were more reflective of distributions than out-of-pocket costs to debtors.

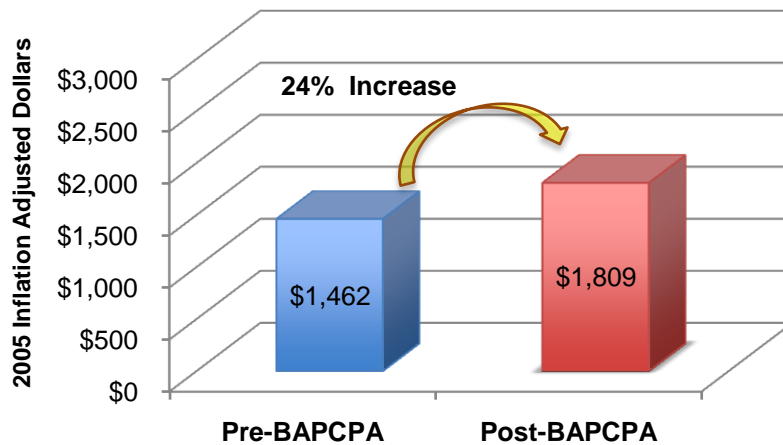
<sup>105</sup> Before 10/31/03, the fee for filing a Chapter 13 case was \$185. From 11/1/03 to BAPCPA's enactment date, the filing fee was \$194. BAPCPA temporarily lowered the fee to \$189, but the fee was raised again to \$274 on 4/9/06. The filing fees for Chapter 13 cases increased again on November 1, 2011 to \$281. 28 U.S.C. § 1930; Memorandum from the Administrative Office of the United States Courts to the Judges United States Bankruptcy Courts, Clerks, United States Bankruptcy Courts (Sept. 27, 2005) *available at* [http://vaeb.uscourts.gov/files/new\\_fees\\_20050927.pdf](http://vaeb.uscourts.gov/files/new_fees_20050927.pdf).

<sup>106</sup> Focus Group of Consumer Bankruptcy Attorneys (Feb. 11, 2011) (transcript on file with principal investigator).

<sup>107</sup> As the majority of the credit counseling and debtor education services are online or via telephone, a uniform fee could be applied nationally. *See* DEPARTMENT OF JUSTICE, APPROVED CREDIT COUNSELING AGENCIES, [http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm) (last visited Nov. 21, 2011).

<sup>108</sup> The statistical significance of our findings is set forth in Appendix II, Table A – 1.

Figure 1. Mean Total Direct Access Costs in Dismissed Chapter 13 Cases



These national numbers, however, only offer a glimpse of the narrative about how and how much debtors' counsel receive when a Chapter 13 case is dismissed prior to discharge. The dollar amount not only varies greatly by district but also by individual case.<sup>109</sup> Typically, the dollar amount is capped by the amount the lawyer has received and the amount the Trustee has on hand at the time of dismissal. As discussed below, this amount ranges from “nothing” to the entire amount the lawyer charged.<sup>110</sup> Whether or not the case is dismissed pre- or post-confirmation also impacts the fee received by the attorney.<sup>111</sup>

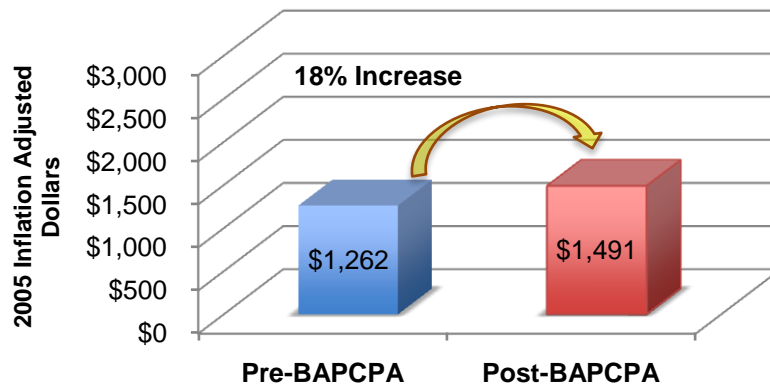
The single largest variable included in Total Direct Access Costs is attorney fees. With respect to cases that were dismissed prior to discharge, attorney fees increased 18% post-BAPCPA, from \$1,262 at the mean, to \$1,491 at the mean.

<sup>109</sup> See *infra* Appendix V.

<sup>110</sup> See *supra* notes 284-289 and accompanying text.

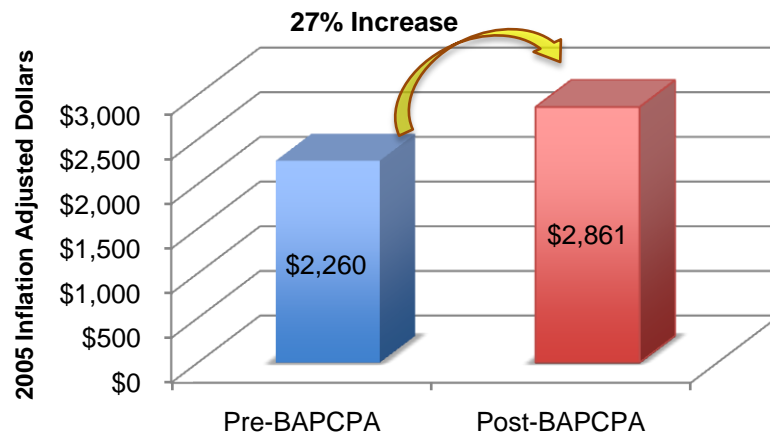
<sup>111</sup> *Id.*

Figure 2. Mean Attorney Fee in Dismissed Chapter 13 Cases



In inflation adjusted 2005 dollars, there was a 27% increase in Total Direct Access Costs in *discharged* Chapter 13 cases filed post-BAPCPA.

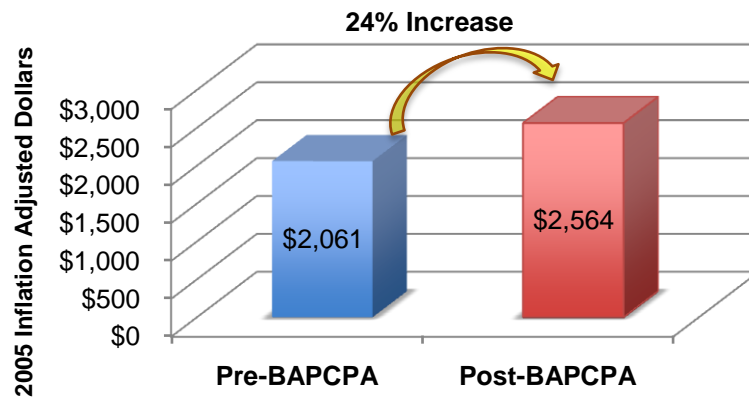
Figure 3. Mean Total Direct Access Costs in Discharged Chapter 13 Cases



Attorney fees in discharged Chapter 13 cases also increased post-BAPCPA. The national pre-BAPCPA mean of \$2,061 increased to \$2,564 post-BAPCPA—a jump of 24%.



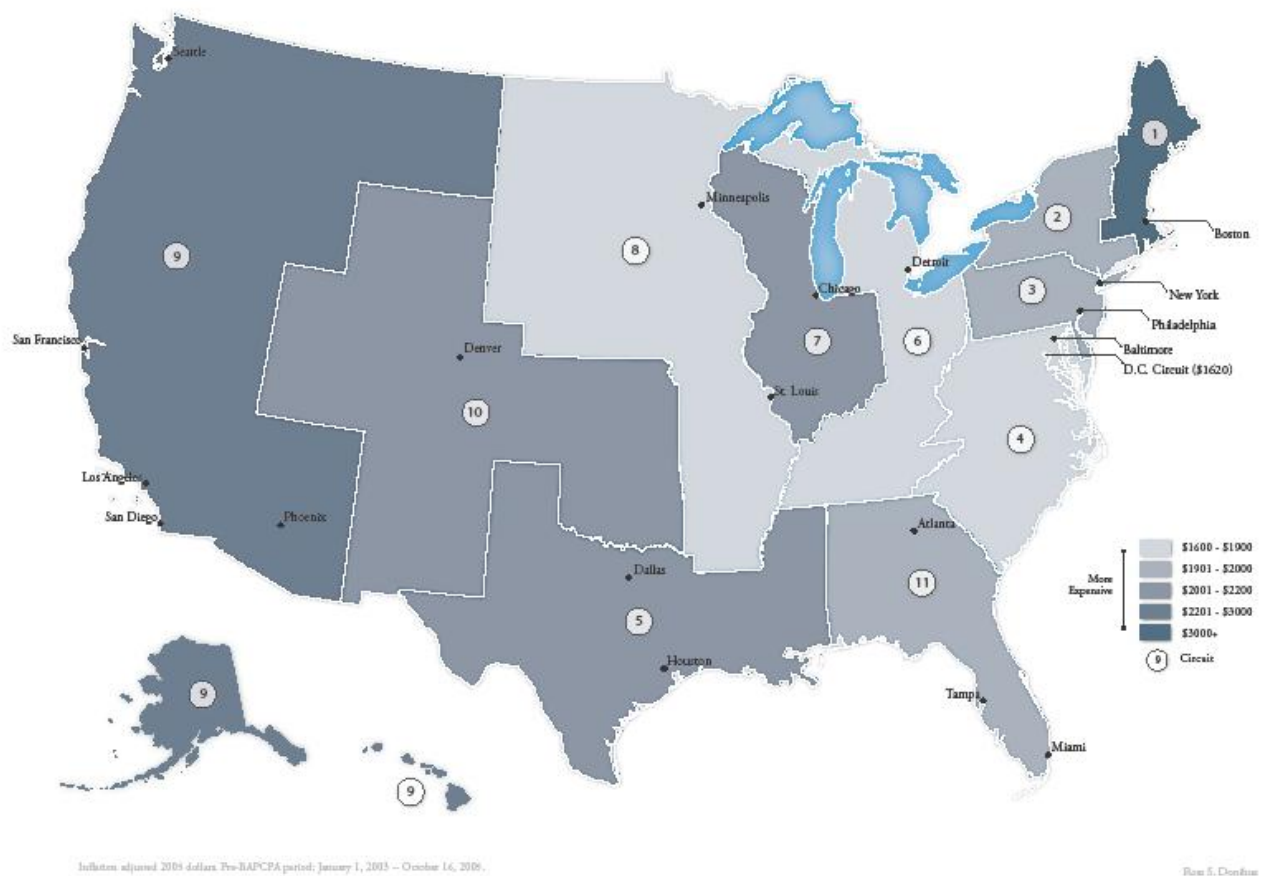
Figure 4. Mean Attorney Fee in Discharged Chapter 13 Cases



While the degree of increase at the national level is significant, it tells only part of the story. Only when fees are examined at the circuit, state, and district levels does a full picture of BAPCPA's impact of attorney fees emerge.

Map 1 reveals considerable variation in pre-BAPCPA fees received by attorneys in Chapter 13 discharged cases by geographic region. The highest fees were found in the First Circuit, followed by the Ninth Circuit.<sup>112</sup> The lowest fees during the pre-BAPCPA period were in the Mid-Atlantic and Mid-West regions (Fourth, Sixth, and Eighth Circuits). Average fees ranged from \$1,636 (Sixth Circuit) to \$3,151 (First Circuit). A comprehensive table of mean attorney fees by circuit in discharged Chapter 13 cases is found at Table A - 16 in Appendix V.

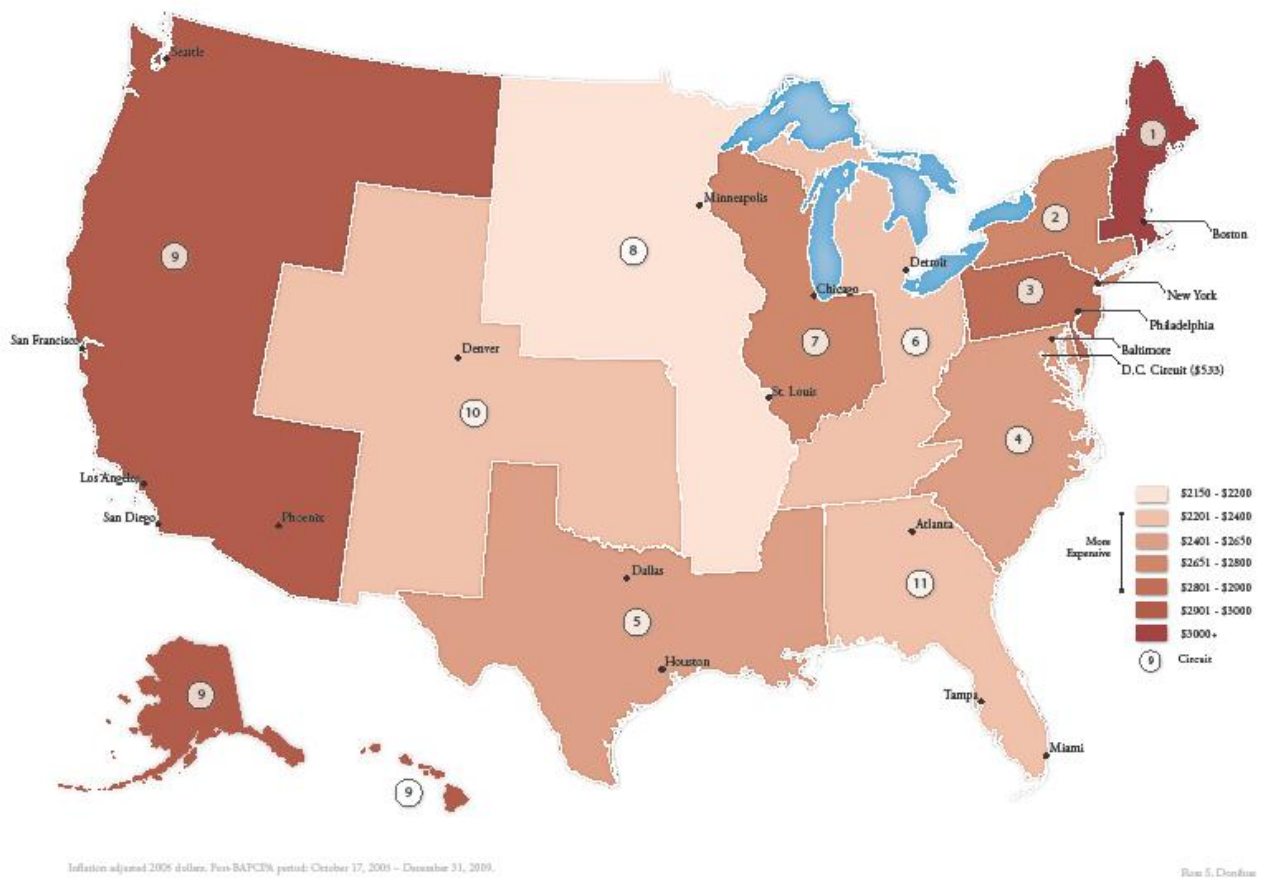
Map 1. Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by Circuit



<sup>112</sup> The D.C. Circuit fees were the lowest nationally, but the sample size of discharged non-*pro bono* Chapter 13 cases was too limited to meaningfully compare the mean to the mean fee in other circuits.

The fees charged in Chapter 13 discharged cases, post-BAPCPA, followed a similar geographic pattern. Again, the highest mean fees were in the First Circuit, followed by the Ninth. Attorneys in the Eighth Circuit received the lowest fees. Post-BAPCPA, mean fees by circuit were more compressed than they were pre-BAPCPA: they ranged from \$2,150 to \$3,349.<sup>113</sup>

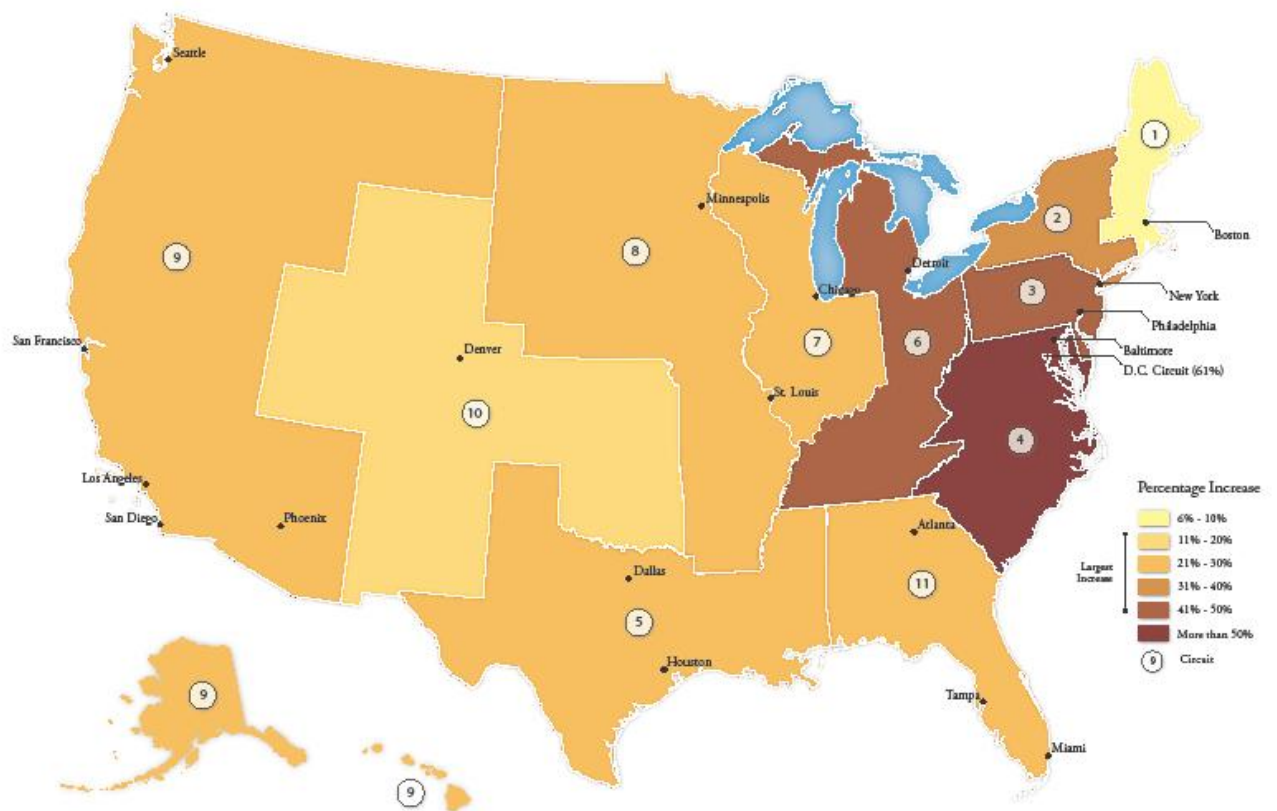
Map 2. Mean Post-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by Circuit



<sup>113</sup> See *infra* Table A - 16 in Appendix V for comprehensive table of mean attorney fees by judicial circuit.

When the difference in fees received in discharged Chapter 13 cases was calculated by circuit, the largest difference in mean was found in the Fourth Circuit (58%), followed by the Third (47%) and Sixth Circuits (45%).<sup>114</sup> The most modest increase was found in the First Circuit (6%); the circuit that had the largest pre- and post-BAPCPA fees. Table A - 16 in Appendix V sets forth the percentage increase in mean attorney fees each circuit.

**Map 3. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by Circuit**



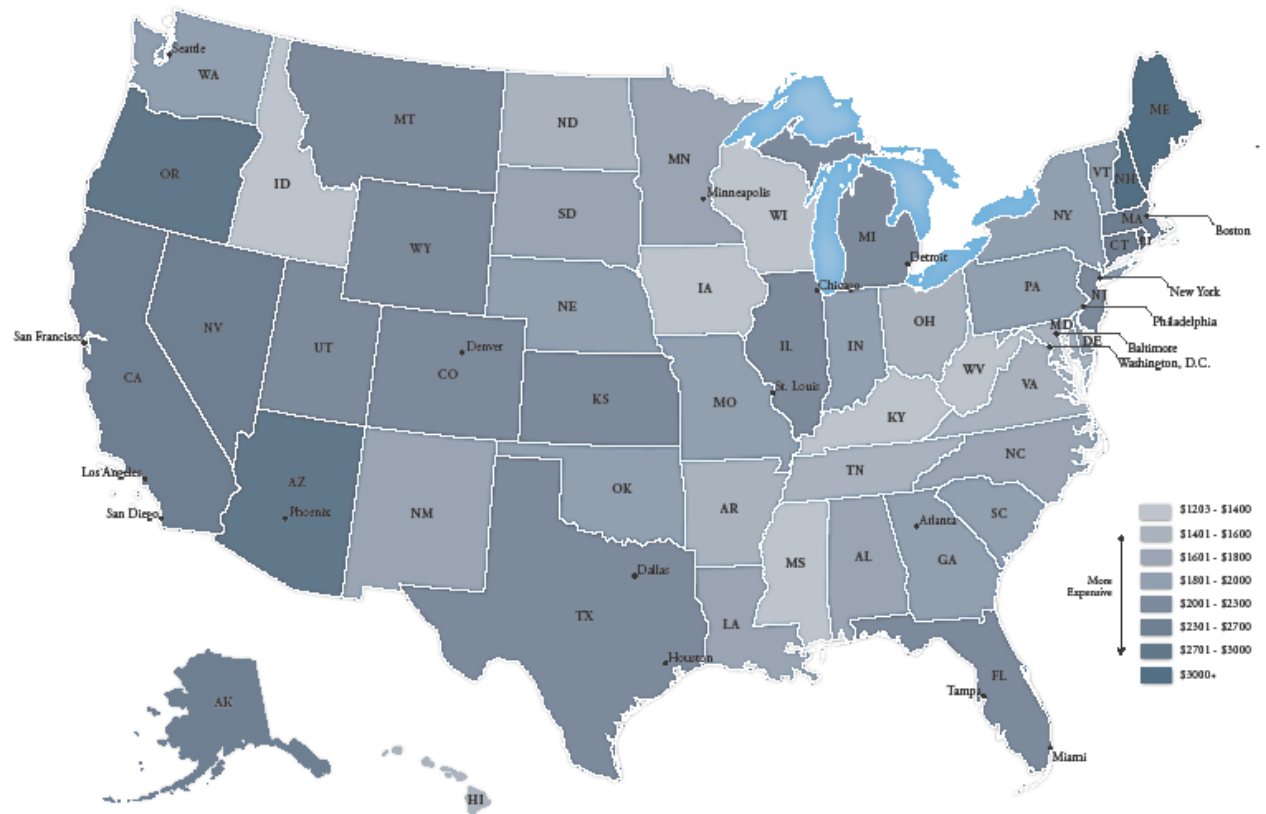
\*Inflation-adjusted 2005 dollars; discharged cases; Pre BAPCPA period: January 2003 - October 16, 2005; Post BAPCPA period: October 17, 2005 - December 2005.

Flow S. Davidson

<sup>114</sup> The D.C. Circuit's difference was 61%, but again, the sample of cases examined was too limited for the mean fee to be meaningfully compared to the mean fee in the other circuits.

The data became more interesting and arguably more meaningful when we examined it at the state level. For the pre-BAPCPA period, the highest fees were found in Maine and New Hampshire (\$3,711 and \$3,373, respectively). The lowest were found in Wisconsin, Mississippi, Iowa, and Idaho (ranging from \$1,273 to \$1,391).

Map 4. Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by State

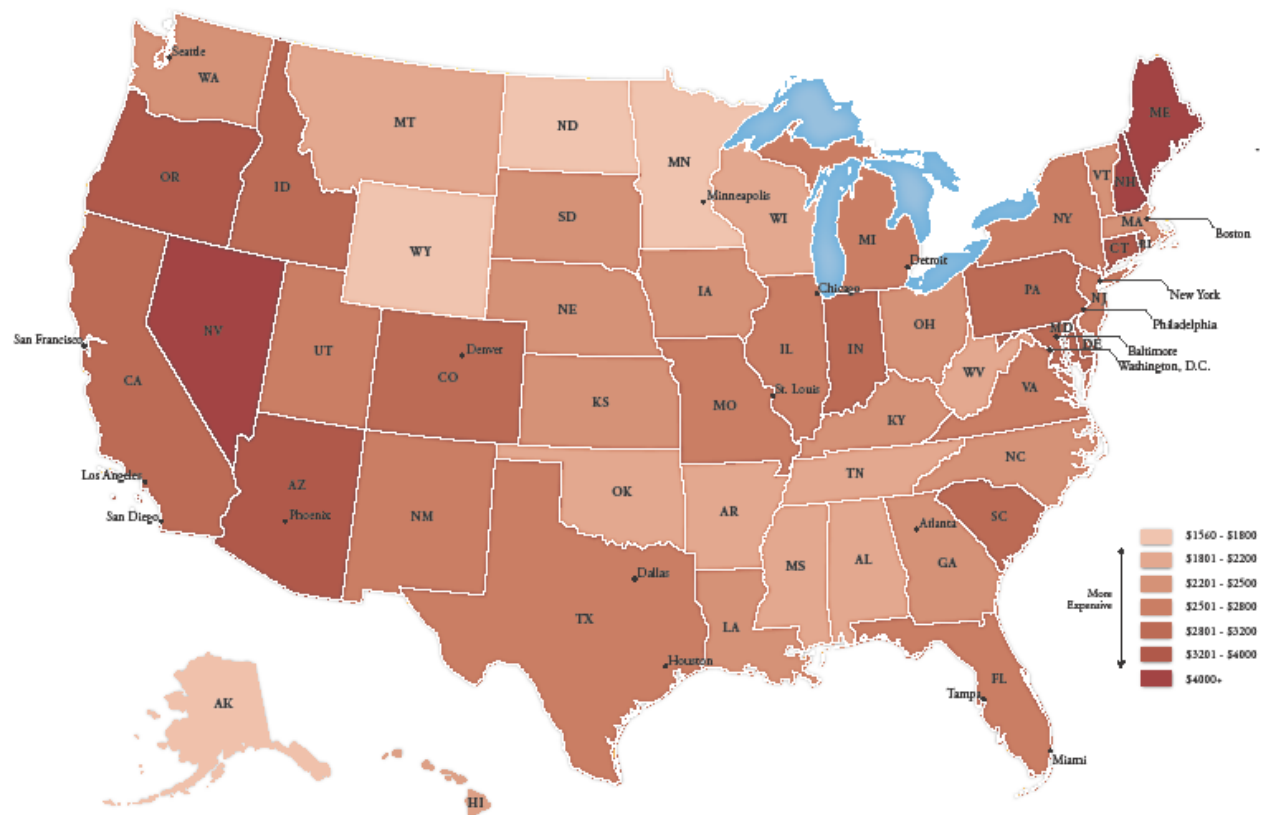


\*Inflation-adjusted 2005 dollars; discharged cases; Pre-BAPCPA period: January 2003 - October 16, 2005.

Ross S. Dentrose

Post-BAPCPA, the highest mean fees were in Maine, Nevada, and New Hampshire (\$4,950, \$4,335, and \$4,294, respectively). North Dakota had the lowest mean fee (\$1,560). By state, the majority of fee averages were between \$2,000 and \$3,000.

Map 5. Mean Post-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by State

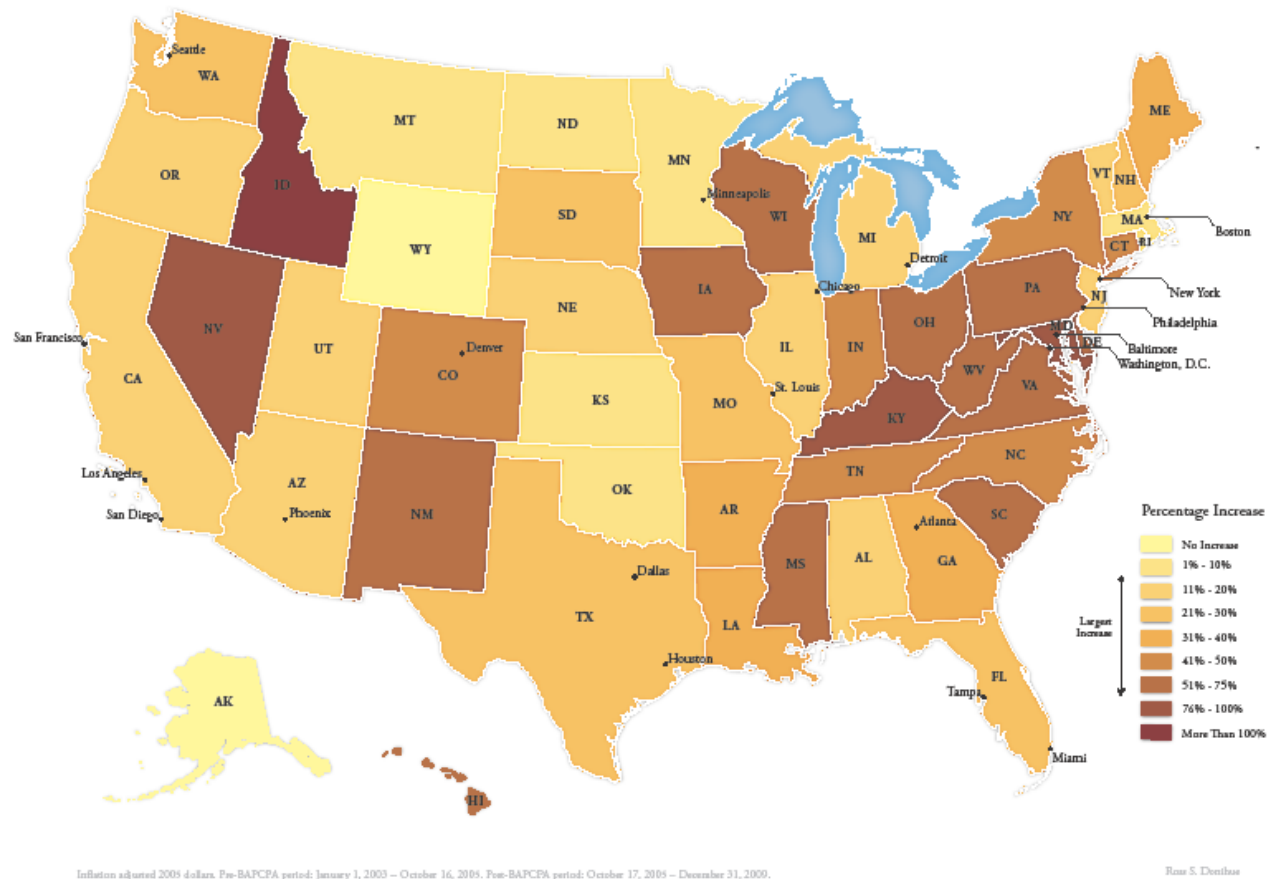


\*Inflation-adjusted 2005 dollars; discharged cases; Post-BAPCPA period: October 17, 2005 - December 31, 2009

Ross S. Dentrose

When we looked at the increase in fees as a percentage of the mean pre-BAPCPA fee by state, we found the most severe change to be in Idaho (a 115% increase), followed by Maryland (an 87% increase), Kentucky (an 87% increase), and Nevada (an 85% increase). The only jurisdictions that registered decreases in fees were Wyoming and Alaska.<sup>115</sup> Of states that saw an increase in mean fee, the most modest increases were in Massachusetts (1%), Montana (2%), Rhode Island (2%), Oklahoma (4%), North Dakota (6%), Minnesota (7%), and Kansas (10%).

**Map 6. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by State**

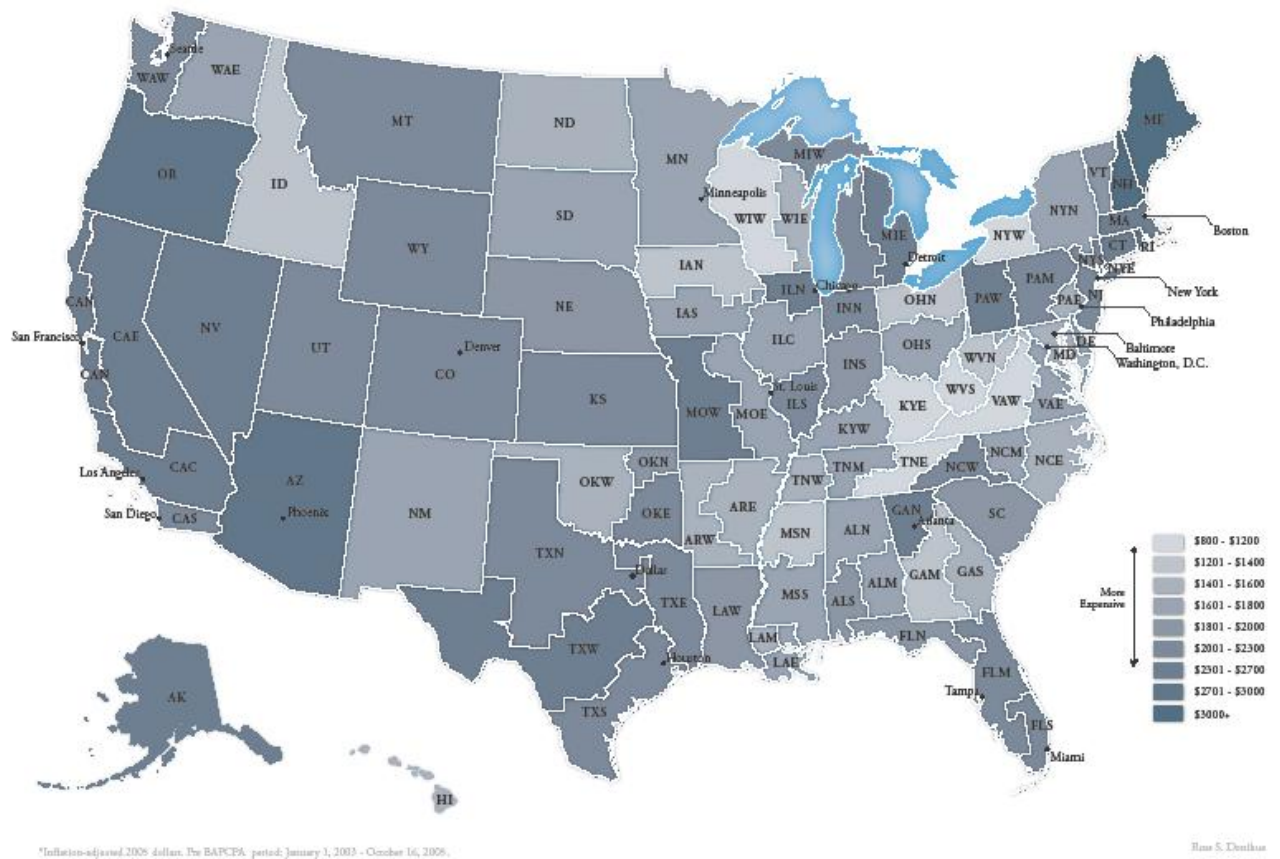


<sup>115</sup> The samples for Wyoming and Alaska were small relative to the samples studied in other jurisdictions due to a low number of Chapter 13 cases filed.



The story grows in complexity when viewed at the district level. Again, because Maine and New Hampshire are single district states, it was no surprise that for the pre-BAPCPA period they again led the field with the highest mean attorney fees. The Western District of Wisconsin had the lowest mean fees (\$859), followed by the Eastern District of Kentucky (\$945), the Southern District of West Virginia (\$1,121), the Western District of Virginia (\$1,140), the Western District of New York (\$1,168), and the Eastern District of Tennessee (\$1,179).

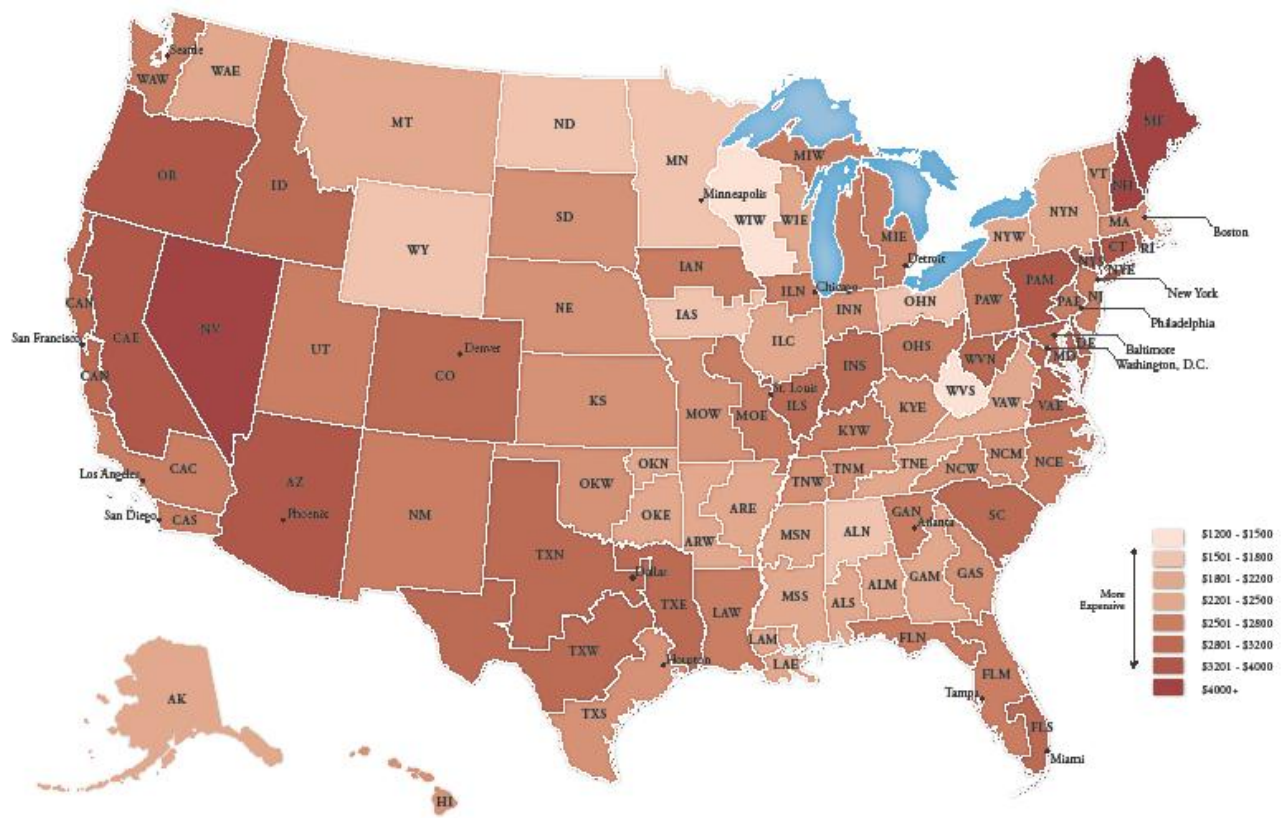
Map 7. Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by District





Post-BAPCPA, the single district states of Maine, Nevada, and New Hampshire again had the highest mean attorney fees in Chapter 13 cases. The districts with the lowest fees, post-BAPCPA, were the Southern District of West Virginia (\$1,262) and the Western District of Wisconsin (\$1,451). Appendix V, Table A - 18 sets forth in detail, each judicial district's mean fee.

**Map 8. Mean Post-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by District**

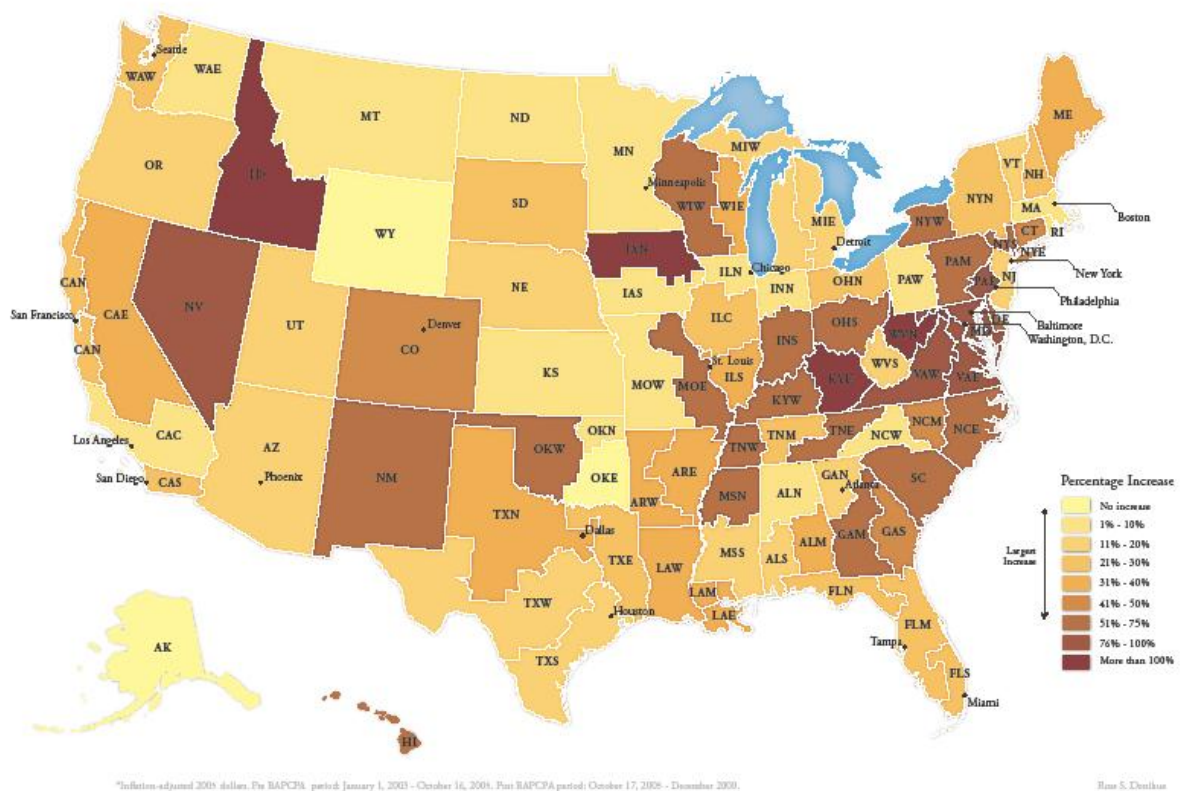


\*Inflation-adjusted 2015 dollars; discharged cases; Post-BAPCPA period: October 17, 2005 - December 2008

Russ S. Chutkan

Map 9, illustrating the percentage change between the two time periods by district, reveals the most acute differences in the Eastern District of Kentucky (153%), the Northern District of West Virginia (118%), the District of Idaho (115%), and the Northern District of Iowa (107%). The District of Alaska and the District of Wyoming's mean fees decreased.<sup>116</sup> Of those districts who saw an increase in the mean fee, the most minor increases were in the District of Massachusetts (1%), the District of Montana (2%), the Northern District of Oklahoma (2%), the District of Rhode Island (2%), the Northern District of Alabama (3%), the Southern District of Iowa (3%), the Western District of North Carolina (3%), the Central District of California (4%), and the Western District of Missouri (4%).

**Map 9. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged Chapter 13 Cases by District**



<sup>116</sup> Again, samples for Wyoming and Alaska were small relative to the samples studied in other jurisdictions due to a low number of Chapter 13 cases filed.

## 2. Chapter 7 Cases

Table 2 below shows the distribution of cases in the sample filed under Chapter 7 by circuit, broken down by asset and no-asset cases.

Table 2. Distribution of Cases in the Sample Filed Under Chapter 7 by Circuit<sup>117</sup>

Circuit	Pre-BAPCPA				Post-BAPCPA			
	Asset		No-Asset		Asset		No-Asset	
	Frequency	Percent	Frequency	Percent	Frequency	Percent	Frequency	Percent
1	7	1.7%	113	3.0%	7	2.1%	84	3.0%
2	15	3.6%	284	7.6%	22	6.6%	171	6.1%
3	15	3.6%	233	6.2%	11	3.3%	163	5.8%
4	22	5.3%	333	8.9%	26	7.8%	210	7.5%
5	31	7.5%	276	7.4%	17	5.1%	134	4.8%
6	77	18.6%	526	14.1%	54	16.2%	400	14.2%
7	54	13.0%	478	12.8%	47	14.1%	320	11.4%
8	39	9.4%	269	7.2%	18	5.4%	220	7.8%
9	58	14.0%	593	15.9%	60	18.0%	571	20.3%
10	47	11.4%	335	9.0%	39	11.7%	161	5.7%
11	49	11.8%	290	7.8%	32	9.6%	377	13.4%
D.C.	0	0.0%	7	0.2%	0	0.0%	5	0.2%

With respect to the pre-BAPCPA Chapter 7 cases studied, 9.9% were asset cases and 90.1% were no-asset cases. Of the cases filed pre-BAPCPA in the sample, 92.5% of all asset cases and 98.8% of all no-asset cases concluded in a discharge. Of the post-BAPCPA Chapter 7 cases examined, 10.6% were asset cases, and 89.4% were no-asset cases. Of these cases, 95.8% of asset cases, and 97.2% of no-asset cases ended with a discharge.<sup>118</sup>

We examined the Total Direct Access Costs (“TDAC”) for Chapter 7 cases filed pre-BAPCPA, and post-BAPCPA. TDAC were defined to include: (i) debtors’ attorney fees and expenses, (iii) filing fees, (iv) credit counseling course fees and, (v) debtor education course fees. As noted above, filing fees increased from \$209 pre-BAPCPA to \$274 post-BAPCPA, and each debtor became obligated for the cost of mandated credit counseling and debtor education courses.<sup>119</sup> In inflation adjusted 2005

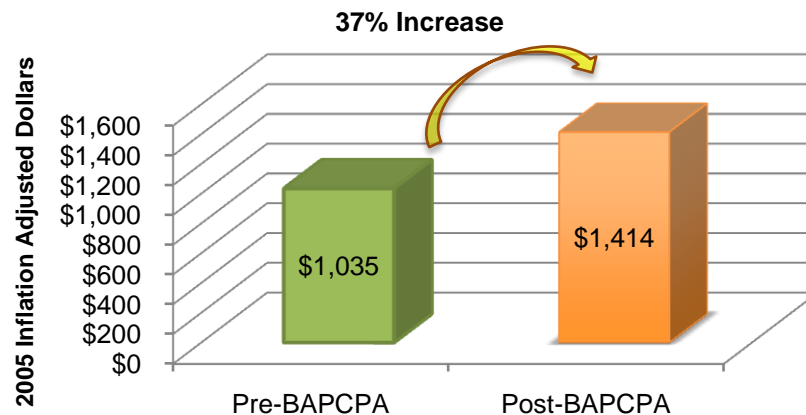
<sup>117</sup> The percentage column reflects the percentages of the total cases of that type (e.g. pre-BAPCPA asset cases) studied in each circuit.

<sup>118</sup> See *infra* Appendix III.

<sup>119</sup> Before 10/31/03, the fee for filing a Chapter 7 case was \$200. From 11/1/03 to BAPCPA’s enactment date, the filing fee was \$209. With BAPCPA’s enactment the fee was raised to \$274. The fee was raised to \$299 on 4/9/06. The filing fees for Chapter 7 cases increased again on

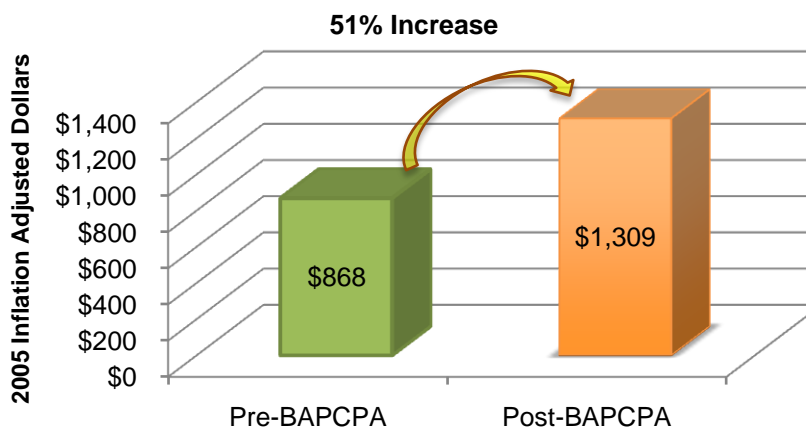
dollars, there was a 37% increase in TDAC in discharged Chapter 7 asset cases filed post-BAPCPA.

Figure 5. Mean Total Direct Access Costs in Discharged Chapter 7 Asset Cases



With respect to no-asset Chapter 7 cases, TDAC increased 51%: from \$868 pre-BAPCPA to \$1,309 post-BAPCPA.

Figure 6. Mean Total Direct Access Costs in Discharged Chapter 7 No-Asset Cases

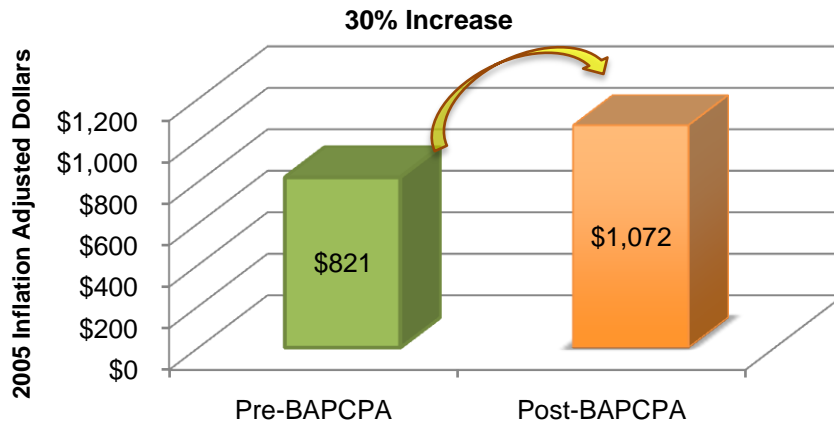


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November 1, 2011 to \$306. *See* 28 U.S.C. § 1930; Memorandum from the Administrative Office of the United States Courts to the Judges of the United States Bankruptcy Courts, Clerks of the United States Bankruptcy Courts (Sept. 27, 2005) *available at* [http://vaeb.uscourts.gov/files/new\\_fees\\_20050927.pdf](http://vaeb.uscourts.gov/files/new_fees_20050927.pdf).

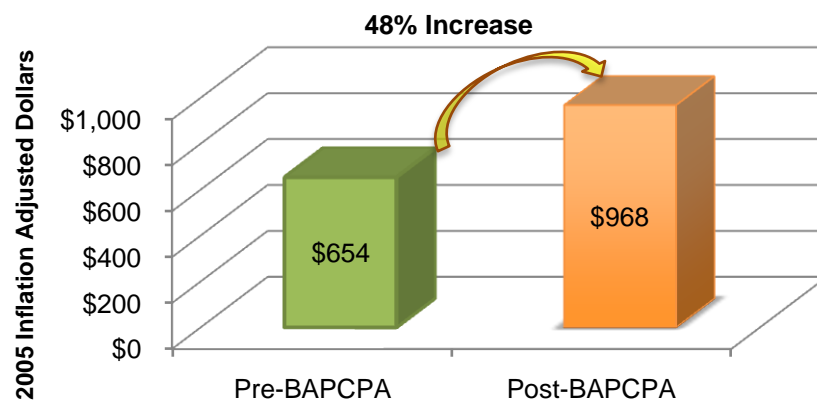
Attorney fees, in both asset and no-asset Chapter 7 cases, were the largest piece of the total cost of access. In Chapter 7 asset cases, the mean attorney fee rose from \$821 to \$1,072—a 30% increase.

Figure 7. Mean Attorney Fee in Discharged Chapter 7 Asset Cases



In no-asset cases, mean attorney fees increased 48%, from \$654 to \$968.<sup>120</sup>

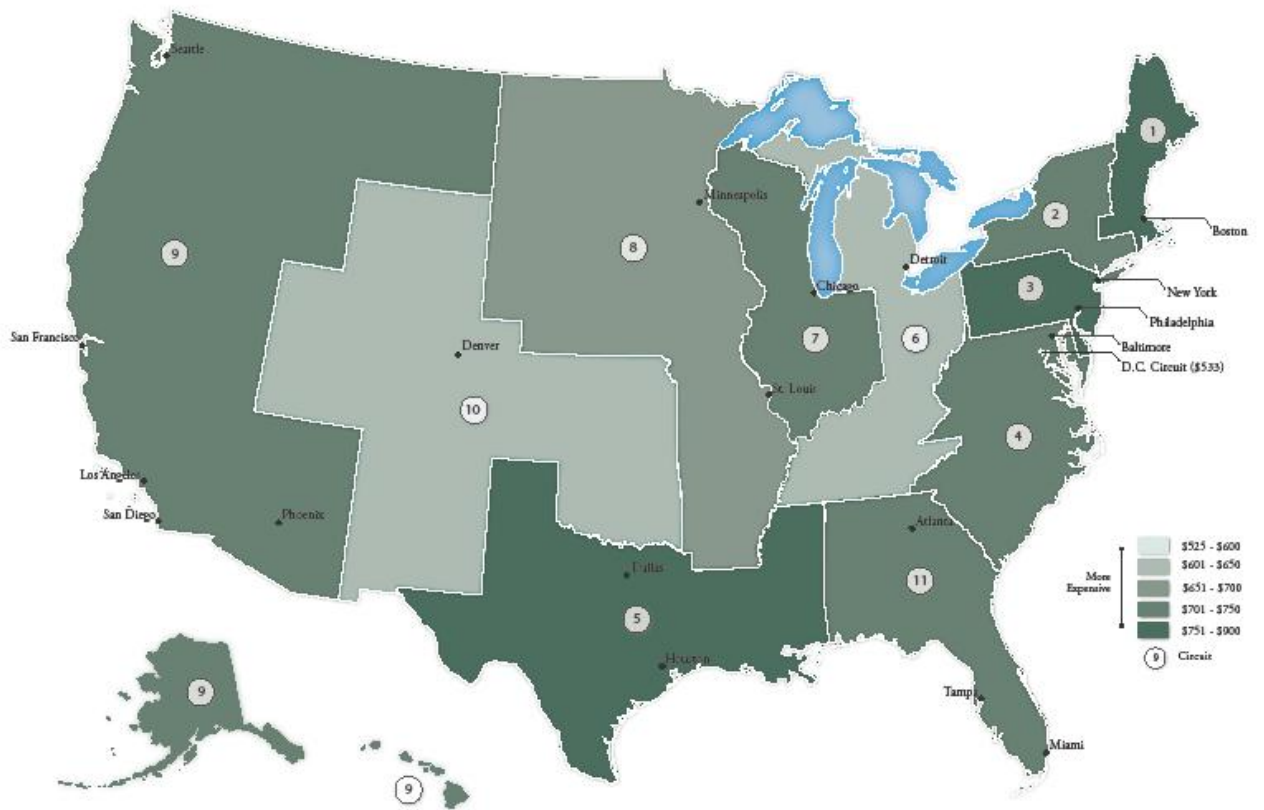
Figure 8. Mean Attorney Fee in Discharged Chapter 7 No-Asset Cases



<sup>120</sup> With respect to no-asset Chapter 7 cases, in some districts, attorneys agreed with their clients to take a portion of their fee upfront, and receive the balance post-petition. In those infrequent instances, we only recorded the pre-petition fee actually received by the debtor as there was no way to verify if the balance of the fee was actually paid post-petition.

As is the case with the Chapter 13 attorney fee data, these nationally aggregated mean numbers only tell part of the story. The attorney fees received in Chapter 7 no-asset cases significantly varied when examined at the circuit, state and district levels. With respect to pre-BAPCPA circuit level data, the highest fees in no-asset cases are found in the First, Third, and Fifth Circuits.

**Map 10. Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by Circuit**



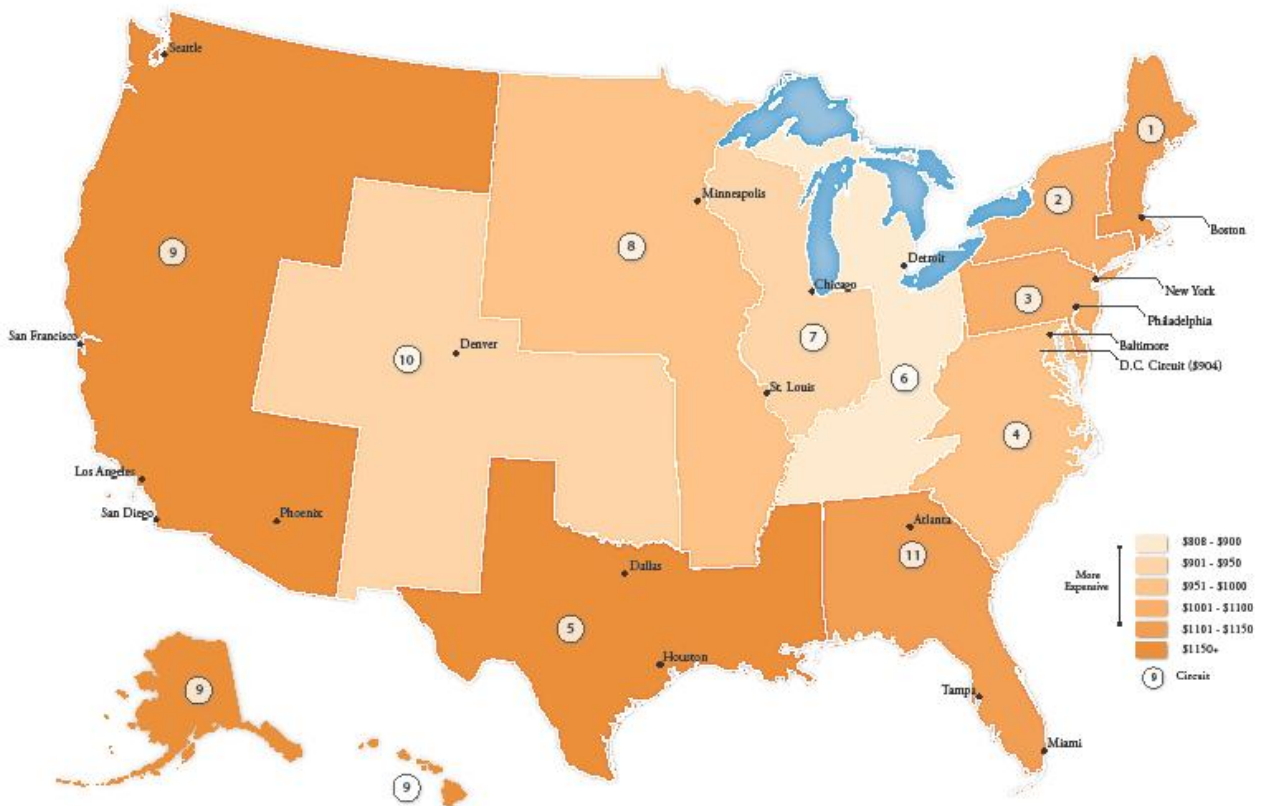
Inflation adjusted 2006 dollars. Pre-BAPCPA period: January 1, 2003 – October 16, 2005. Includes cases converted from Chapter 13.

Flow S. Davidson



Post-BAPCPA, the highest fees are again found in the Fifth and Ninth Circuits. At the mean, the fees received in Chapter 7 no-asset cases in these circuits exceeded \$1,150. The fees in the Sixth Circuit were the lowest—\$808 at the mean.

**Map 11. Mean Post-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by Circuit**

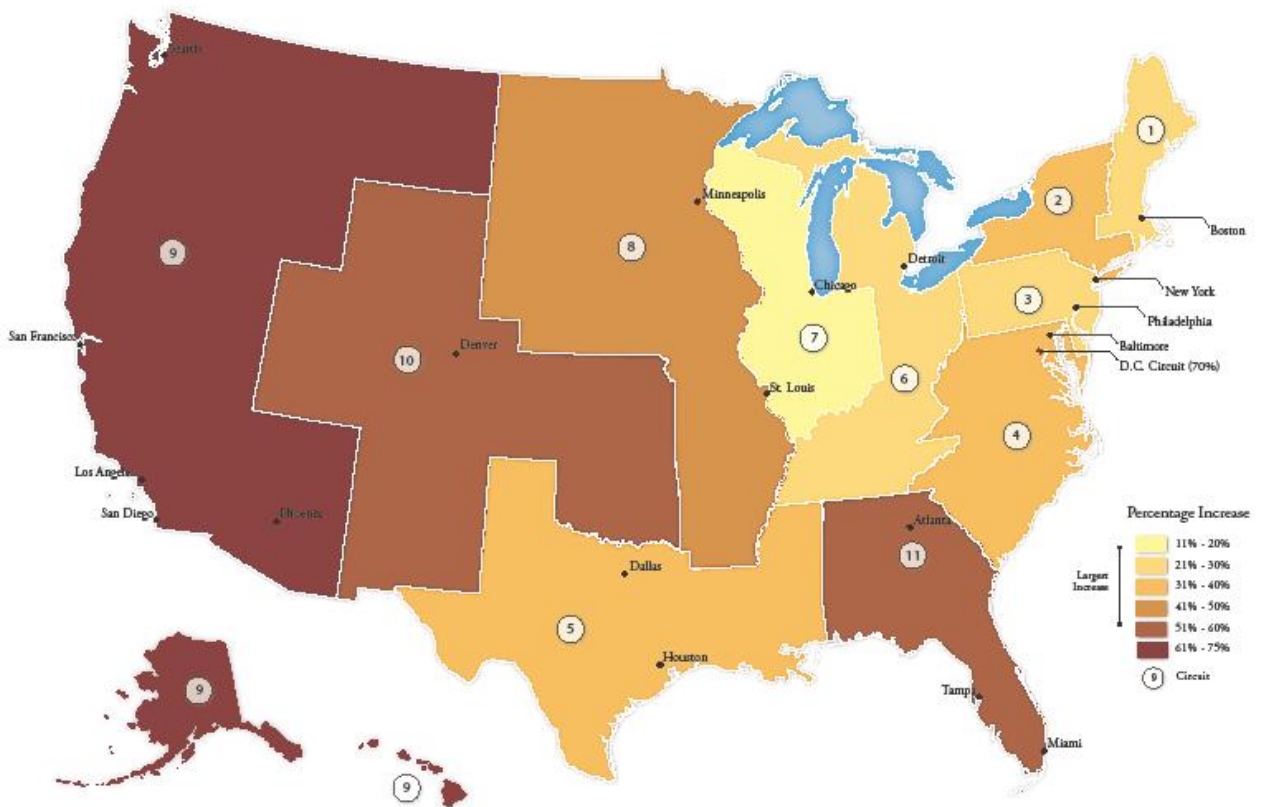


Inflation adjusted 2005 dollars. Post-BAPCPA period: October 17, 2005 – December 31, 2010. Includes cases converted from Chapter 13.

From S. Deanston

When we compared the Chapter 7 no-asset case mean fee received pre-BAPCPA to the mean fee in comparable cases received post-BAPCPA, the largest divergence was found in the Ninth Circuit—a difference of almost 70%. The smallest difference was in the Seventh Circuit, but the increase was still significant at 27%.<sup>121</sup> A comprehensive table of mean attorney fees pre- and post-BAPCPA and percentage difference by judicial circuit is found in Appendix V.

**Map 12. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by Circuit**



\*Inflation-adjusted 2005 dollars. Pre BAPCPA period: January 1, 2003 - October 16, 2005. Post BAPCPA period: October 17, 2005 - December 2009. Includes cases converted from Chapter 13.

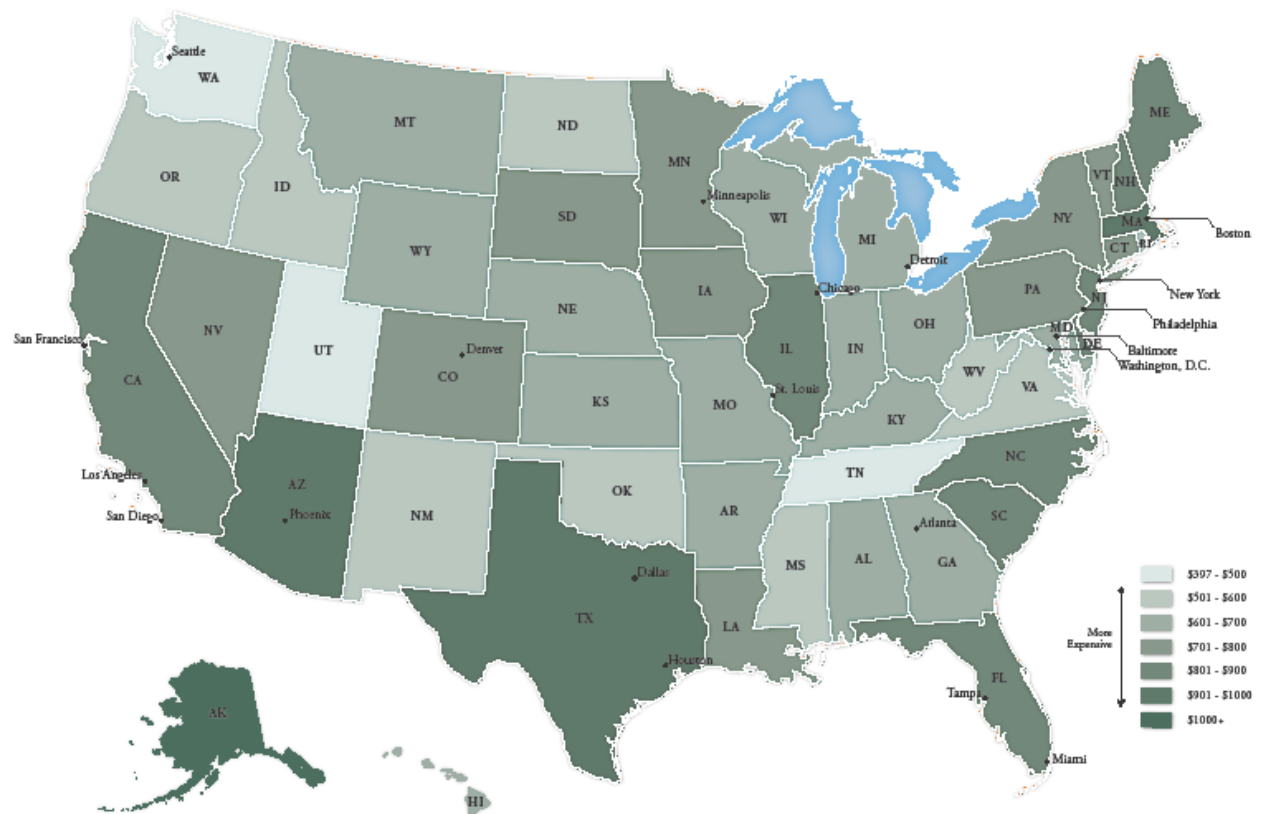
From S. Dandrea

<sup>121</sup> The D.C. Circuit difference was 70% but the sample size was too limited to allow reasonable inferences to be drawn.



At the state level, the distinctions in cost are even more severe. The highest mean Chapter 7 fees pre-BAPCPA were in Alaska, Texas, Massachusetts, and Arizona.<sup>122</sup> The lowest mean pre-BAPCPA fees were found in Utah (\$396), Tennessee (\$473), and Washington (\$484).

**Map 13. Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by State**



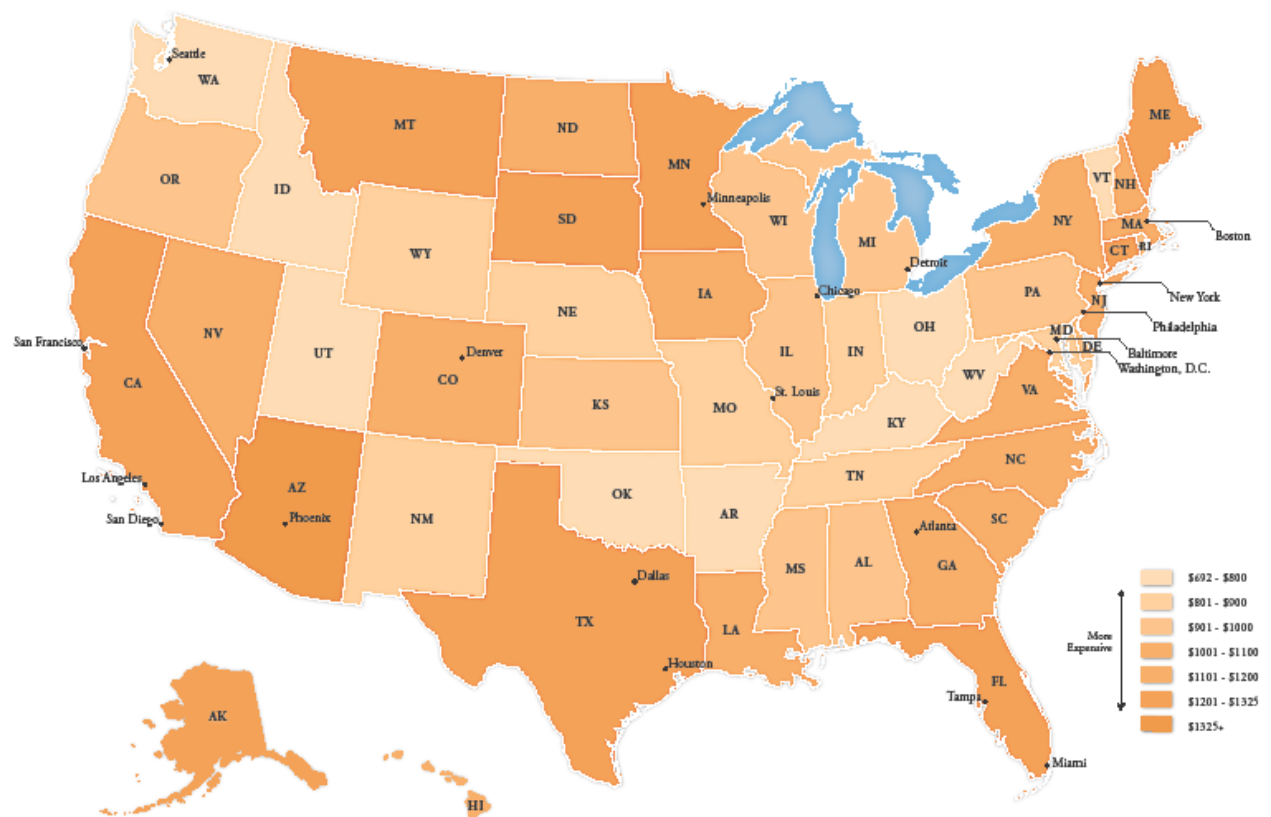
Inflation adjusted 2005 dollars. Pre-BAPCPA period: October 17, 2004 – December 31, 2009. Includes cases converted from Chapter 13.

Ross S. Dentrose

<sup>122</sup> The pre-BAPCPA sample from Alaska consisted of five Chapter 7 Cases. The sample size is too limited to meaningfully compare it to the fee means in other states.

The highest average post-BAPCPA fees by state were found in Arizona (\$1,530), Texas (\$1,314), Alaska (\$1,298), Montana (\$1,282), Minnesota (\$1,268), South Dakota (\$1,238), and Florida (\$1,223). The states with the lowest average fees were Idaho (\$692), Arkansas (\$698), Kentucky (\$749), Washington (\$702), Utah (\$714), and Vermont (\$781).

**Map 14. Mean Post-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by State**

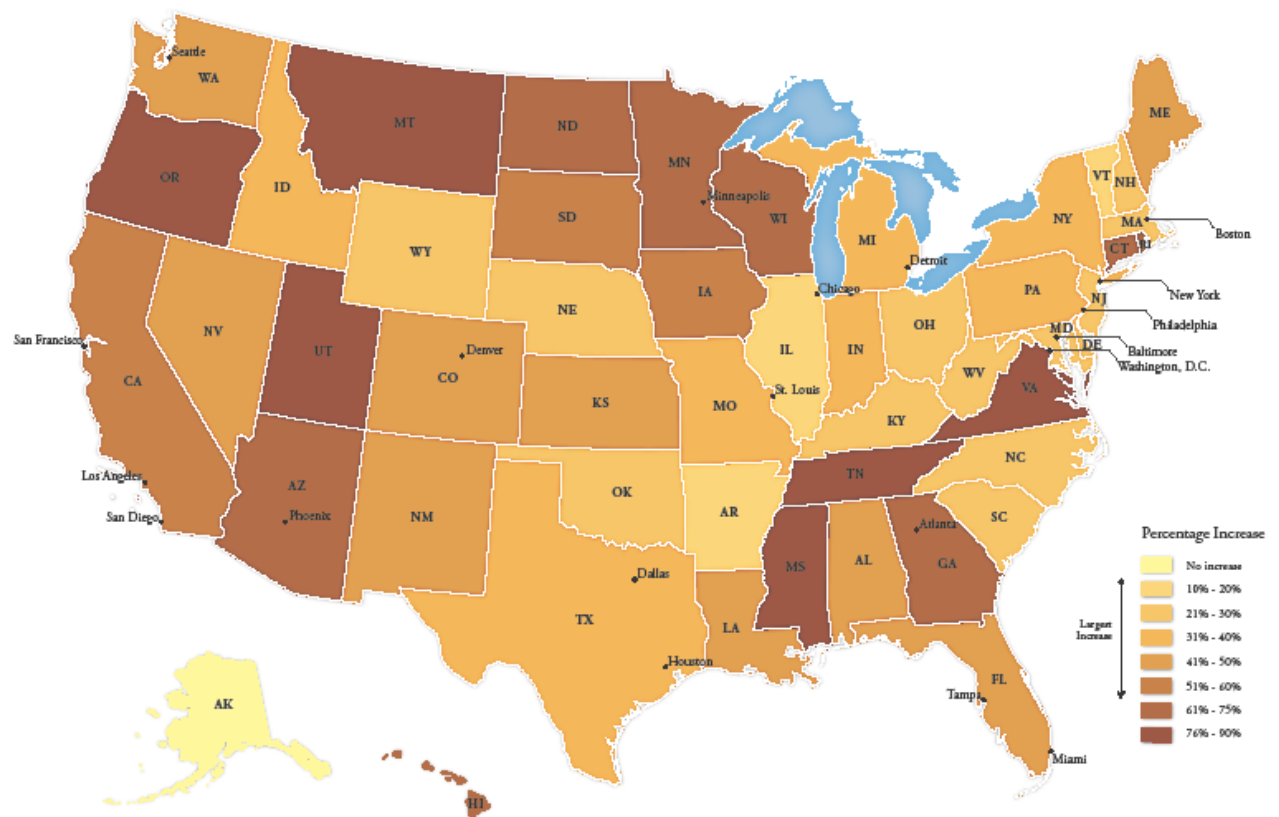


Inflation adjusted 2005 dollars. Post-BAPCPA period: October 17, 2005 – December 31, 2009. Includes cases converted from Chapter 13.

Ross S. Dentrose

The largest post-BAPCPA percentage increases in mean attorney fees in Chapter 7 no-asset cases were found in Montana (90%), Virginia (87%), Oregon (85%), Mississippi (82%), Tennessee (81%), and Utah (80%). The states with the smallest percentage increase were Vermont (10%), Arkansas (11%), and Illinois (16%).

**Map 15. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by State**

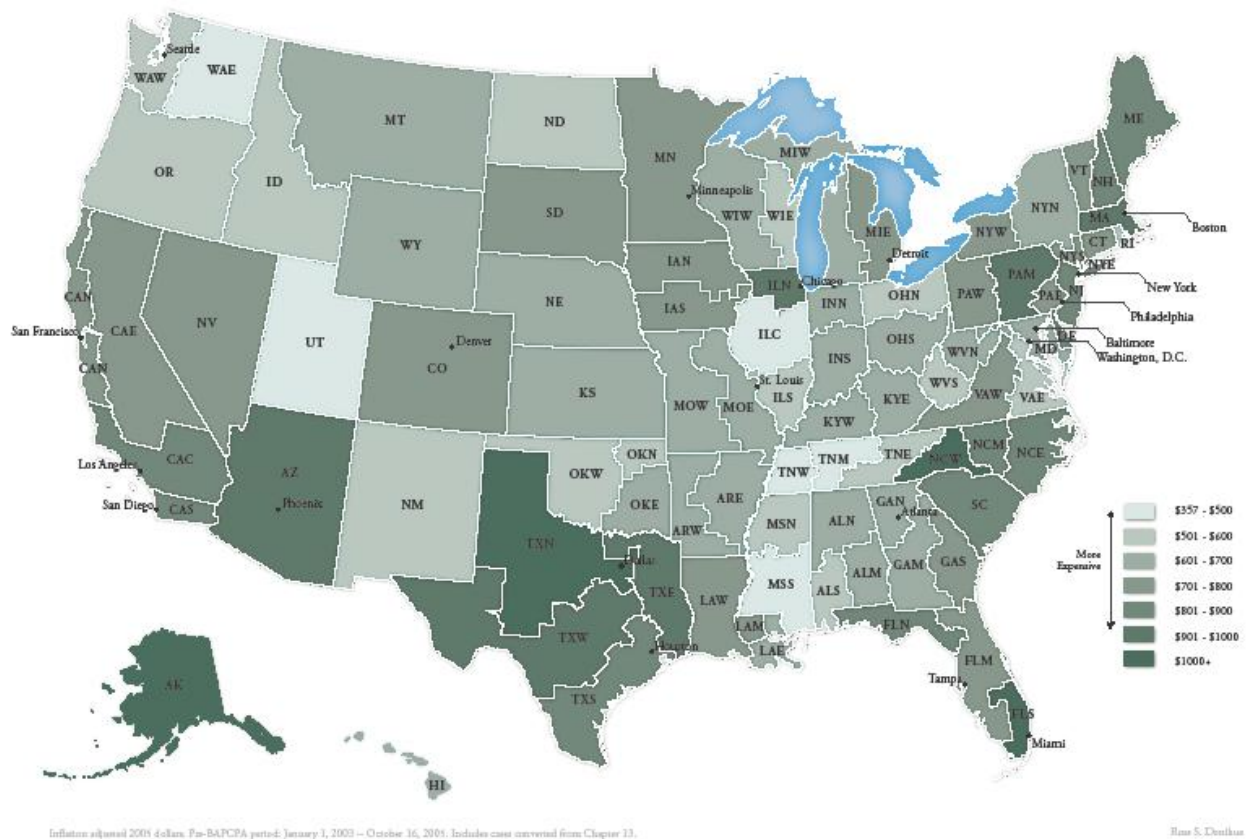


\*Inflation-adjusted 2005 dollars. Pre BAPCPA period: January 1, 2003 - October 16, 2005. Post BAPCPA period: October 17, 2005 - December 31, 2009. Includes case converted from Chapter 13.

Ross S. Dentrose

At the district level, the variation in mean fees is most dramatic. The highest mean pre-BAPCPA fees in Chapter 7 no-asset cases were in the District of Alaska (\$1,470),<sup>123</sup> the Northern District Texas (\$1,018), the Western District of North Carolina (\$1,008), the Northern District of Illinois, (\$946), and the District of Massachusetts (\$956).<sup>124</sup> The mean fees in the Middle District of Tennessee (\$356), the District of Utah (\$396), the Eastern District of Washington (\$400), the Central District of Illinois (\$410), the Southern District of Mississippi (\$443), and the Western District of Tennessee (\$468), were the lowest.

**Map 16. Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by District**

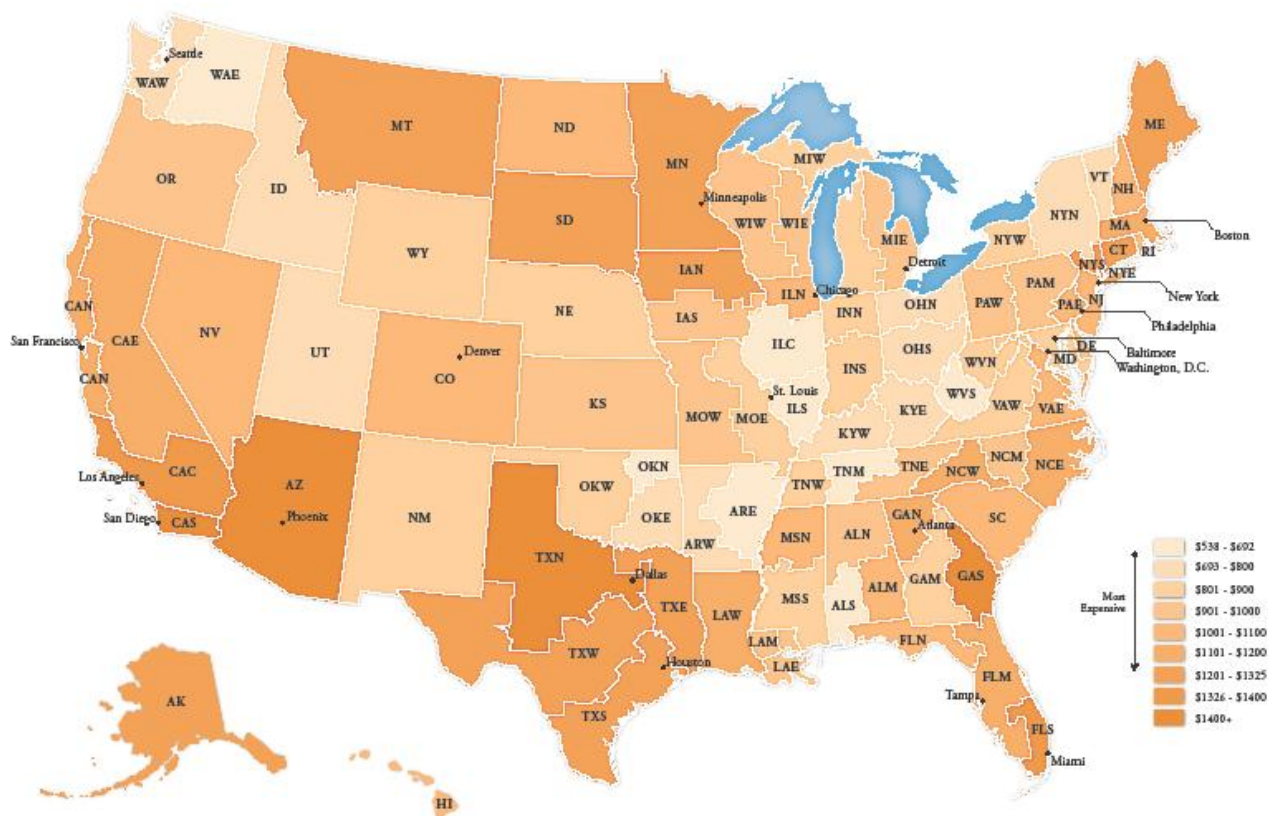


<sup>123</sup> Again, the pre-BAPCPA sample from Alaska consisted of five Chapter 7 Cases. The sample size is too limited to meaningfully compare it to the fee means in other states.

<sup>124</sup> Because the Southern District of Florida went online with PACER on October 16, 2005, we were only able to capture data for pre-BAPCPA cases filed that day. Based on that limited data, the mean pre-BAPCPA attorney fee for Southern District of Florida was \$1,920.

Post-BAPCPA, the Southern District of Georgia (\$1,581), the District of Arizona (\$1,530), the Southern District of California (\$1,514), and the Northern District of Texas (\$1,419) had the highest mean fees in Chapter 7 cases. The smallest mean fees were found in the Eastern District of Washington (\$538), the Northern District of Oklahoma (\$607), the Southern District of Alabama (\$678), the Middle District of Tennessee (\$680), and the Southern District of West Virginia (\$688).

**Map 17. Mean Post-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by District**



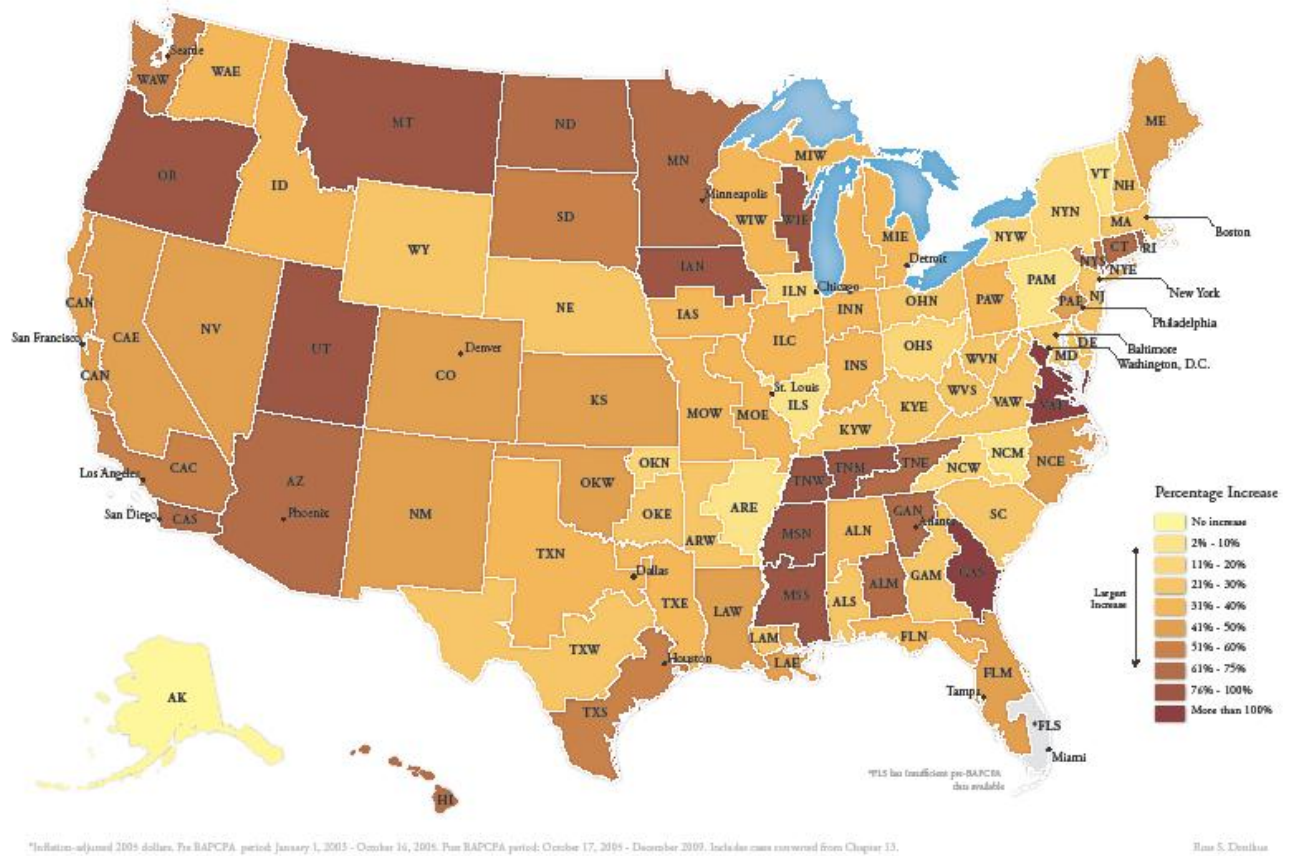
Inflation adjusted 2005 dollars. Post-BAPCPA period: October 17, 2008 - December 31, 2009. Includes cases converted from Chapter 13.

Ken S. Demko



Finally, the “percentage increase” district map reveals that the Southern District of Georgia (122%) and the Eastern District of Virginia (101%) had post-BAPCPA percentage increases in mean attorney fee exceeding 100%. The lowest percentage increases were found in the Eastern District of Arkansas (2%), the Middle District of Pennsylvania (3%), and the Middle District of North Carolina (7%).<sup>125</sup>

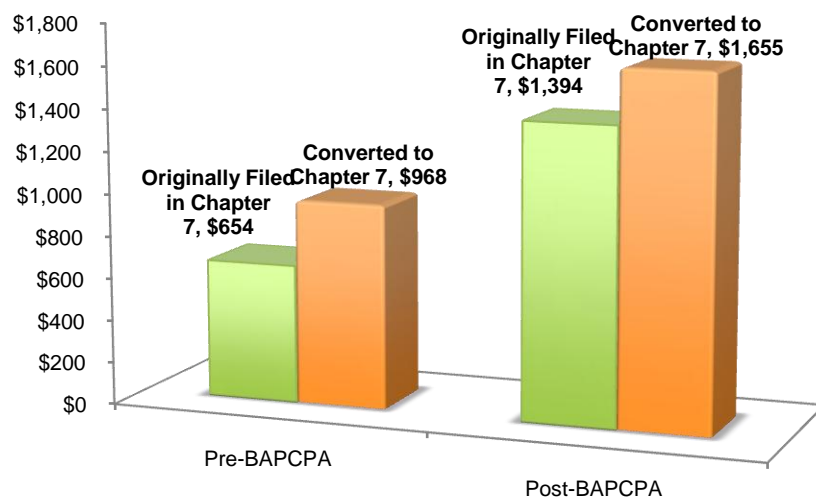
**Map 18. Percentage Post-BAPCPA Increase in Mean Pre-BAPCPA Attorney Fee in Discharged No-Asset Chapter 7 Cases by District**



<sup>125</sup> See *infra* Appendix V, Tables A - 21, A - 22, A - 23 for complete Chapter 7 no-asset attorney fees.

We further found that fees in no-asset Chapter 7 cases that were converted from Chapter 13 are considerably higher than in those cases that are originally filed as Chapter 7s. For example, pre-BAPCPA the inflation adjusted mean attorney fee was \$1,394 (compared to \$653 for a comparable discharged case that was originally filed as a Chapter 7 case). Post-BAPCPA, the mean fee for a discharged case that had been converted from Chapter 13 was \$1,655 (compared to \$968 for a case originally filed under Chapter 7).<sup>126</sup>

**Figure 9. Mean Attorney Fee in No-Asset Discharged Chapter 7 Converted Cases Compared to No-Asset Discharged Chapter 7 Cases**



### 3. *Fee Trends Across Practice Areas*

The Study's quantitative data detail the mean dollar amounts received by lawyers in individual consumer bankruptcy cases. The data do not tell us, however, how much each attorney earns across cases, nor account for differences in experience, firm size, or other variables.

Additionally, the data do not tell us the relative degree increases in recent years compared to lawyers in other practice areas. Moreover, as noted, in contrast to many other legal specialists, consumer bankruptcy lawyers typically charge a “flat fee” per case, rather than an hourly rate.

<sup>126</sup> See *infra* Appendix III, Table A – 10.

This difference in billing practice makes it difficult to place fee trends in the consumer bankruptcy market within the greater context of attorney billing trends generally. A few observations, however, can be made.

ALM Legal Intelligence conducts an annual Survey of Law Firm Economics (“SLFE”). The 2009 Survey focused on the billing practice of attorneys in private sector law practice across the country, including a trend comparison of average billing rates in law firms for “senior partners” and fifth year associates.<sup>127</sup> According to the SLFE, from 2003 to 2009, hourly billing rates for senior partners increased 26%.<sup>128</sup> For fifth year associates, the percentage increase was 15%.<sup>129</sup> While it appears that attorney fees have generally increased during the Study’s time frame, our models demonstrate that a specific degree of increase is a direct function of “BAPCPA effects.” A discussion of the regression modeling and findings is found in Part IV.D.

#### 4. *Pro se Cases in Chapter 13 and in Chapter 7*

The increase in costs of bankruptcy access lead us to question whether debtors were less likely to engage an attorney and more likely to file their case *pro se*, or whether the system had become too complicated for debtors to even try to represent themselves.<sup>130</sup>

The data reveal that the number Chapter 13 cases (discharged, dismissed, open) filed *pro se* was quite low both pre-BAPCPA (3%) and post-BAPCPA (2%). The rates are even lower when the *pro se* cases that

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<sup>127</sup> ALM LEGAL INTELLIGENCE, THE SURVEY OF LAW FIRM ECONOMICS 2009 EDITION (July 2009).

<sup>128</sup> *Id.* at 5, 82. The statistics presented in this report represent “broad performance benchmarks against which an individual firm can be measured.” *Id.* at 5. Senior partners are defined as 25th to 29th year partner/shareholders. *Id.* at 82. It is not clear whether the SLFE data uses inflation-adjusted dollars.

<sup>129</sup> *Id.* at 82.

<sup>130</sup> One scholar predicted that the number of *pro se* debtors filing for bankruptcy protection would decline following BAPCPA’s enactment. A. Mechele Dickerson, *Race Matters in Bankruptcy Reform*, 71 Mo. L. REV. 919, 951 n.181 (2006) (“There were very few *pro se* filers pre-BAPCPA and that number will likely decrease since bankruptcy petitions and schedules are even longer and more detailed than they were under the pre-reform law, and the means testing formula is almost undecipherable.”). Professor Rafael Pardo in his single district 2008 study had similar findings. Pardo, *supra* note 15, at 17 n.60. The difference in methodology and sample used make it difficult to compare and reconcile results across samples.



resulted in a discharge are isolated: 1.5% of all Chapter 13 cases filed pre-BAPCPA and 0.8% of all Chapter 13 cases filed post-BAPCPA that ended the debtor receiving a discharge were filed *pro se* and received discharge. The number of dismissed Chapter 13 cases that were originally filed *pro se* was higher: 5% pre-BAPCPA and 5.9% post-BAPCPA.<sup>131</sup>

Further, we found that during the pre-BAPCPA period 40% of Chapter 13 *pro se* cases were filed with the aid of a petition preparer. Post-BAPCPA, 100% of *pro se* cases were filed under Chapter 13 with a petition preparer's assistance. Not one of the post-BAPCPA cases filed with the assistance of a petition preparer ended in the debtor receiving a discharge.<sup>132</sup> Average petition preparer fees for Chapter 13 petitions were \$204 pre-BAPCPA and \$164 post-BAPCPA (in inflation adjusted 2005 dollars).<sup>133</sup>

Figure 10. Pre-BAPCPA Chapter 13 Discharged Cases Filed *Pro Se*: 1.5%

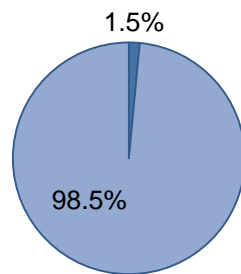
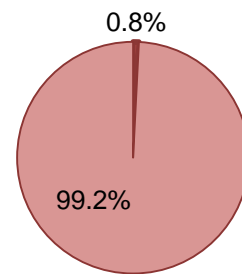


Figure 11. Post-BAPCPA Chapter 13 Discharged Cases Filed *Pro Se*: 0.8%



We found a *decrease* in the rate of *pro se* filings post-BAPCPA, compared to pre-BAPCPA in Chapter 7 cases. With respect to all Chapter 7 cases (asset and no-asset), 7.4% of cases were filed *pro se* pre-BAPCPA, compared to 5.8% post-BAPCPA.<sup>134</sup> The rate is slightly higher

<sup>131</sup> See *infra* Appendix II, Tables A – 2, A – 3.

<sup>132</sup> The sample analyzed in this instance was too small to allow any meaningful inferences to be drawn.

<sup>133</sup> The sample analyzed was too small to allow any meaningful inferences to be drawn.

<sup>134</sup> The CBP data reveals a 2007 Chapter 7 *pro se* rate, for the five districts surveyed to be 5.3%. Using the CBP 2001 data set, 2% of debtors 2001 were unrepresented. The CBP used a five district sample (2001) and 2007 (subsample). The difference in study methodologies and sample selection could well account for different results. Littwin, *supra* note 39 at 1960. See also GAO REPORT, *supra* note 15, at 57-58 (finding that 5.9% of post-BAPCPA cases were filed *pro se*, compared with 11% pre-BAPCPA).

when just no-asset cases are considered: 7.6% pre-BAPCPA compared to 6.1% post-BAPCPA. We further found that 23.4% of all dismissed pre-BAPCPA Chapter 7 no-asset cases and 28.2% of dismissed post-BAPCPA Chapter 7 no-asset cases were filed *pro se*.<sup>135</sup>

The vast majority of Chapter 7 debtors filing *pro se* had the assistance of a petition preparer: 100% of all *pro se* asset cases and 97.4% of all *pro se* no-asset cases filed pre-BAPCPA; and 75% of all asset cases, and 97.8% of all no-asset cases filed post-BAPCPA. Petition preparer fees declined post-BAPCPA, from a mean of \$191 for a no-asset Chapter 7 case to a mean of \$181. The frequency of use of petition preparers varies by jurisdiction; in some regions, they are far more common than others. The issue of the frequency of petition preparer use and cost by geographic region calls for further study.<sup>136</sup>

## 5. *Pro Bono Representation in Chapter 13 and in Chapter 7*

We also examined the frequency of *pro bono* representation in our sample. With respect to Chapter 13 cases, we found a slight drop in the incidence of *pro bono* representation post-BAPCPA, from 6.8% to 4.9% of all closed cases.<sup>137</sup>

**Table 3. *Pro Bono* Representation in Chapter 13 Cases**

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance <sup>138</sup>
All closed cases	6.8%	4.9%	**
Discharged cases	2.8%	1.4%	**
Dismissed cases	12.0%	10.0%	no

<sup>135</sup> See *infra* Appendix III, Table A – 7 for further information.

<sup>136</sup> See *infra* Appendix III, Table A – 8. See also Littwin, *supra* note 39 at 1935; Philip Tedesco, *In Forma Pauperis in Bankruptcy*, 84 AM. BANKR. L.J. 79, 85 (2010).

<sup>137</sup> We defined “*pro bono*” as any case where there was an attorney of record on the docket listing, but there was no fee paid. We based the determination of whether a fee was paid on the 2016 Disclosure and, if available, the Trustee Final Report.

<sup>138</sup> \* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level; “no” no statistically significant difference.

In Chapter 7 cases, there was no statistically significant difference in the rate of *pro bono* representation, post-BAPCPA compared to pre-BAPCPA. In both time periods, the percentage of cases in which the Chapter 7 debtor was represented by a *pro bono* attorney hovered around 7%.

**Table 4. *Pro Bono* Representation in Chapter 7 Cases**

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance
All cases	7.0%	7.6%	no
All asset cases	8.0%	10.2%	no
Discharged cases	7.8%	10.7%	no
Dismissed cases	9.7%	0.0%	no
No asset cases	6.8%	7.3%	no
Discharged cases	6.7%	7.1%	no
Dismissed cases	14.9%	12.8%	no

## C. Distributions to Unsecured Creditors

### 1. Chapter 13

Distributions to unsecured creditors in all closed Chapter 13 cases modestly declined. In inflation adjusted 2005 dollars, the mean distribution as a percentage of claims was 29.5% pre-BAPCPA and 26.4% post-BAPCPA.. A discussion of the factors that explain variations in distribution to unsecured creditors is found in Part IV.D. below.

**Table 5. Distribution to Unsecured Creditors as a Percentage of Allowed Unsecured Creditor Claims in Discharged Chapter 13 Cases<sup>139</sup>**

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All closed cases	29.5%			26.4%				
Average unsecured claims		\$25,090	\$25,980		\$25,836	\$24,519	no	No
Median unsecured claims		\$13,532	\$14,206		\$13,918	\$13,245		
Average distributions		\$7,373	\$7,670		\$6,700	\$6,465	no	*
Median distributions		\$2,021	\$2,119		\$1,674	\$1,617		

<sup>139</sup> See *infra* Appendix IV, Tables A – 12, A – 13.

## 2. Chapter 7

With respect to Chapter 7 asset cases in which the debtor received a discharge, the mean distribution as a percentage of claims were 10.4% pre-BAPCPA and 5.1% post-BAPCPA. This difference, however, was not statistically significant. A discussion of the factors that explain variations in distribution to unsecured creditors is found in Part IV.D. below.

**Table 6. Distribution to Unsecured Creditors as a Percentage of Allowed Unsecured Creditor Claims in Chapter 7 Asset Cases<sup>140</sup>**

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
Discharged asset cases	10.4%			5.1%				
Average unsecured claims		\$36,614	\$37,995		\$68,944	\$61,916	***	**
Median unsecured claims		\$22,434	\$23,085		\$35,037	\$30,660		
Average distributions		\$3,826	\$3,951		\$3,489	\$3,169	no	no
Median distributions		\$1,547	\$1,590		\$900	\$818		

<sup>140</sup> See *infra* Appendix IV, Tables A – 14, A – 15.

#### D. Modeling Statistical Data: What Factors Accounted for the Increase in Attorney Fees and Total Direct Access Costs

The mean attorney fees and creditor distributions reported above tells us only a part of the story. We developed regression models to account for the many factors that may influence the rate of attorney fees and distributions in consumer cases. Included among these factors are a host of economic variables and state economic effects.<sup>141</sup>

To control for macroeconomic events in the models presented below, data on state-wide employment levels and unemployment rates were obtained from the U.S. Bureau of Labor Statistics.<sup>142</sup> The unemployment rate and the monthly change in total employment (seasonally adjusted) for each state and the District of Columbia were matched to individual case filings in our database according to the corresponding month in which each case was filed.

Nominal dollar amounts for attorney fees and total direct access costs were deflated using a monthly implicit price deflator constructed from current dollar and inflation adjusted, chain-weighted personal consumption expenditures for legal services as reported by the U.S. Commerce Department's Bureau of Economic Analysis. Thus, the resulting values used in the regression models are in terms of inflation-adjusted 2005 dollars.

Six regression models are presented below. Each model seeks to explain differences in a dependent variable pre- and post-BAPCPA while controlling for the impact of macroeconomic effects that occurred during the period and a variety of other relevant factors recorded from case documents. State fixed effects were included in the models to control for average differences across states in any observable or unobservable factors that do not change over time, and that might uniquely characterize the judicial districts within each state.

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<sup>141</sup> The recession that occurred during the period of December 2007 through June 2009 was precipitated by a collapse of the housing market and resulted in dramatic reductions in household wealth. National Bureau of Economic Research Dating Committee recession dates are available at: <http://www.nber.org/cycles/>.

<sup>142</sup> Data on state unemployment rates were obtained from the Local Area Unemployment Statistics databases, available at <http://www.bls.gov/data/#unemployment> (last visited Nov. 7, 2011). See *infra* Appendix VII, Table A – 25.

In Models 1 through 4, the estimates corresponding to the variables in the lower part of each respective table measure the partial effect of a change in each explanatory variable during the post-BAPCPA period. The estimated coefficients in the upper part of each table are the effects for the pre-BAPCPA period. The net post-BAPCPA effect is the sum of the coefficients for the pre-BAPCPA period and the post-BAPCPA period. The asterisks next to the pre-BAPCPA coefficients indicate their statistical significance for that period. The post-BAPCPA effects require a different method of testing to determine whether or not the two sets of coefficients are jointly significant. These results are in each Model's final column.

For Models 5 through 8, the coefficients for the pre- and post-BAPCPA periods appear next to each other. The intuition for the tests of significance, however, is the same.

Model 1 examines variations in the reported level of attorney fees as a function of a variety of relevant explanatory factors from court document filings for Chapter 7 bankruptcy cases.<sup>143</sup> All else fixed, attorney fees were \$258 higher in real terms post-BAPCPA. The effects of macroeconomic events during the 2003-2009 time horizon are captured by state-wide unemployment rates at the time the case was filed. As noted in Appendix VII, unemployment rates were much higher for many states on average during the post-BAPCPA period. According to the Model, a one percentage point increase in post-BAPCPA unemployment rates served to lower attorney fees on average by \$9. Attorney fees in no-asset cases were not significantly different. However, for dismissed cases, attorneys received on average \$7 less for dismissed cases, holding all else constant. Similarly, the number of motions filed, monthly income, and the estimated value of real estate assets all factored significantly in the determination of attorney fees.

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<sup>143</sup> Data for attorney fees, total direct access costs, monthly client income, and real estate assets were adjusted for inflation and reported in units of constant 2005 dollars using an implicit price deflator constructed from the personal consumption expenditures on legal services as reported by the U.S. Bureau of Economic Analysis.

**Model 1. Dependent Variable: Attorney Fees in Chapter 7 Cases**

Variable	Estimated Coefficients		Pre-BAPCPA Effect	Post-BAPCPA Effect	Post-BAPCPA joint tests of significance
Post-BAPCPA	280.585	***		\$258	***
Unemployment Rate	14.631		\$15	-\$9	***
No-Asset Cases	-49.215	*	-\$49	\$1	
Dismissed Cases	220.066	***	\$220	-\$7	***
Motions Filed	76.394	***	\$76	\$57	***
Monthly Income	0.0347	***	\$0.03	\$0.06	***
Real Estate Assets	0.0003	***	\$0.0003	\$0.0006	***
Unemployment - post	-24.024	**	<p>Discharged or dismissed cases only; excluding all <i>pro bono</i> and <i>pro se</i> debtor cases.</p> <p>Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables.</p> <p>*** p-value &lt; .01; ** p-value &lt; .05; * p-value &lt; .10</p>		
No-asset - post	50.014				
Dismissed - post	-227.104	***			
Motions - post	-19.109	**			
Income - post	0.0250	***			
Real estate - post	0.00036	***			
State Fixed Effects	***				
Observations	6,266				
Adj R-squared	.0278				

The results for Model 2, examining the effects on inflation adjusted Total Direct Access Costs, mirror those for Model 1 with the post-BAPCPA period playing a dominant role in the determination of these costs. As noted above, the definition of TDAC includes attorney fees, the filing fee, and debtor education expenses (inflation-adjusted).



### Model 2. Dependent Variable: Total Direct Access Costs in Chapter 7 Cases

Variable	Estimated Coefficients		Pre-BAPCPA Effect	Post-BAPCPA Effect	Post-BAPCPA joint tests of significance
Post-BAPCPA	437.378	***		\$488	***
Unemployment Rate	14.962		\$15	-\$13	***
No-Asset Cases	-49.733	*	-\$50	\$1	
Dismissed Cases	222.023	***	\$222	-\$6	***
Motions Filed	76.487	***	\$76	\$58	***
Monthly Income	0.0349	***	\$0.03	\$0.06	***
Real Estate Assets	0.0003	***	\$0.0003	\$0.0006	***
Unemployment - post	-28.240	***	<div>Discharged or dismissed cases only; excluding all <i>pro bono</i> and <i>pro se</i> debtor cases.</div> <div>Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables.</div> <div>*** p-value &lt; .01; ** p-value &lt; .05; * p-value &lt; .10</div>		
No-asset - post	51.205				
Dismissed - post	-228.165	***			
Motion - post	-18.956	**			
Income - post	0.0245	***			
Real estate - post	0.00036	***			
State Fixed Effects	***				
Observations	6,266				
Adj R-squared	0.336				

Model 3 examines variations in the reported level of attorney fees in Chapter 13 cases as a function of a variety of relevant explanatory factors.<sup>144</sup> Holding all other factors constant, on average, attorney fees were \$564 higher in real terms post-BAPCPA. Cases in states with higher employment growth witnessed higher attorney fees; on average, fees during the post-BAPCPA period were \$541 higher for every percentage point increase in monthly employment growth.

Not surprisingly, fees on average were lower for cases that ended in a dismissal than they were for cases where the debtor received a discharge. Holding all else fixed, pre-BAPCPA, attorney fees in dismissed

<sup>144</sup> Total attorney fees equal the sum of debtor attorney pre-petition and post-petition fees.

cases were, on average, \$656 lower than fees in discharged cases. Post-BAPCPA fees were \$653 lower.

The number of motions and plan amendments filed both had a positive effect on attorney fees. Post-BAPCPA, fees rose by an average of \$28 per motion, holding all else constant. Plan amendments increase fees, on average, by \$96 per amendment.

Debtors' income, real estate assets and personal property assets also had a positive effect upon attorney fees in Chapter 13 cases. For every additional \$1,000 in monthly income, the post-BAPCPA increase in average fees was \$25. With respect to real estate assets, debtors with an additional \$100,000 in real estate assets paid on average \$60 more in attorney fees in the post-BAPCPA time frame. Personal property assets also positively affected fees. Clients with an additional \$100,000 in personal property assets, post-BAPCPA, paid an average of \$220 more in attorney fees.

Finally, the filing of fee applications had a positive effect on attorney fees. Post-BAPCPA, the filing of an additional fee application corresponded to an increase in average attorney fees of \$123.

### Model 3. Dependent Variable: Attorney Fees in Chapter 13 Cases

Variable	Estimated Coefficients		Pre-BAPCPA	Post-BAPCPA	Post-BAPCPA joint tests of significance
Post-BAPCPA	524.708	***		\$564	***
Employment Rate (1 mo.)	23.735		\$24	\$541	*
Dismissed Cases	-656.22	***	-\$656	-\$653	***
Motions Filed	46.951	***	\$47	\$28	***
Plan Amendments	53.766		\$54	\$96	**
Monthly Income	0.0141		\$0.0141	\$0.025	***
Real Estate Assets	0.0003		\$0.0003	\$0.0006	**
Personal Property Assets	0.0005		\$0.0005	\$0.0022	*
Fee Applications	504.72	***	\$505	\$123	***
Employment. post	517.458	*	<div>Discharged or dismissed cases only; excluding all <i>pro bono</i> and <i>pro se</i> debtor cases.</div> <div>Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables</div> <div>*** p-value &lt; .01; ** p-value .05; * p-value &lt; .10</div>		
Dismissed - post	3.035				
Motions - post	-18.751				
Amendments - post	42.080				
Income - post	0.011				
Real estate - post	0.0000				
Personal prop - post	0.0017				
Application - post	-381.89	***			
State Fixed Effects	***				
Observations	2,009				
Adj R-squared	.0294				

The results in Model 4, examining the effects on inflation adjusted Total Direct Access Costs for Chapter 13 cases mirror those for Model 3 with the post-BAPCPA period playing a dominant role in the determination of these costs.

**Model 4. Dependent Variable: Total Direct Access Costs in Chapter 13 Cases**

Variable	Estimated Coefficients		Pre-BAPCPA	Post-BAPCPA	Post-BAPCPA joint tests of significance
Post-BAPCPA	630.311	***		\$667	***
Employment Rate (1 mo.)	20.895		\$21	\$500	*
Dismissed Cases	-656.12	***	-\$656	-\$638	***
Motions Filed	46.749	***	\$47	\$29	***
Plan Amendments	54.00		\$54	\$92	**
Monthly Income	0.014		\$0.0140	\$0.025	***
Real Estate Assets	0.0003		\$0.0003	\$0.0006	**
Personal Property Assets	0.0004		\$0.0004	\$0.0022	*
Fee Applications	505.186	***	\$505	\$122	***
Employment - post	479.324	*	Discharged or dismissed cases only; excluding all <i>pro bono</i> and <i>pro se</i> debtor cases. Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables  *** p-value < .01; ** p-value .05; * p-value < .10		
Dismissed - post	18.504				
Motions - post	-18.215				
Amendments - post	38.457				
Income - post	0.011				
Real estate - post	0.0000				
Personal prop - post	0.0017	#			
Application - post	-383.62	***			
State Fixed Effects	***				
Observations	2,009				
Adj R-squared	.0304				

The complexity of the issues increased significantly when we tried to explain the effects of a host of variables on distributions to unsecured creditors. We found that in Chapter 7 cases, the ratio of distributions per dollar of claims was about a half-cent lower, on average, during the post-BAPCPA period. Economic effects also impacted creditor distributions. Post-BAPCPA, the ratio of distributions to claims was about a half-cent lower for every percentage point increase in unemployment rate. Attorney fees had a small effect upon creditor distributions, but this effect was not statistically significant.

**Model 5. Dependent Variable: Distributions to Unsecured Creditors in Chapter 7 Cases**

Variable	Estimated Coefficients		Pre-BAPCPA Effect	Post-BAPCPA Effect	Post-BAPCPA joint tests of significance
Post-BAPCPA	0.005			-\$0.005	1% (99% confidence level)
Unemployment Rate	0.007	**	\$0.01	-\$0.004	1% (99% confidence level)
Unemployment Rate - post	-0.011	***			
No-asset cases	-0.156	***	-\$0.16	-\$0.10	1% (99% confidence level)
No-asset -post	0.053	***			
Dismissed Cases	-0.090	***	-\$0.09	\$0.04	1% (99% confidence level)
Dismissed-post	0.128	***			
Attorney fee	0.00001		\$0.00001	\$0.00001	10% (90% confidence level)
Attorney fee - post	0.000003				
State Fixed Effects		***	<div>Discharged or dismissed cases only, for values of the ratio of distributions to claims less than or equal to 1.0</div> <div>Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables.</div> <div>*** p-value &lt; .01; ** p-value &lt; .05; * p-value &lt; .10</div>		
Observations	7,068				
Adj R-squared	0.108				

When we developed models to explain the effects of economic and case-specific variables on distributions to unsecured creditors in Chapter 13 cases, we found that holding everything else constant, distributions to unsecured creditors were two cents lower per dollar of claims, post-BAPCPA. This difference however, was not statistically significant. We also found that the ratio of distributions to claims was, on average, nine cents higher for every percentage point increase in employment growth. This result was also not statistically significant. Dismissed cases resulted in lower distributions to creditors, by a statistically significant forty-one cents, on average, during the post-BAPCPA period. There was no statistically significant relationship between attorney fees and the ratio of distributions to unsecured claims.

It became very clear when developing these models that there are significant differences across states, and across cases, given the variation

in how payments are made to unsecured creditors. The issue of the impact of BAPCPA on distributions to unsecured creditors, as well as of the effects of a range of economic variables warrants further study.

**Model 6. Dependent Variable: Distributions to Unsecured Creditors in Chapter 13 Cases**

Variable	Estimated Coefficients		Pre -BAPCPA Effect	Post -BAPCPA Effect	Post- BAPCPA joint tests of significance
Post-BAPCPA	-0.015			-\$0.02	not statistically significant
Employment Change (1 m)	-0.026		-\$0.03	\$0.09	not statistically significant
Employment - post	0.113	*			
Dismissed Cases	-0.378	***	-\$0.38	-\$0.41	1% (99% confidence level)
Dismissed - post	-0.031				
Attorney Fee	0.00001	#	\$0.00001	\$0.00001	not statistically significant
Attorney fee - post	-0.000001				
State Fixed Effects		***	Discharged or dismissed cases only, for values of the ratio of distributions to claims less than or equal to 1.0 Numerical totals are in terms of inflation-adjusted, constant 2005 dollars. Post BAPCPA effects were calculated using mean values for the explanatory variables.  *** p-value < .01; ** p-value < .05; * p-value < .10		
Observations	2,572				
Adj R-squared	0.281				

## E. Qualitative Data

Quantitative data and its analysis has limitations. The quantitative data in this Study reveals an increase in attorney fees in Chapter 7 and Chapter 13 consumer cases following BAPCPA's enactment. The data also allow us to monetize the increased costs at the national, circuit, state, and district levels. Regression analysis of the data allows us to account for the many factors that influence dependent variables. To augment the Study's quantitative findings, we developed a qualitative data pool and undertook a rigorous examination of the gathered information. This qualitative data analysis enables insights into the context in which attorney fees increased, and allows us to gain a deep understanding of how affected stakeholders experience the consumer bankruptcy system.

As described, the Study's qualitative data pool emerged from focus group interviews, open-ended survey questions, and in-person one-on-one interviews and conversations. Consumer debtors' attorneys, Chapter 7 Panel Trustees, Standing Chapter 13 Trustees, U.S. Trustees and bankruptcy judges were all subjects of the qualitative study. The data, in its raw form, identify and describe the subjective experiences of respondents. In that state, the data reflect the "undigested complexity of reality."<sup>145</sup> When critically and discreetly analyzed, however, patterns, themes, and categories emerge, framing a holistic picture of the bankruptcy system.

### 1. *Demographics of Respondents*

From dozens of interviews, focus groups, and hundreds of open-ended survey responses by attorneys, a picture of the professionals who work within the consumer bankruptcy system emerged. A striking feature of the sample studied was the polarity presented by each respondent pool's internal homogeneity and the heterogeneity of the bankruptcy system as each individual experienced it. While each cohort presented many perspectives and features in common, there was considerable disparity in how consumer bankruptcy law operates, and how it can be

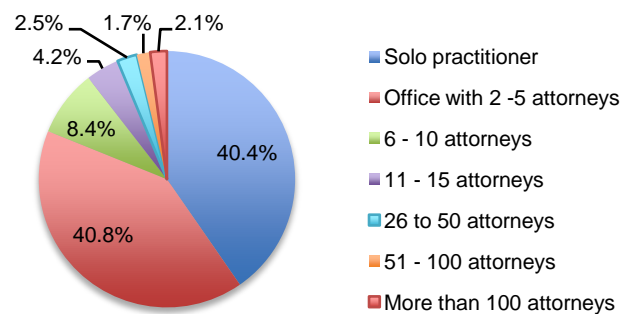
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<sup>145</sup> PATTON, *supra* note 10, at 463.

and is practiced.<sup>146</sup> What follows is an outline of the demographic characteristics of the Survey respondents. Focus group participant and interview subject demographics closely tracked the Survey sample.

We found that most debtor counsel respondents were solo practitioners, or practiced in small firms of 2 to 5 attorneys.<sup>147</sup> A majority of respondents were partners or equivalent in their firms (85%)<sup>148</sup> and most practiced bankruptcy law (55%)—in most cases consumer bankruptcy law (45%)—for more than 20 years.<sup>149</sup>

**Figure 12. Consumer Bankruptcy Attorneys' Practice Context**



Most of the reporting lawyers limited their practice to consumer bankruptcy; 60% reported devoting between 75% and 100% of their practice to consumer debtor representation.<sup>150</sup> Small business bankruptcy was the most common practice area reported after consumer bankruptcy.<sup>151</sup>

<sup>146</sup> Purposeful Sampling was employed to gather the survey data. See notes 321–322 and accompanying text for a complete discussion of the sample method.

<sup>147</sup> Consumer Bankruptcy Attorney Survey, question 3 (data on file with Principal Investigator).

<sup>148</sup> Consumer Bankruptcy Attorney Survey, question 6 (data on file with Principal Investigator).

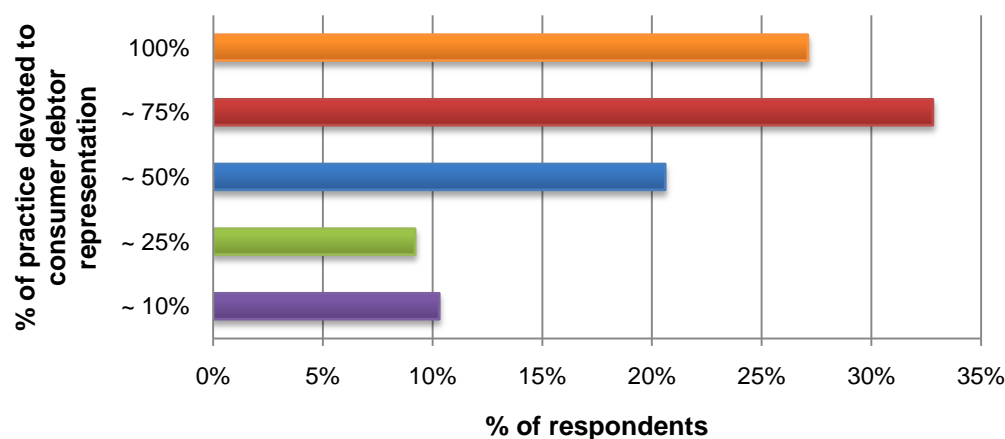
<sup>149</sup> Consumer Bankruptcy Attorney Survey, question 7 (data on file with Principal Investigator).

<sup>150</sup> Consumer Bankruptcy Attorney Survey, question 5 (data on file with Principal Investigator).

<sup>151</sup> *Id.* 61% reported at least some degree of their practice was spent on small business bankruptcy cases.



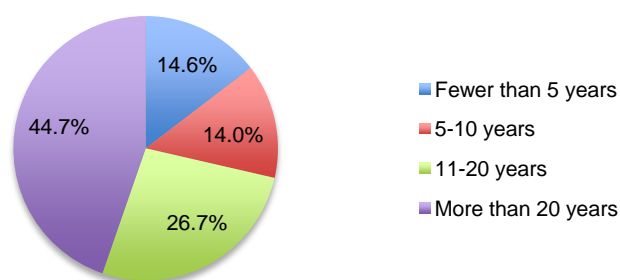
Figure 13. Percentage of Practice Respondents Devoted to Consumer Debtor Representation



These findings are consistent with trends in the legal profession generally. In recent decades, specialization among lawyers has become increasingly more common, largely as a result of the growing complexity of the law, coupled with an increasingly competitive market.<sup>152</sup>

We also found the cohort of respondent consumer bankruptcy lawyers to have considerable experience; close to 80% of survey respondents reported practicing law for 11 to over 20 years, and over 70% reported practicing consumer bankruptcy for the same duration.<sup>153</sup>

Figure 14. Consumer Bankruptcy Attorneys' Years of Consumer Bankruptcy Practice



Most attorneys surveyed do not have “high volume practices,” defined as filing more than 75 consumer cases a month. Fifty-eight

<sup>152</sup> See RICHARD A. POSNER, OVERCOMING LAW 63–68 (1995); RICHARD L. ABEL, AMERICAN LAWYERS 202–203 (1989) (noting that attorneys tend to be positioned not only by practice area but also by the types of clients served; lawyers typically represent either individual or business interests).

<sup>153</sup> Consumer Bankruptcy Attorney Survey, questions 7–8 (data on file with Principal Investigator).

percent of respondents reported that they personally filed ten or fewer cases each month, and 76% reported that their firms typically filed under twenty-five cases each month.<sup>154</sup> When asked about the mix of Chapter 7 and Chapter 13 cases filed, the responses fell into one of three categories: very few Chapter 7 cases relative to the number of Chapter 13 cases; a one third (Chapter 13)/two thirds (Chapter 7) split; or few Chapter 13 cases relative to the number of Chapter 7 cases.<sup>155</sup>

The Chapter 7 Panel Trustee is another central player in Chapter 7 consumer bankruptcy cases. The Chapter 7 Trustee's primary responsibility is to liquidate and administer a debtor's non-exempt assets and to maximize the return to creditors. These private sector professionals, appointed and supervised by the Office of the U.S. Trustee, collectively administer over one million cases annually.<sup>156</sup> Hundreds of Chapter 7 Panel Trustees responded to the Study survey, and dozens were interviewed over the course of eighteen months.

Most Survey respondents have served as a Chapter 7 Panel Trustee for many years; the vast majority since before BAPCPA's enactment.<sup>157</sup> Forty-six percent of respondents reported having a full-time Chapter 7 Trustee practice, and 54% reported a part-time practice.<sup>158</sup> A strong majority of Chapter 7 Panel Trustee respondents (72%) reported administering between 51 and 150 new Chapter 7 consumer cases per month.<sup>159</sup> The Trustees reporting were from all judicial circuits, and a cross-section of judicial districts.<sup>160</sup>

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<sup>154</sup> Consumer Bankruptcy Attorney Survey, questions 10-11 (data on file with Principal Investigator).

<sup>155</sup> Consumer Bankruptcy Attorney Survey, question 12 (data on file with Principal Investigator).

<sup>156</sup> Alabama and North Carolina are the two jurisdictions that have Bankruptcy Administrators rather than U.S. Trustees. In such jurisdictions, the bankruptcy court appoints the trustee in Chapter 7 cases. Most Chapter 7 Trustees are attorneys or accountants. Often, in addition to their Trustee work, they maintain an independent law or accounting practice.

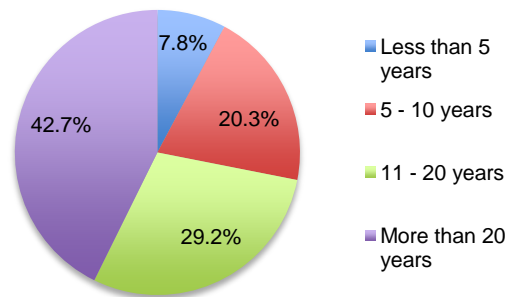
<sup>157</sup> Chapter 7 Trustee Survey, question 3 (data on file with Principal Investigator).

<sup>158</sup> Chapter 7 Trustee Survey, question 4 (data on file with Principal Investigator).

<sup>159</sup> Chapter 7 Trustee Survey, question 5 (data on file with Principal Investigator).

<sup>160</sup> Chapter 7 Trustee Survey, questions 1-2 (data on file with Principal Investigator).

Figure 15. Years of Service as Chapter 7 Panel Trustee



With respect to Chapter 13 cases, the Standing Chapter 13 Trustee is involved in a debtor's case from the petition filing to the case's ultimate conclusion.<sup>161</sup> As one focus group participant observed, the Chapter 13 Trustee "is the center of gravity" in Chapter 13 cases.<sup>162</sup>

Scores of Standing Chapter 13 Trustees responded to the Survey and over fifteen Trustees participated in a focus group interview. In addition, numerous individual Chapter 13 Trustee interviews were conducted over a period of eighteen months. Of the respondent Chapter 13 Trustees, over two-thirds have served as a Trustee for eleven or more years.<sup>163</sup> Over 95% of the Chapter 13 Trustee respondents are attorneys, and about 85% have at least one other lawyer working in their office.<sup>164</sup> Chapter 13 Trustee offices also rely upon a cadre of non-legal support staff to perform many of the necessary administrative and accounting tasks.<sup>165</sup>

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<sup>161</sup> The statutory duties of Chapter 13 Trustees are set forth in 11 U.S.C. § 1302, which incorporates by reference a number of the duties of Chapter 7 Trustees that are laid out in 11 U.S.C. § 704.

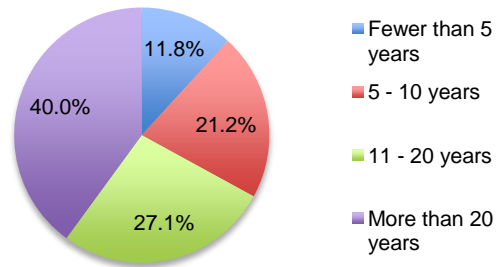
<sup>162</sup> Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator).

<sup>163</sup> Chapter 13 Trustee Survey, question 3 (data on file with Principal Investigator).

<sup>164</sup> Chapter 13 Trustee Survey, question 4 (data on file with Principal Investigator).

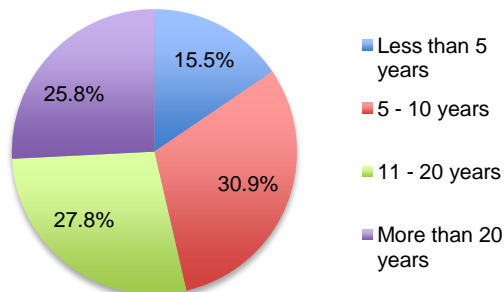
<sup>165</sup> As one Chapter 13 Trustee observed, "My office staff rarely 'comes up for air,' meaning they are always busy and occupied with processing respective caseloads." Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator).

Figure 16. Years of Service as Standing Chapter 13 Trustee<sup>166</sup>



The bankruptcy judges responding to the Survey were from each of the judicial circuits and a cross section of states. The focus group of judges mirrored the survey cohort. A majority of the judge survey respondents have served on the bench for 11 or more years (53%).<sup>167</sup> Sixteen percent of the responding judges have only been bankruptcy judges since BAPCPA's enactment.<sup>168</sup>

Figure 17. Years of Service as a Bankruptcy Judge<sup>169</sup>



Prior to becoming bankruptcy judges, a majority of respondents had been involved in the consumer bankruptcy system, as debtors' counsel (37%) or creditor's counsel (34%).<sup>170</sup> A few judges are former Chapter 13 Trustees (6%), Chapter 7 Trustees (20%), or U.S. Trustees

<sup>166</sup> Chapter 13 Trustee Survey, question 3 (data on file with Principal Investigator).

<sup>167</sup> Bankruptcy Judges Survey, question 2 (data on file with Principal Investigator).

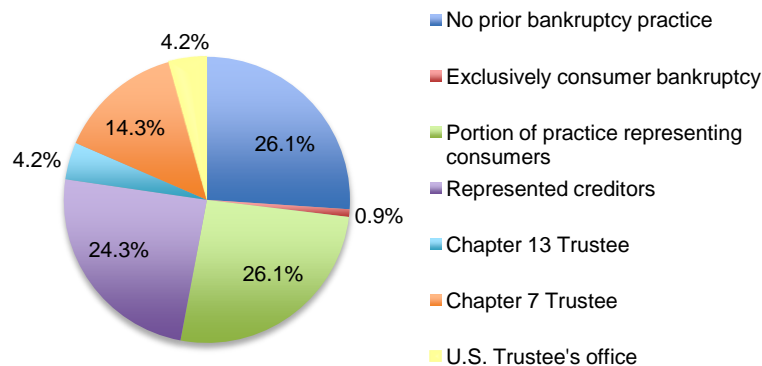
<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Bankruptcy Judges Survey, question 3 (data on file with Principal Investigator).

(6%).<sup>171</sup> A small percentage (1%) of respondents formerly exclusively practiced consumer bankruptcy law; while 36.5% of respondents had no experience with the consumer bankruptcy system before becoming a judge.<sup>172</sup>

Figure 18. Past Involvement of Bankruptcy Judges in the System<sup>173</sup>



Finally, a focus group was conducted with a small cohort of U.S. Trustees in an effort to evaluate their experiences working within the bankruptcy system since BAPCPA's enactment. Because this group was limited in size and scope, the views and experiences of the U.S. Trustee participants were not necessarily reflective of the U.S. Trustee population as a whole. Nonetheless, the focus group discussion made a significant contribution to the qualitative data set by providing a necessary and important perspective on the system's operation.

## 2. Consumer Bankruptcy "In Action": Descriptive Data

A study of consumer bankruptcy "in action" examines the system not only as it exists in the statute and in the case law, but how the enterprise actually works in practice.<sup>174</sup> It allows for the realization of how principal stakeholders and constituents are affected and their

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> This approach has its roots in the Wisconsin School. See UNIVERSITY OF WISCONSIN, *Law In Action*, <http://law.wisc.edu/law-in-action/> (last visited Nov. 8, 2011).

corresponding responses.<sup>175</sup> As has been observed, “the bankruptcy system is not simply imposed on judges, trustees, lawyers, and other repeat players; instead, these parties make the system what it is today.”<sup>176</sup> By engaging in careful scrutiny of the system through experiences as reported by front-line service providers, an authentic picture of how a consumer moves through the consumer bankruptcy system emerges.

Typically, the first contact a consumer has with the bankruptcy system is a phone call or a meeting with a lawyer.<sup>177</sup> Commonly, there is no charge for this first meeting: over 80% of lawyers offer prospective clients free initial consultations.<sup>178</sup> Attorneys reported, however, that sometimes, “initial” consultations drag on for two or three visits to the lawyer’s office, during which time prospective clients are gathering needed documentation, and acclimating themselves to the decision to file for bankruptcy protection.<sup>179</sup> Attorneys noted that a significant number of prospective clients do not return to file after an initial consultation.<sup>180</sup>

When asked *why* such prospective clients do not return, the most common responses were (i) a mismatch between their problems and the remedy offered by the bankruptcy system, (ii) prospective clients’

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<sup>175</sup> See e.g., Rafael Efrat, *Legal Culture and Bankruptcy: A Comparative Perspective*, 20 EMORY BANKR. DEV. J. 351, 352–353 (2004) (“Law and society scholars attribute some of the disparity between the formal laws and the laws in action, as well as the substantial local variations in the implementation of the laws, to the influence of legal culture.”); Lynn M. LoPucki, *Legal Culture, Legal Strategy, and the Law in Lawyers’ Heads*, 90 NW. U. L. REV. 1498, 1508 (1996).

<sup>176</sup> Melissa B. Jacoby, *Ripple or Revolution? The Indeterminacy of Bankruptcy Reform*, AMER. BANKR. L.J. 169, 177 (2005).

<sup>177</sup> Of the Chapter 13 cases in our quantitative data set, 97% of cases pre-BAPCPA and 97.9% of cases post-BAPCPA were filed with the assistance of counsel. Of the Chapter 7 cases in our quantitative data set, 92.6% of cases pre-BAPCPA and 94.2% of cases post-BAPCPA were filed with the assistance of counsel. See *infra* Appendix II, Table A – 2; Appendix III, Table A – 7.

<sup>178</sup> Consumer Bankruptcy Attorney Survey, question 18 (data on file with Principal Investigator).

<sup>179</sup> Focus Group of Consumer Bankruptcy Attorneys (Feb. 11, 2010) (transcript on file with Principal Investigator).

<sup>180</sup> Consumer Bankruptcy Attorney Survey, question 19 (data on file with Principal Investigator). The majority of respondents indicated that 11%–50% of prospective clients never returned after an initial consultation: 32.6% of attorney respondents reported that 11%–25% of prospective clients did not return; 27.5% of attorney respondents reported that 25%–50% of prospective clients did not return.

emotional condition, on the continuum from denial to depression,<sup>181</sup> and (iii) bankruptcy's costs.<sup>182</sup>

An attorney vividly described the emotionally taxing nature of financial distress and the consumer's decision to file for bankruptcy:

It takes a lot of courage to call us, more to show up, then even more to bring back our paperwork and "go through" with it. Debt is like cancer. You realize you need help but you hate the treatment program so going back to the doctor is tough. We don't force a timeline or follow-up appointments on clients so they have to build their courage to come back.<sup>183</sup>

In response to the question of what were the "triggers" or "catalysts" for consumer debtors' ultimate decision to file for bankruptcy, Chapter 13 debtors' top three precipitates were (i) to stop a foreclosure, (ii) a job loss, and (iii) to discharge debt following a divorce.<sup>184</sup> These triggers were confirmed by the responses to the same question in the survey of Standing Chapter 13 Trustees, although a high incidence of medical-related debt was also recurrently mentioned as a key instigator

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<sup>181</sup> See Elizabeth Kübler-Ross, *ON DEATH AND DYING* (1st Collier books trade ed. 1993) (identifying the five stages of grief as denial, anger/resentment, bargaining, depression and, finally, acceptance).

<sup>182</sup> Illustrative answers to the question why prospective clients do not return after initial consultation include: procrastination; price shopping; lack of income or expiration of unemployment; the fees are more than they had expected; they chose to not file bankruptcy; they do not qualify; they are overwhelmed with the paperwork; the free consultation tells them what they want to know; cannot organize their paperwork to go forward; bankruptcy is not an appropriate solution based on the circumstances; debtor has opted for bankruptcy alternatives; debtors use petition preparers instead of attorneys; some do not have a poor enough financial condition to justify filing bankruptcy; some want results that cannot be obtained; some have a strong aversion to bankruptcy; some find another way out of their financial issues (usually with help from relatives); the attorney and client cannot reach an agreement as to how to proceed; competition among attorneys; failure of the means test for Chapter 7; and depression. Consumer Bankruptcy Attorney Survey, question 19 (data on file with Principal Investigator). Professors Mann and Porter assert that bankruptcy does not provide an adequate remedy or proxy for financial distress. Mann & Porter, *supra* note 8, at 313 (observing that "debtors must 'save up' certain emotional resources, such as humility, before they will consider bankruptcy.")

<sup>183</sup> Consumer Bankruptcy Attorney Survey, question 19 (data on file with Principal Investigator). See also Mann & Porter, *supra* note 8, at 289.

<sup>184</sup> Consumer Bankruptcy Attorney Survey, question 23 (data on file with Principal Investigator). See also Mann & Porter, *supra* note 8, at 289 (noting that in jurisdictions where the foreclosure process has a shorter time frame, Chapter 13 filings are more likely to be filed on an emergency basis.)

of the case filing.<sup>185</sup> It was reported that Chapter 7 debtors are compelled to file by (i) a job loss, (ii) a reduction in income, and (iii) to discharge debt following a divorce.<sup>186</sup>

With respect to both Chapter 13 and Chapter 7 cases, respondents were clear that in most cases, there is an amalgam of intertwined instigating factors, it is hard to identify a “top choice” and few debtors present just one or two.<sup>187</sup>

A debtor’s decision to file for bankruptcy is often a protracted one.<sup>188</sup> The drawn-out deliberation period has a significant negative effect on debtors. They continue to endure both the internal and external stressors that led them to seek bankruptcy counsel in the first instance. Delays also adversely affect attorneys’ practice and emotional well-being. Respondents described numerous frustrating instances of preparing a debtor’s petition and necessary schedules, only to have a debtor’s decision to delay a filing necessitating a repeat of the exercise the following month.<sup>189</sup> It was also reported that an attorney’s ability to file

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<sup>185</sup> Chapter 13 Trustee Survey, question 11 (data on file with Principal Investigator). Mann & Porter, *supra* note 8, at 292 (noting that emergency Chapter 7 filings are rare).

<sup>186</sup> Consumer Bankruptcy Attorney Survey, question 24 (data on file with Principal Investigator).

<sup>187</sup> *Id.*

<sup>188</sup> *See* Consumer Bankruptcy Attorney Survey, question 22 (data on file with Principal Investigator). One-fourth of respondents reported that approximately 75% of their clients file within the first three months after an initial consultation. Another third reported that approximately 50% of their clients file within the first three months. A majority (76%) of attorney respondents reported that approximately 25% of their clients wait either three to six months, or six months to a year before filing. *Id.*

<sup>189</sup> Changes in income and other circumstances can greatly affect the means test calculation. Debtors looking to file for Chapter 7 must qualify under the Form 22A Chapter 7 Statement of Current Monthly Income and Means-Test Calculation. Debtors looking to file Chapter 13 use Form 22C, Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income. These forms require debtors’ income and expense information as well as state median family income from the Census Bureau and standards data from the IRS. Form 22C for Chapter 13 filing is used to calculate debtors’ disposable income which will be paid into their Chapter 13 plan. Included in the deductions of Chapter 13 debtors are deductions for debt payment. As debt balances decline each month, the calculations of pay-off balances and amount owed change. *See* Official Bankruptcy Form B22A: Chapter 7 Statement of Current Monthly Income and Means Test Calculation, <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>; Official Bankruptcy Form B22C: Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, <http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>. “Once a potential client comes in to see an attorney, the process starts and stops and delays and starts all over again.” Notes on File with Principal Investigator. “People come in with a circumstance and come back a month later in a different circumstance.” Notes on file with Principal Investigator.



for bankruptcy on an “emergency basis”—to stop a foreclosure or wage garnishment—has been limited by the array of pre-filing requirements, thus hindering the attorney’s ability to address client exigencies.<sup>190</sup>

Once the decision to file for bankruptcy protection is finally made, however, “there is relief.”<sup>191</sup> At this point, the consumer can “see the problem and face up to it,” and the lawyer is in a position to try to help the client “get to a better spot.”<sup>192</sup> The path to this better spot, however, is paved with paper; debtors must now gather and produce specifically prescribed documentation of their financial condition. Attorneys consistently reported the most daunting BAPCPA requirement is getting debtors to produce six months of pay advices and three years of tax returns.<sup>193</sup> For many debtors, personal financial organization is not a strong suit, and efforts made to get their hands on these documents can be time-consuming and are often futile, particularly for those debtors who do not receive “W2” wages, but are self-employed, contract employees, or those who work on commission.<sup>194</sup> Chapter 7 Trustees, Chapter 13 Trustees, and bankruptcy judges affirmed that the inflexible document requirements are an obstacle that often results in delay, and at times, denial of bankruptcy relief.<sup>195</sup> The pressure to extract these necessary documents from a client was recurrently reported as “changing the relationship between clients and lawyers,” at times transforming the lawyer from “advocate to adversary.”<sup>196</sup>

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<sup>190</sup> “I used to be able to help people if their house was set for a sheriff’s sale . . . . [Now] they come in the day before the sheriff’s sale and say, ‘I need to file bankruptcy to save my home,’ and I can’t help them anymore because there’s no way I can gather all of the information.” Focus Group of Consumer Bankruptcy Attorneys (Apr. 2, 2010) (transcript on file with Principal Investigator). “By default because at least where I am the cases start off very slow at the beginning of the month, and then build up at the end because if you wait until the beginning of the next month then you have to have the documents from the preceding month. So the 1st through the 15th, it’s dry. The 15th through the 30th, it’s a sharp curve up until the last three days of the month when there’s a lot of cases. So that indicates at least that they’re having trouble getting documents, but they’re doing it by scrambling at the end of the month because they know they’ll have to start again in the scramble.” Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator).

<sup>191</sup> Notes on file with Principal Investigator.

<sup>192</sup> Notes on file with Principal Investigator.

<sup>193</sup> Focus Group of Chapter 7 Trustees (Apr. 10, 2010) (transcript on file with Principal Investigator).

<sup>194</sup> Attorneys reported that in some cases, the inability to produce copies of pay stubs keeps some people who bankruptcy would help from filing. Notes on file with Principal Investigator.

<sup>195</sup> Notes on file with Principal Investigator.

<sup>196</sup> Notes on file with Principal Investigator.

Attorneys, Panel Trustees, and Chapter 13 Standing Trustees consistently reported the necessity of hiring more and better skilled support staff to gather, prepare and review the additional required documentation. Attorneys lamented that a consequence of hiring support staff was the challenge of taking on an increased number of cases to support the firm's higher overhead.<sup>197</sup> Chapter 13 Trustees noted the increased administrative burden on their offices, but an initial decline in the number cases necessitated "doing more with less."<sup>198</sup>

Panel Trustee in Chapter 7 cases also reported being burdened by the administrative responsibility imposed by BAPCPA.<sup>199</sup> When asked about the most time-consuming part of administering a no-asset Chapter 7 case, 35.6% of Panel Trustees identified "gathering the required additional documentation from the debtor or debtor's counsel" as "very time-consuming" (5 on a scale of 1 to 5).<sup>200</sup> Additionally, "reviewing the required additional documentation" was rated 4 on the same scale by 30.4% of Trustees, as was "tracking down unscheduled or hidden assets—by 37.2% of respondents.<sup>201</sup>

The same survey question provided an opportunity for respondents to offer a narrative about the most time-consuming aspect of administering no-asset cases. Of the 35.7% of respondents who took advantage of this opportunity, (i) dealing with *pro se* debtors' questions and requests for legal advice, (ii) sending out and tracking domestic support obligation notices, (iii) compliance with new data entry requirements, and (iv) gathering and reviewing additional documentation, were all repeatedly identified.<sup>202</sup>

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<sup>197</sup> Consumer Bankruptcy Attorney Survey, question 95 (data on file with Principal Investigator).

<sup>198</sup> Notes on file with Principal Investigator.

<sup>199</sup> 86.4% of Chapter 7 Trustees "strongly agreed" that Chapter 7 consumer no-asset cases take more Trustee time under BAPCPA than cases took pre-BAPCPA. An additional 11.9 % of respondents "agreed." With respect to asset cases, 92.4% of respondents "strongly agreed" (63.8%) or "agreed" (28.6%) that BAPCPA Chapter 7 cases took more Trustee time. (Chapter 7 Trustee Survey, question 22 (data on file with Principal Investigator).

<sup>200</sup> Chapter 7 Trustee Survey, question 23 (data on file with Principal Investigator).

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

Chapter 7 Trustees further observed that it now takes “two to three [times] as much time [to administer] no-asset cases as [it] did before BAPCPA.”<sup>203</sup> It was noted that courts are reluctant to dismiss cases where required documents are not produced, and continuances are more common than they used to be.<sup>204</sup> One Trustee observed that it was not unusual for “at least 50% of new cases to be continued [because of the debtor’s failure to produce required documents at the 341 hearing.]”<sup>205</sup> Elaborating further that trustee noted, “One continuance [may not] seem like much, but [if you multiply it] by the number [of] cases [handled by a Chapter 7 Trustee] . . . [and the need to] reacquaint yourself with the case when the documents come in . . . there is a direct impact on Trustee time . . . .”<sup>206</sup>

The data further revealed that there are fewer asset cases to balance the increased number of no-asset cases.<sup>207</sup> Moreover, Panel Trustees reported spending more time on each no-asset case, which means less time available to spend on cases in which a Trustee is entitled to receive a commission.<sup>208</sup>

In addition to the challenge of producing required financial documents, BAPCPA mandates that debtors take two financial education courses: credit counseling as a pre-requisite to filing, and a debtor education course prior to receipt of a discharge.<sup>209</sup> While most lawyers reported not being directly impacted by this requirement, they nonetheless consistently and emphatically reported their clients describing the pre-filing credit counseling course requirement as “worthless,” “stupid,” “time-consuming,” a “significant expense,” and “offensive.”<sup>210</sup> Numerous judges confirmed these observations. As one judge observed, “pre-filing

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<sup>203</sup> Interview with Chapter 7 Trustee (July 11, 2011) (notes on file with Principal Investigator). This observation was made by numerous Chapter 7 Trustees in formal and informal conversations and interviews.

<sup>204</sup> *Id.*

<sup>205</sup> Interview with Chapter 7 Trustee (July 11, 2011) (notes on file with Principal Investigator).

<sup>206</sup> *Id.*

<sup>207</sup> Consumer Bankruptcy Attorney Survey, question 65 (data on file with Principal Investigator).

<sup>208</sup> Consumer Bankruptcy Attorney Survey, question 70 (data on file with Principal Investigator).

<sup>209</sup> See 11 U.S.C. § 727(11).

<sup>210</sup> Focus Group of Consumer Bankruptcy Attorneys (Apr. 1, 2010) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Sept. 13, 2010) (transcript on file with Principal Investigator); Consumer Bankruptcy Attorney Survey, questions 41 & 95 (data on file with Principal Investigator).

credit counseling is a joke. I am aware of *not one* case in which the counseling has resulted in a debtor not proceeding with a bankruptcy filing. It is expensive for people who can barely afford the . . . filing fee.”<sup>211</sup>

Some attorneys noted, however, there was “some value” in the pre-discharge debtor education course. Calling it “surprisingly useful,” more than one lawyer observed that a “fair number of clients come away with a better grasp on what it means to borrow money.”<sup>212</sup> Numerous Chapter 13 Trustees confirmed the positive observations about this course. One Trustee observed, “pre-bankruptcy credit counseling has added a costly, ineffective and unnecessary administrative layer. On the other hand, the personal financial management education requirement is beneficial.”<sup>213</sup> In response to a question about the best feature of BAPCPA, one judge said, “the pre-discharge financial management course. I generally ask my *pro se* debtors at discharge whether they found this course to be helpful. To a person, they have responded ‘yes’.”<sup>214</sup>

Not all comments about the pre-discharge course were positive. A number of judges observed that they are seeing more Chapter 7 case dismissals directly as a result of *pro se* debtors’ failure to meet the financial management course requirement.<sup>215</sup>

With respect to the “core” issue of this Study—attorney fees and costs of access—the quantitative data enabled the answers to the “what” and “how much” questions. The qualitative data allows us to ask and answer the “why” and “how” questions about fees.

We asked debtors’ lawyers to explain how a client typically pays them in Chapter 7 cases. While a majority of attorneys stated, that as a

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<sup>211</sup> Bankruptcy Judges Survey, question 27 (data on file with Principal Investigator).

<sup>212</sup> Focus Group of Consumer Bankruptcy Attorneys (Apr. 1, 2010) (transcript on file with Principal Investigator).

<sup>213</sup> Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator)

<sup>214</sup> Bankruptcy Judges Survey, question 28 (data on file with Principal Investigator).

<sup>215</sup> Bankruptcy Judges Survey, question 11 (data on file with Principal Investigator). Another judge commented, “as far as the financial management course, it is clear from the reaffirmation motions I have coming before me, these debtors have learned nothing from these courses.” Bankruptcy Judges Survey, question 27 (data on file with Principal Investigator).

rule market forces determine legal fees, a few lawyers reported practicing in districts with codified “no look” fees in Chapter 7 cases.<sup>216</sup>

Many respondents also reported a high level of competition for Chapter 7 clients, and in some geographic areas, market saturation. The decline in legal business in other practice areas, such as real estate, has resulted in many new entrants into the consumer Chapter 7 market.<sup>217</sup> The issue raised by attorneys as well as by Panel Trustees and bankruptcy judges, is not simply the matter of increased competition, but the perception that there may be price undercutting, and sub-quality work being performed by lawyers less experienced in consumer bankruptcy practice.<sup>218</sup> Moreover, a U.S. Trustee noted that in some jurisdictions, “petition preparers . . . [put] a lot of downward pressure on the fees.”<sup>219</sup>

Respondents repeatedly observed a disconnect between the time it takes to responsibly represent a consumer debtor in a Chapter 7 case, and the legal fee the market will support. One attorney noted, “Doing a thorough job is time-consuming, and unfortunately most debtors can’t afford to pay a fee sufficient to compensate for that time.”<sup>220</sup> Others remarked that market fees are “depressed by attorneys . . . operating at a loss.”<sup>221</sup> Still another remarked, “My fee does not cover my time for

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<sup>216</sup> See *In re Williams*, 357 B.R. 434, 439 (B.A.P. 6th Cir. 2006) (“A growing number of districts have established standardized attorney’s fees for routine bankruptcy cases. These standardized fees are commonly referred to as ‘presumptive,’ ‘fixed,’ ‘flat,’ or ‘no look’ fees. These standard fees allow attorney’s fees without requiring a detailed fee application in the absence of an objection. The Panel recognizes that this type of standardization, or uniform fee guideline, promotes efficiency by relieving the courts of the administrative burden of reviewing numerous attorney’s fee applications; encourages predictability and efficiency for all involved in a chapter 7 or 13 case; and saves time for the court, trustees and the attorneys who represent debtors.”) See Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator); *infra* Appendix VI.

<sup>217</sup> Interview with Consumer Bankruptcy Attorney (Apr. 2, 2010) (notes on file with Principal Investigator); Focus Group with Consumer Bankruptcy Attorneys (Jan. 18, 2010) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Apr. 2, 2010) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Sept. 23, 2010) (transcript on file with Principal Investigator); Focus Group of U.S. Trustees (May 3, 2011) (transcript on file with Principal Investigator); Interview with Chapter 13 Trustee (Jan. 1, 2010) (notes on file with Principal Investigator); Consumer Bankruptcy Attorney Survey, questions 19, 30, 54, 64, & 69 (data on file with Principal Investigator).

<sup>218</sup> See notes 294–299 and accompanying text for a more complete discussion of the quality of consumer bankruptcy practice.

<sup>219</sup> Focus Group of U.S. Trustees (May 3, 2011) (transcript on file with Principal Investigator).

<sup>220</sup> Consumer Bankruptcy Attorney Survey, question 69 (data on file with Principal Investigator).

<sup>221</sup> *Id.*

most of my Chapter 7 practice. I probably represent Chapter 7 debtors because I've always done so, and as a favor to referring attorneys who refer other bankruptcy matters to the office.”<sup>222</sup>

Most counsel reported that clients typically pay their lawyers in full prior to filing a Chapter 7 case—the bankruptcy code does not allow a debtor’s attorney to be paid from estate property.<sup>223</sup> Moreover, post-petition obligations that are incurred pre-petition are dischargeable, so any agreement to pay attorney fees after the filing is unenforceable.<sup>224</sup> Some respondents reported, however, that in order to enable cash-poor clients to file under Chapter 7, they enter into unenforceable agreements to be paid fees post-petition.<sup>225</sup> When asked if they end up receiving these fees, typically the response was, “sometimes I do, and sometimes I don’t.”<sup>226</sup>

Debtors’ counsel is not the only professional in Chapter 7 cases for which compensation is an issue. Chapter 7 Panel Trustees uniformly expressed consternation about the Trustee fee structure currently in place. While Chapter 7 Trustees primary role is to liquidate and administer a debtor’s non-exempt assets in asset cases,<sup>227</sup> in all cases—including cases in which there are no assets to liquidate and administer—the Chapter 7 Trustee is accountable for reviewing the debtor’s petition and schedules, investigating the debtor’s financial affairs, questioning him or her under oath, and submitting reports to the bankruptcy court, and the Office of the U.S. Trustee.<sup>228</sup> In addition, BAPCPA imposes a host of new responsibilities on Panel Trustees. They are now required to: collect, track, store, and safeguard case documents, such as tax returns; notify appropriate parties of domestic support

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<sup>222</sup> *Id.*

<sup>223</sup> *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004) (“§ 330(a)(1) does not authorize compensation awards to debtors’ attorneys from estate funds, unless they are employed as authorized by § 327. If the attorney is to be paid from estate funds under § 330(a)(1) in a chapter 7 case, he must be employed by the trustee and approved by the court.”)

<sup>224</sup> *Id.*

<sup>225</sup> Focus Group with Consumer Bankruptcy Attorneys (Jan. 18, 2010) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Apr. 2, 2010) (transcript on file with Principal Investigator); Consumer Bankruptcy Attorney Survey, question 69 (data on file with Principal Investigator).

<sup>226</sup> Notes on file with Principal Investigator.

<sup>227</sup> 11 U.S.C. § 726.

<sup>228</sup> 11 U.S.C. § 341.

obligations; review the accuracy of information in forms associated with the means test; and comply with the new requirements for uniform final reports.<sup>229</sup> They are also charged with the responsibility of investigating bankruptcy filings for abuse, criminal activity, and fraud, including mortgage fraud on the part of creditors.<sup>230</sup>

For these services, Chapter 7 Panel Trustees are paid a portion (\$60) of the filing fee paid by debtor. If the Trustee does liquidate assets, the Trustee will receive, in addition to the \$60, a “trustee commission” based on the sliding scale formula set forth in § 326 of the Bankruptcy Code.<sup>231</sup> The commission is based on the value of the assets the Trustee brings into the bankruptcy estate. In cases where there are no assets for the Trustee to liquidate, the only compensation the Trustee receives is the \$60 from the filing fee. The compensation scheme is justified by the theory that commissions received from asset cases will offset the nominal no-asset fee, such that the Trustee earns overall, reasonable compensation for his or her service.

According to the Study data, the system has failed Chapter 7 Panel Trustees. As observed by a Panel Trustee in testimony before the House Judiciary Committee,

A major concern for trustees has been the lack of any compensation adjustment since 1994. Under the present law, trustees receive \$60 for administering Chapter 7 cases in which “no assets” are liquidated. The last increase in this trustee compensation occurred in 1994, when the fee was raised from \$45 to \$60. Let me emphasize that this is a flat fee per case. A case could take an hour, a few hours, days, weeks, or in some unique circumstances, years, to bring to closure. Trustees essentially work on a “contingent” basis because if their efforts do not result in a dividend to creditors, they receive only the \$60 no asset fee. Every trustee can tell about cases in which he or

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<sup>229</sup> See e.g. 11 U.S.C. §§ 704, 351.

<sup>230</sup> See 11 U.S.C. § 707.

<sup>231</sup> According to the statutory bankruptcy commission formula, the Chapter 7 trustee will receive: (i) 25% of the first \$5,000; (ii) 10% of the next \$45,000; (iii) 5% of the next \$950,000; and (iv) 3% of the balance. In addition, Chapter 7 Trustees are entitled to be paid for any legal services that he or she performs in order to collect and liquidate and administer assets. Some trustees will hire other lawyers or law firms to do this legal work, but other Chapter 7 Trustees will do the work themselves and bill the estate accordingly. Trustees must apply to the court and receive court approval for all commissions and legal fees. 11 U.S.C. § 326 (a).

she devoted many hours and much money and did not recover any assets. In other cases, trustees are obligated by their statutory duties to spend the time and money to fulfill their duty without additional compensation. That happens on a daily basis in my practice.<sup>232</sup>

The matter of increasing the fee for Panel Trustees has been recurrently raised by bankruptcy stakeholders over the course of the past twenty years, and multiple Congressional hearings have been held on this subject, the most recent one in July 2011.<sup>233</sup> Provisions increasing the fee have been included in numerous bills, but to date, none have passed. When asked, if given the opportunity, what they would change about the Chapter 7 consumer bankruptcy system, the vast majority of Chapter 7 Trustee respondents said the fee level in no-asset cases should be increased to reflect the increased time spent meeting BAPCPA's mandates.<sup>234</sup> Eighty-six percent of respondents said that no-asset Chapter 7 cases take more Trustee time than they did prior to BAPCPA's enactment.<sup>235</sup> Sixty-four percent of Trustees said the same thing about Chapter 7 asset cases.<sup>236</sup>

Another strongly expressed concern was the impact of the *in forma pauperis* ("IFP") provision in BAPCPA.<sup>237</sup> The IFP provision allows for a filing fee waiver for debtors with income of less than 150% of the poverty level and an inability to pay the Chapter 7 fees in installments.<sup>238</sup>

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<sup>232</sup> Chapter 7 Bankruptcy Trustee Responsibilities and Remuneration: Hearing before the House Subcomm. on Courts, Commercial and Admin. Law, of the H. Comm. on the Judiciary, 112th Cong. (2011) (statement of Robert C. Furr, on behalf of the National Association of Bankruptcy Trustees.)

<sup>233</sup> *Id.* See also Bankruptcy Trustee Compensation: Hearing before the Subcomm. on Commercial and Admin. Law of the H. Comm. on the Judiciary, 110th Cong. (2008).

<sup>234</sup> Chapter 7 Trustee Survey, question 26 (data on file with Principal Investigator).

<sup>235</sup> Chapter 7 Trustee Survey, question 22 (data on file with Principal Investigator).

<sup>236</sup> *Id.*

<sup>237</sup> A recent empirical study using the 2007 Consumer Bankruptcy Project IV data examined the frequency of IFP filings. The sample was supplemented by an oversample of cases in which debtors filed an *in forma pauperis* application. The study found that only 2.6% of income eligible debtors applied for fee waivers. Of all income qualified Chapter 7 debtors, (i) two-thirds of *pro se* filers, (ii) half of those with *pro bono* counsel, (iii) less than a third of debtors using a petition preparer, and (iv) 2.1% of those represented by an attorney, applied for a fee waiver. The study concluded that the "Chapter 7 filers who applied for a waiver do not appear to have been, on the whole, economically more needy than non-applicants." Philip Tedesco, *In Forma Pauperis in Bankruptcy*, 84 AM. BANKR. L.J. 79, 85 (2010).

<sup>238</sup> 28 U.S.C. § 1930(f). This is known as filing *in forma pauperis* which means, "in the character or manner of a pauper." BLACK'S LAW DICTIONARY 783 (7th ed. 1999). Eligibility for *in forma pauperis* filing is determined under the "poverty guidelines last published by the United States Department



When a debtor's bankruptcy petition is granted *in forma pauperis* status, the filing fee is waived and, as a result, the Chapter 7 Trustee receives no fee at all.

When this provision was enacted as part of BAPCPA,<sup>239</sup> one of the more controversial issues was whether an IFP petition could be filed (and granted) if a paid attorney was representing the debtor in the bankruptcy case. Such an arrangement was ultimately sanctioned, although it was predicted that the issue would not frequently arise.<sup>240</sup>

Despite the prominence this issue took in the survey responses, the quantitative data revealed the incidence of IFP filings to be low: 1.9% of all Chapter 7 cases. Of all IFP petitions filed, 71.2% of them were approved. A number of Chapter 7 Panel Trustees observed, however, that the incidence of IFP filings have increased in the past two years as attorneys and debtors have become increasingly aware of their availability.<sup>241</sup> It was further observed that statistical data about the number of IFP cases and their impact on Chapter 7 Trustees does not reflect cases where motions are granted to pay filing fees in installments and the case ends in dismissal.<sup>242</sup> In such cases, the Panel Trustee may receive only fraction of the \$60 fee. The quantitative and qualitative data

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of Health and Human Services applicable to a family of the size involved.” JUDICIAL CONFERENCE OF THE UNITED STATES, INTERIM PROCEDURES REGARDING CHAPTER 7 FEE WAIVER PROVISIONS OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005 *available at* <http://www.uscourts.gov/bankruptcycourts/jcusguidelines.html>.

<sup>239</sup> See 28 U.S.C. § 1930(f). I am indebted to Judge James E. Massey of the United States Bankruptcy Court for the Northern District of Georgia for his counsel and observations.

<sup>240</sup> Philip Tedesco, *In Forma Pauperis in Bankruptcy*, 84 AM. BANKR. DEV. L.J. 79, 85 (2010).

<sup>241</sup> A Panel Trustee, who conducted an informal study of IFP waivers, noted, “As a matter of reference, during the period of July 1, 2010 to June 30, 2011 there were 1,105 cases filed in Vermont and 31 IFP’s granted for a most recent percentage of 2.8% or an effective rate on the No-Asset fee of \$58.32 currently . . . . During the period of October 1, 2011 to September 30, 2011 there were [according to] PACER 15,336 Chapter 7 cases filed, of which there were 1,023 IFP applications filed, for a 6.67%. This would result in an effect rate based on IFP cases of \$56.” Notes on file with Principal Investigator.

<sup>242</sup> As was observed by a Chapter 7 Trustee, another issue related to IFP waivers needs to be recognized: “the number of installment cases which are filed, and subsequently dismissed . . . . [O]ver 13% of the cases filed sought to pay the filing fee by installments, and of that, approximately 47% appear to actually complete the installments. Depending upon the amount paid under the installments, the resulting Trustee Compensation in failed cases is also reduced. This is a bit of a wildcard since verification of the data is difficult, but on the assumption that the installments are nominal the amount of cases not paid increases to over 14% making the effective rate in that District at \$51.43.” Notes on file with Principal Investigator.

make clear that the frequency of use of *in forma pauperis* filings varies considerably from jurisdiction to jurisdiction.

As noted above, if a debtor does not pay a filing fee, the Chapter 7 Trustee receives no payment for administering the case. But in some instances, debtors' counsel is charging their indigent client a fee. We found that in all cases in which an IFP motion was filed and an attorney was paid, the mean debtor's attorney fee was \$695. In cases where the IFP was granted, the mean attorney fee was \$502.<sup>243</sup>

**Table 7. *In Forma Pauperis* Cases**

	Post-BAPCPA		
	% of cases	Attorney Fees	
		Current \$	Inflation Adjusted 2005 dollars
All <i>in forma pauperis</i> cases	1.9%	\$783	\$695
<i>in forma pauperis</i> granted	71.2%	\$563	\$502
<i>in forma pauperis</i> no assets	100%	\$783	\$695

Bankruptcy judges also expressed consternation about the nominal fees paid to Panel Trustees in no-asset cases. As one judge observed, “we have primarily no-asset cases with minimal compensation to panel trustees, as well as numerous *pro se* filers who require additional time to be spent by the trustee.”<sup>244</sup> Another judge noted,

no commission for *in forma pauperis* cases [and] inadequate compensation for no-asset cases [are concerning]. These all take time. [There are] very few asset cases to earn the commissions. I am amazed that many of the trustees have not yet quit. In most cases they are the “face of the system”—it is important we have good trustees.<sup>245</sup>

It was further observed, “the \$60 they get for a no-asset is grossly inadequate to compensate them for the amount of documents and

<sup>243</sup> See *infra* Appendix III, Table A – 11.

<sup>244</sup> Bankruptcy Judges Survey, question 23 (data on file with Principal Investigator).

<sup>245</sup> *Id.*

information they must review. This low fee discourages people who would be great trustees from considering applying to be trustees. It is bad for the system.”<sup>246</sup>

The concern about Panel Trustees leaving the system, and being discouraged from entering it appears to be real. As observed by one Chapter 7 Trustee who is giving up his trusteeship,

The other portions of my firm’s practice have been subsidizing my Chapter 7 consumer trustee practice for years. [There] are no financial rewards and [it has become] an administrative hassle. Cases with assets to distribute mostly occur in urban areas. [Even when I have an asset case] there is more tension [than there used to be] about whether I will receive my maximum compensation on assets distributed.<sup>247</sup>

The no-asset Trustee fee and IFP issue and their impact on Chapter 7 Trustees implicates fundamental fairness. The collective effect of low or no fees paid to Chapter 7 Trustees for cases that require increasingly more work and resources resulted in 62% of respondents reporting a current lower net income from their Chapter 7 Trustee consumer practice than before BAPCPA’s enactment.<sup>248</sup> Moreover, 92% of respondents “disagreed” or “strongly disagreed” with the statement, “I am fairly compensated by my work as a Chapter 7 Trustee in consumer cases.”<sup>249</sup> Seventy-eight percent of respondents reported a “higher” or “much higher” stress level attributed to their Chapter 7 Trustee consumer practice.<sup>250</sup>

With respect to fees in Chapter 13 cases, there are significant distinctions in all fee-related practices, customs and policies at the state, district, court, and even individual levels. Over 50% of attorneys surveyed charge a flat fee to their Chapter 13 clients.<sup>251</sup> Fifteen percent of the lawyers reported charging by the hour, and ~15% used a combined

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<sup>246</sup> Bankruptcy Judges Survey, question 23 (data on file with Principal Investigator)

<sup>247</sup> Interview with Chapter 7 Trustee (July 11, 2011) (Notes on file with Principal Investigator).

<sup>248</sup> Chapter 7 Trustee Survey, question 27 (data on file with Principal Investigator).

<sup>249</sup> Chapter 7 Trustee Survey, question 28 (data on file with Principal Investigator).

<sup>250</sup> Chapter 7 Trustee Survey, question 29 (data on file with Principal Investigator).

<sup>251</sup> Consumer Bankruptcy Attorney Survey, question 43 (data on file with Principal Investigator).

hourly rate and flat fee.<sup>252</sup> Others reported charging a “sliding scale,” depending upon what debtors can pay.<sup>253</sup> The median hourly rate reported by those responding attorneys who charge an hourly rate is \$271.<sup>254</sup> Note however, that this is the rate charged, not necessarily the rate ultimately received.<sup>255</sup> In many instances, there is a significant divergence between the two.<sup>256</sup> Moreover, many lawyers reported that their effective hourly rate, when they charged the presumptively reasonable fee was considerably lower than their “usual” hourly rate.<sup>257</sup>

In many jurisdictions, the “flat fee” is a *de jure* or *de facto* “presumptively reasonable fee” arrangement (“PRF”).<sup>258</sup> A PRF allows the lawyer to charge a flat, pre-approved fee for an array of services and avoid the necessity of filing a fee application with the court.<sup>259</sup> In some jurisdictions, the lawyer determines up front whether he or she will charge client the PRF. In at least one district, the attorney is afforded more flexibility in terms of the timing of the decision: “Attorneys make the decision within 30 days of the 341 completion to opt out of the base fee and this is due to complicated issues in the case.”<sup>260</sup> In yet other jurisdictions, the amount of the PRF turns on the size of the plan payments: “In [my district] there is an ‘official’ no-look fee of \$3,000, but if the plan will pay less than a total of \$5,000 (including attorney's fees and trustee's commission) the attorney fee is only \$2,000.”<sup>261</sup>

According to the Survey, in *almost all* jurisdictions with a PRF, the PRF array of services for Chapter 13 representation includes:

1. Initial meeting with debtors to explain the bankruptcy process;

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<sup>252</sup> Consumer Bankruptcy Attorney Survey, question 43 (data on file with Principal Investigator).

<sup>253</sup> Consumer Bankruptcy Attorney Survey, question 48 (data on file with Principal Investigator).

<sup>254</sup> Consumer Bankruptcy Attorney Survey, question 44 (data on file with Principal Investigator).

<sup>255</sup> See *supra* notes 284–289 and accompanying text.

<sup>256</sup> *Id.*

<sup>257</sup> Consumer Bankruptcy Attorney Survey, question 45 (data on file with Principal Investigator).

<sup>258</sup> See *infra* Appendix VI.

<sup>259</sup> As one Chapter 13 Trustee observed, “Per local rule, fee [applications] are an option if counsel does not want to be bound by the no-look fee. Some few always chose that option; most accept the no-look fee.” Chapter 13 Trustee Survey, question 25 (data on file with Principal Investigator).

<sup>260</sup> Chapter 13 Trustee Survey, question 25 (data on file with Principal Investigator).

<sup>261</sup> Notes on file with Principal Investigator.

2. Advice to debtors concerning their obligations and duties under the Bankruptcy Code and Rules, applicable court orders, and the provisions of their Chapter 13 plan;
3. Preparation and filing of the documents required by § 521 of the Bankruptcy Code;
4. Preparation and filing the plan;
5. Attending the 341 meeting;
6. Communication with client after the 341 meeting;
7. Attendance of confirmation hearing.<sup>262</sup>

In *some* jurisdictions, the PRF services also include:

1. Preparation and filing of all motions required to protect the debtor's interest;
2. Preparation and filing of responses to all motions filed against the debtor;
3. Preparation and filing any and all plan amendments;
4. Representing the debtor in connection with a motion for relief from stay;
5. Representing the debtor in connection with a motion for relief from stay which is resolved by agreement;
6. Representing the debtor in connection with a motion by the Chapter 13 Trustees seeking dismissal of the case;
7. Representing the debtor in connection with a motion by the Chapter 13 Trustee seeking dismissal of the case for which there is an agreement or no opposition;
8. Representing the debtor in connection with debtor's motion to modify the plan;
9. Representing the debtor in a contested matter.<sup>263</sup>

In *a few* jurisdictions, the PRF services also include:

1. Representing the debtor in an adversary proceeding as plaintiff;
2. Representing the debtor in an adversary proceeding as defendant;
3. Representing the debtor in any matter in which the court orders "fee shifting";

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<sup>262</sup> Consumer Bankruptcy Attorney Survey, question 51 (data on file with Principal Investigator).

<sup>263</sup> *Id.*

4. Representing the debtor in any matter in for which the first hearing is set more than 120 days following confirmation.<sup>264</sup>

In those jurisdictions where the PRF is a “cradle to grave” fee, there is no opportunity, even if the unforeseeable happens, for the lawyer to receive additional compensation.<sup>265</sup> Most often however, the debtor is charged the PRF in a standard case, but if a complication arises, such as the filing of an adversary proceeding, the attorney may be entitled to either a fixed amount of additional compensation, or payment of an hourly rate for time spent.<sup>266</sup>

The circumstances under which a lawyer would file either an abbreviated fee application and receive a fee amount in accordance with a local rule-based schedule, or file a more extensive fee application and receive an hourly rate, varies by district and by court. Illustrations include:

- “Motions for Relief from Stay generate a request for additional fees when multiple hearings are required.”
- “All post-confirmation fees are by application with the exception to allowance of fees by stipulation with the debtor and Chapter 13 trustee if under \$1,000.”
- “We mostly see supplemental fee requests in connection with requests to modify confirmed plans.”
- “Adversary proceedings almost always require fee applications.”
- “There are basically two times I see fee applications: in failed cases that do not get confirmed (attorneys frequently file a fee application so that their unpaid fees are paid from the money in my possession . . . these are routinely granted by the Court); and exceedingly complicated cases (rarely see these filed . . . but when filed by my ‘regular’ debtors’ bar, the fees are generally granted).”<sup>267</sup>

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<sup>264</sup> *Id.*

<sup>265</sup> Focus Group of Consumer Bankruptcy Attorneys (Sept. 23, 2010) (transcript on file with Principal Investigator).

<sup>266</sup> Notes on file with Principal Investigator.

<sup>267</sup> Chapter 13 Trustee Survey, question 25 (data on file with Principal Investigator).

Not all lawyers exercise their right to augment the PRF by filing an application for additional fees. As one Chapter 13 Trustee noted,

the most frequent participants in the system are “scared” to file the fee applications because they don't know what to expect and many comment that filing the application takes far longer than the fees incurred in many cases (and they can't seek payment for much of the time preparing the application) so they don't bother.<sup>268</sup>

At least one district builds an “administrative reserve” into every Chapter 13 plan as a way of ensuring the debtor will be able to pay additional legal fees if approved.<sup>269</sup> If the reserve fund is not used for attorney fees, it is distributed to unsecured creditors.<sup>270</sup> According to the data, the administrative reserve is not widely used.<sup>271</sup>

We further found in some Chapter 13 cases, fees charged by attorneys do not rise to the level of the PRF. A variety of reasons were cited for this, including: (i) filing a Chapter 13 to pay attorney fees, with the intention of converting to a Chapter 7 as soon as the fees were paid,<sup>272</sup> (ii) agreeing to a lesser fee for those in the military or other “sympathetic” clients,<sup>273</sup> (iii) determining that a debtor “can't afford” the no-look fee,<sup>274</sup> (iv) the case is a “disguised” Chapter 7,<sup>275</sup> (v) market pressures,<sup>276</sup> and (vi) the operational complexity of a case.<sup>277</sup>

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<sup>268</sup> *Id.*

<sup>269</sup> Notes on file with Principal Investigator.

<sup>270</sup> Notes on file with Principal Investigator.

<sup>271</sup> Notes on file with Principal Investigator.

<sup>272</sup> “Debtor can file [a Chapter] 7 but can't come up with the [fee] to file . . . . So the attorney has the debtor file [a Chapter] 13 to collect fees [through] the plan, but charges a fee between the normal [Chapter] 7 fee and the no-look [Chapter] 13 fee. If the debtor is having his pay garnished, this may be only way to get the case filed.” Notes on file with Principal Investigator.

<sup>273</sup> Fee discounts for service men and women, members of legal plans, and a few other “sympathetic” debtors were reported. “There aren't any hard and fast rules, but understand, I am a bankruptcy lawyer because I want to help people. If that means I decided to make less, that's a decision I make. And it's not a decision I make lightly.” Interview with Consumer Bankruptcy Attorney (Sept. 25, 2011) (transcript on file with Principal Investigator).

<sup>274</sup> Chapter 13 Trustee Survey, question 25 (data on file with Principal Investigator) (“Many debtors' [attorneys] do not charge the full no-look fee if the debtor cannot afford it.”) “Sometimes you might agree with the debtor to take less. This isn't that common since even a \$1,000 price cut, only lowers a plan payment by \$16 a month or so.” Notes on File with Principal Investigator.

A majority of lawyers reported, and the quantitative data confirmed, only the exceptional cases merited charging less than the PRF. One attorney observed that the client's ability to pay the PRF was used as a prognosticator of the success of the Chapter 13 plan: "if a debtor cannot afford the full legal fee, they are likely not able to complete a plan."<sup>278</sup>

The mean attorney fee values, however, revealed twenty-two jurisdictions where the PRF was higher than the mean fee received in a discharged case.

**Table 8. Districts Where the Average Fee for Discharged Chapter 13 Cases Was Below the Presumptively Reasonable Fee Post-BAPCPA<sup>279</sup>**

District	Average Fee Post-BAPCPA	Presumptive Fee Post-BAPCPA
ALNB	\$1,685.06	\$2,500
ALSB	\$2,183.64	\$3,000
AKB	\$2,048.46	\$2,500
CACB	\$2,671.52	\$3,000 to \$4,000
CAEB	\$3,265.09	\$3,500
GASB	\$2,260.53	\$2,500

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<sup>275</sup> "The [C]hapter 13 is a [C]hapter 7 in disguise. The most appropriate circumstance for this to occur is when the debtor does pass the means test in [Chapter] 7, but has a 0% payout to unsecured in a [Chapter] 13. This can occur when the debtor has child support income which is included in [Current Monthly Income] in [Chapter] 7 but excluded in [Chapter] 13, or has retirement account payroll deductions which are not an allowable expense in [Chapter] 7 but are in [Chapter] 13. The case is simpler than the normal [Chapter] 13 and the attorney charges less." Notes on file with Principal Investigator.

<sup>276</sup> "I would attribute below no-look median fees virtually entirely to market pressures . . . we have attorneys who take [Chapter] 13s for \$2,000 or even less, while our no-look is \$4,000/\$4,500." Notes on file with Principal Investigator.

<sup>277</sup> "[It] depends on the complexity of the case, not just legal complexity but also (and probably more importantly) operational complexity, i.e., how can we rearrange the debtor's business/income *vis a vis* his overhead/expenses to make what appears to be a non-feasible plan feasible (one of the useful services a good attorney provides in the absence of an accountant who in a Chapter 11 would be doing that)." Notes on File with Principal Investigator.

<sup>278</sup> Notes on file with Principal Investigator.

<sup>279</sup> Presumptively reasonable fees values dating from 2006 to 2008 were considered post-BAPCPA. For the average fee numbers, the values from the quantitative analysis were used. Only those districts with a difference between the presumptively reasonable fee and the average fee of more than \$200 were included. Districts where the presumptively reasonable fee was set by unwritten practice were not included in these tables. *See infra* Appendix VI, Table A – 24 and Appendix V, Table A – 18 for the complete data.



District	Average Fee Post-BAPCPA	Presumptive Fee Post-BAPCPA
ILCB	\$2,157.86	\$2,500 to \$3,000
ILSB	\$3,156.43	\$3,500
INSB	\$3,195.96	\$3,500
LAMB	\$2,112.32	\$2,500
MNB	\$1,712.20	\$2,000 to \$2,500/\$3,000
MOEB	\$2,639.35	\$3,000
NJB	\$2,528.60	\$3,500
NCEB	\$2,614.70	\$3,000
NCMB	\$2,399.47	\$2,500 to \$3,000
NCWB	\$2,299.51	\$3,000
OHSB	\$2,656.29	\$3,000
OKEB	\$1,942.42	\$3,750
RIB	\$2,832.21	\$3,500
TNEB	\$1,916.92	\$3,000
TXSB	\$2,435.13	\$3,085
WYB	\$1,798.04	\$2,000

Not only is there variation in how much an attorney is paid, and the method by which the amount of the fee is determined, there are also material differences in Chapter 13 cases as to how the attorney fee is structured.<sup>280</sup> The extent to which an attorney receives his or her fees up front, in whole or in part, or over time as part of the plan payments, and over what period of time, turns on one of more of the following variables: (i) the lawyer's or the lawyer's firm's policies, predilections or business model, (ii) the presiding judge, (ii) the interpretation of the Bankruptcy Code in the jurisdiction, (iii) the Chapter 13 Trustee, (iv) the lawyer's predictions about the feasibility of the debtor's case, (v) the market for legal services, and (vi) local custom and practice.<sup>281</sup>

How fees are structured impacts not only how much is paid by a client, but also how much is received by the lawyer. The structure also affects chapter choice as well as the issue of how cases perform and

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<sup>280</sup> A number of lawyers observed that clients frequently shop for the lowest upfront fees and the willingness of lawyers to pay filing fees for clients (and receive later reimbursement through plan payments). This affects the market for consumer debtors' attorneys. Focus Group with Consumer Bankruptcy Attorneys (Jan. 18, 2010) (transcript on file with Principal Investigator); Focus Group of Consumer Bankruptcy Attorneys (Feb. 11, 2010) (transcript on file with Principal Investigator); Consumer Bankruptcy Attorney Survey, question 19 (data on file with Principal Investigator).

<sup>281</sup> Notes on file with Principal Investigator.

their eventual disposition. An example of how this plays out was described by an attorney as follows:

In [District A] attorneys get paid \$200 a month, meaning that if nothing is taken in advance, the attorney [is] paid [over] . . . 15 months.<sup>282</sup> There is no judicial opinion on where these funds [should be] taken from, so frequently Debtors have “step” plans that provide \$200 more a month for the first 15 months, then drop down.

In [District B], however, the Court [determined] that while [section] 1325 requires secured creditors to receive “equal monthly payments” it does not require that [those] . . . payments start at confirmation. Accordingly, these plans pay only “adequate protection payments” to secured creditors (usually cars) basically swiping some of their money to pay attorneys fees. Additionally, since the Code only requires pre-confirmation adequate protection payments for personal property collateral, the 2-4 months of pre-confirmation mortgage payments get diverted to pay attorneys fees, with that amount being added to the mortgage arrearage. With these . . . maneuvers, debtors’ attorney fees usually get paid within 6-12 months of filing a case.

Lastly, in [District C] the attorney fees are spread over the length of the Chapter 13 plan. This means that if nothing is taken in advance, the full amount is paid in 60 installments. Because of this, fees paid through the plan are incredibly devalued, both [because of the time value of money] and because of the [higher] risk of case dismissal. Accordingly, most attorneys [in District C] require \$1500 or more “up-front.”

These three different schemes for paying attorney fees have real effects on chapter selection. [District C] has far fewer Chapter 13 cases . . . . [In many instances] potential clients either don’t file or the attorney works with him or her to get them into a Chapter 7.

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<sup>282</sup> If the plan payment is lower than \$200/month, it takes longer for attorneys to receive their fee.

Similarly, [District B] might have higher dismissal rates, since an attorney only needs a debtor to last 6-10 months to cover his or her costs, making it less risky [for the attorney] to take a more tenuous case.

In [District A] with step-down plans, the first year, which is already often the hardest for a debtor, is even harder due to the heightened payment.<sup>283</sup>

On their face, these appear to be mere procedural decisions about the timing of fee distributions, but in practice, these decisions have a critical substantive effect on the debtor, the attorney as well as on the bankruptcy system as a whole.

The above discussion concerns fees charged in cases in which the debtor receives a discharge. The story with respect to attorney fees received in cases that end in a *dismissal* is very different. As the objective data reveals, attorney fees received in dismissed cases were 42% lower than those fees received in cases that end in discharge.<sup>284</sup> This, in part, accounts for the difference between the fee an attorney charges, and the fee the attorney receives.<sup>285</sup> When Chapter 13 Trustees were asked how much attorneys charged and how they are paid in dismissed cases, the answers varied greatly.<sup>286</sup> With respect to cases dismissed prior to confirmation, the range of answers included:

- “\$800 paid pre-petition plus 25% of unpaid balance up to a max amount of \$300; Any fees awarded in a dismissed or converted case must be by application (unless under \$1,000).”
- “In addition to the amount of the fee paid pre-petition, sometimes attorneys receive a portion of payments made prior to dismissal or conversion.”
- “To the extent that pre-confirmation plan payments were made, the debtor’s attorney will receive some pro rata portion

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<sup>283</sup> Interview with Consumer Bankruptcy Attorney (Apr. 2, 2010) (notes on file with Principal Investigator).

<sup>284</sup> See *infra* Appendix II, Table A – 5.

<sup>285</sup> *Id.*

<sup>286</sup> The Chapter 13 Trustee responses included cases that were converted as well as dismissed.

distribution after, i) all required adequate protection payments are paid in full, and ii) the Trustee's 'new case set up fee.' Usually they receive nothing."

- "Generally, the dismissal orders provide for attorney fees to be paid up to \$400."
- "Funds are refunded to the debtor in care of the attorney. The attorney may resolve with the debtor what if any are paid from the refund."
- "Pursuant to court order they get up to one-half of the no look fee if the case is dismissed."
- "We have a local rule that allows them up to \$500 of the funds on hand toward their unpaid fee claim in a case that is dismissed or converted pre-confirmation. They also get to keep whatever they were paid pre-petition."
- "Debtors' attorneys will now receive up to \$1,000, depending on balance on hand, in converted or dismissed cases."
- "My rule . . . is not to object to all but \$100 or so of the requested fee (usually \$2,500) if the dismissal/conversion is not the attorney's fault and the case was otherwise ready for confirmation. Often there is not enough money in our account to pay all that."
- "The attorney generally gets paid his retainer and some amount as an administrative fee based upon the Court's granting of a fee application."
- "If their client has made plan payments and there are funds in the case, the attorney will file a fee application for the 'no look' fee balance remaining less trustee's fees from the available funds."
- "It depends on the amount on hand after payment of the filing fee. Usually \$300 to \$900."
- "Cases crater in the first 9 months. The plan dictates how such fees are paid and in many cases, the fees have not been satisfied at the time of dismissal."
- "Attorneys who want to be paid need to file a motion for an administrative expense. These motions are typically allowed for the

full amount of the no-look fee, though there is rarely enough money on hand to pay it.”

- “We are a jurisdiction that pays pre-confirmation, so often times counsel is paid in full.”
- “Depends on the amount of the plan payment—but 60-70% are likely getting the entire fee because such a small portion is going to adequate protection payments in most cases.”
- “\$300 per court order.”
- “Presumptive fee of \$900 if funds are on hand.”
- “If attorney timely completed all tasks and dismissal was debtors fault, they can get the full presumptive fee (however, I usually only have one or two payments to disburse on attorney fees). Other times, the court only allows the retainer, and in extreme cases, the [court] will require disgorgement.”<sup>287</sup>

These answers show that the debtor’s ability to complete a multi-year plan dictate whether an attorney will received their full fee, or nothing.<sup>288</sup> One attorney observed that a consequence of these varied policies is that lawyers take Chapter 13 cases essentially on a contingency basis.<sup>289</sup> This, in turn, has a profound effect upon the quality of legal services delivered.

When asked about the time it takes to represent a consumer debtor in a Chapter 13 case, the answers ranged from 3 to 50 hours, with most respondents making clear that there is no such thing as a “typical” or average case, and the time varies greatly from case to case.<sup>290</sup> The mean number of hours spent by attorneys representing a Chapter 13 debtor in a case that resulted in a discharge fell between 12 and 25 hours.<sup>291</sup> Interestingly, responding attorneys reported spending

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<sup>287</sup> Chapter 13 Trustee Survey, question 37 (data on file with Principal Investigator).

<sup>288</sup> With respect to cases that were dismissed following confirmation, attorneys fared somewhat better. A majority of Chapter 13 Trustees reported that attorneys received what they had already been paid. In many jurisdictions, by that point, attorneys were paid all or most of their fee. Chapter 13 Trustee Survey, question 37 (data on file with Principal Investigator).

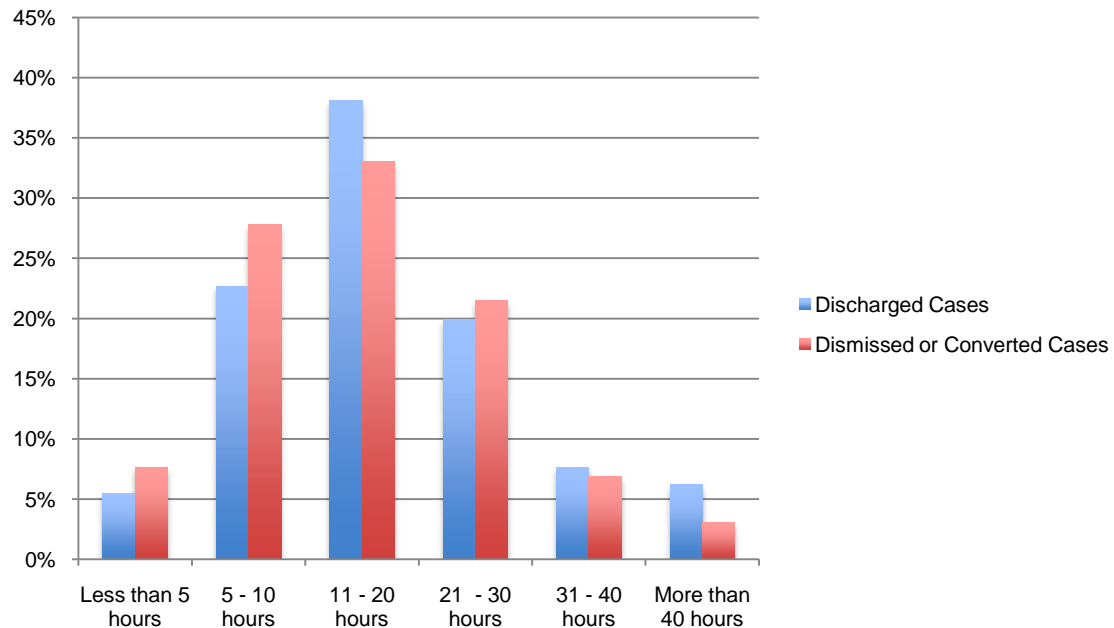
<sup>289</sup> Notes on file with Principal Investigator.

<sup>290</sup> Consumer Bankruptcy Attorney Survey, questions 72–74 (data on file with Principal Investigator).

<sup>291</sup> Consumer Bankruptcy Attorney Survey, question 72 (data on file with Principal Investigator).

roughly the same amount of time on a Chapter 13 case that was discharged, as they did in a case that was converted or dismissed.

Figure 19. Time Spent on Discharged and Dismissed/Converted Chapter 13 Cases<sup>292</sup>

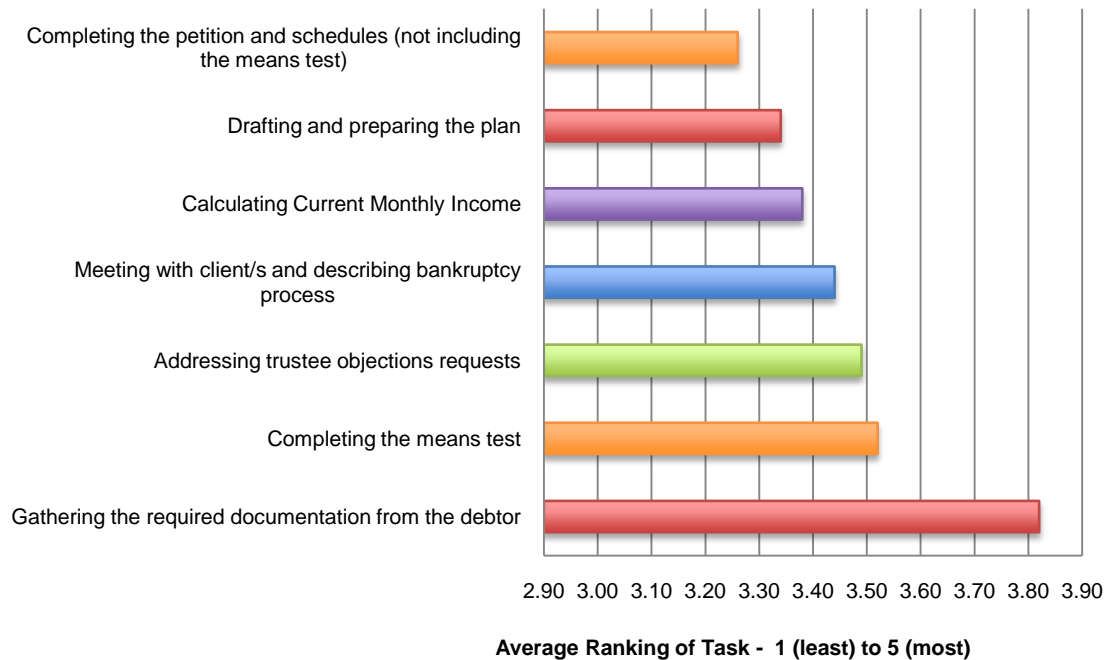


Attorneys were asked to break down how long it took to perform each discrete task when representing Chapter 13 debtors. The most time-consuming tasks were (in order) (i) gathering the required documentation from the debtor, (ii) client “handholding,” and (iii) drafting and preparing the petition, schedules, plan, and means test, and (iv) calculating Current Monthly Income.<sup>293</sup>

<sup>292</sup> Consumer Bankruptcy Attorney Survey, questions 72–73 (data on file with Principal Investigator).

<sup>293</sup> Consumer Bankruptcy Attorney Survey, question 81 (data on file with Principal Investigator).

**Figure 20. Ranking of Tasks as Most and Least Time-Consuming, Top Time-Consuming Tasks**



### 3. *Qualitative Analysis*

Part III above describes the raw qualitative data that emerged from focus groups, interviews, and survey responses. Analysis of the data enables us to assess the operation of the consumer bankruptcy system generally, and evaluate the extent to which its objectives are being met. Two central themes became apparent:

1. The disunion between (i) complexity of the consumer bankruptcy system, (ii) the experience and resources needed to represent debtors through an often byzantine maze, and (iii) the dearth of resources available to pay for this representation; and
2. The irony presented by the ostensible goals of those who sought the 2005 Bankruptcy Code amendments and the unintended consequences of these changes in practice.

These themes cut across a preponderance of the data, and across all data sets. They also reveal causal linkages between the consumer bankruptcy process and outcomes.

## a. Complexity, Experienced Professionals & Needed Resources

As the raw data details, the consumer bankruptcy system is exceptionally complex, and only more so since BAPCPA's enactment. Even a "seemingly simple" case may turn out to be "a minor quagmire."<sup>294</sup> And there are ever fewer "seemingly simple" cases. As observed, "the paradigmatic Chapter 13 debtor" no longer exists: one in which a client has lost a well-paying job, incurs debt, gets another well-paying job, and then files for bankruptcy to discharge the debt incurred. It takes more skill and experience to responsibly and professionally represent consumer debtors—especially in this economic climate—than it used to. There is a greater need to have a nuanced understanding of the dissonance between how the system is designed to work in theory, and how it works in practice. Lawyers consistently report working harder than ever before, and experiencing higher stress levels that they directly attribute to practicing in the new consumer bankruptcy environment.

Moreover, the system is less tolerant of mistakes and yet there are so many more opportunities presented by BAPCPA for even seasoned attorneys to make errors.<sup>295</sup> Without a detailed understanding of how to make the system work, the temptation is there for lawyers to "cut

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<sup>294</sup> The following was described in the blog post, *What Are We Worth as Bankruptcy Lawyers?* "I sat with a new client discussing his bankruptcy options, puzzling how to price a Chapter 7 that's fair to me and fair to the client. To the client, it no doubt looked like a 'simple' Chapter 7: a job, a couple of pieces of underwater property, no taxes, no spouse, no sweat, right?

To me, it looks like a minor quagmire:

- There's an income blip in the look back period;
- Client's parent lives on one property and pays "rent" only sporadically;
- We've got business expenses for investment properties, with any records scattered;
- Values of properties are undetermined;
- Credit card payments are made by automatic bank draft, the debtor hopes to stop;
- There's recent purchase activity on several cards;
- The car loan is with a credit union that issued client a credit card: cross collateralization
- Future income both from job and properties will be different than look back; AND
- We expect to file a subsequent 13 to strip off/cram down underwater liens—so consistency is important."

Cathy Moran, *What Are We Worth As Bankruptcy Lawyers?*, BANKRUPTCY MASTERY <http://www.bankruptcymastery.com/what-are-we-worth-as-bankruptcy-lawyers/>.

<sup>295</sup> The consumer bankruptcy system was described as evidencing an "iceberg effect"—more beneath the surface than what meets the eye. Focus Group of Consumer Bankruptcy Attorneys (Apr. 2, 2010) (transcript on file with Principal Investigator).



corners” in order to minimize time spent on a client’s case, or conversely, to spend so much time on a case that the legal fee exceeds what an insolvent client can reasonably afford. Efficiency coupled with a high level of skill, while important in every area of law practice, is crucial to the success of a consumer bankruptcy practice. “Best practices” for consumer bankruptcy lawyers requires finding a balance between comprehensively addressing a financially distressed client’s interests, and doing so in a time sensitive and efficient manner.

“Best practices” however, are not consistently achieved by the whole of the consumer bankruptcy bar. Stakeholders noted “a lot of variation in the quality of practice,” but this variation was not necessarily tied to the BAPCPA changes.<sup>296</sup> At least one trustee observed, “I [saw] crappy attorneys before, I [see] crappy attorneys now, I [saw] good attorneys before [and I see] good attorneys now.”<sup>297</sup> It was also recognized that the cost of entry to the market is high, and “new entrants to the market disappear as fast as they appear,” especially those lawyers who “occasionally” represent consumer debtors.<sup>298</sup> Attorneys, trustees, judges, and U.S. Trustee respondents all expressed concern about the system-wide negative effects of the expedient entry of less experienced and opportunistic lawyers into the consumer bankruptcy market.

Despite the observations about uneven quality of legal representation, one scholar recently asserted that compared to other government “redistributive programs,” bankruptcy is a “relative success.”<sup>299</sup> Recognizing that consumers are paying a high price for bankruptcy “benefits” and describing the phenomenon of the high cost of bankruptcy as the “affordability paradox,” it was argued:

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<sup>296</sup> Focus Group of Consumer Bankruptcy Attorneys (Jan. 18, 2010) (transcript on file with Principal Investigator); Chapter 13 Trustee Survey, question 15 (data on file with Principal Investigator); Chapter 7 Trustee Survey, question 13 (data on file with Principal Investigator).

<sup>297</sup> Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator).

<sup>298</sup> Focus Group of Consumer Bankruptcy Attorneys, (Apr. 2 2010) (transcript on file with Principal Investigator).

<sup>299</sup> Littwin *supra* note 39 at 1939 (defining success in terms of accessibility). Professor Littwin further noted, “Consumer bankruptcy attorneys contribute to the smooth running of the system, protect their clients from overreaching, and lobby against bankruptcy legislation that could potentially harm consumers.” *Id.* at 1040.

when struggling bankruptcy consumers hand over much-needed funds to their lawyers, they are paying for more than representation in their individual cases. They are paying for the fact that much of the administrative work necessary to process their bankruptcies will be completed by people they have hired, rather than by government officials operating under the pressures of bureaucratic entitlement. They are paying for the continued development of a community of lawyers and judges that wants consumer bankruptcy to work.<sup>300</sup>

This community of lawyers is comprised of a mix of highly skilled and professional practitioners, and a cadre of less capable, experienced or committed counsel. The matter of encouraging and tangibly rewarding proficiency, dedication and best practices is a matter of serious concern. As with other professionals, attorneys are motivated by “objective symbols of recognition.”<sup>301</sup> These symbols include reputational capital, professional honors, and high rates of remuneration.<sup>302</sup> Many respondents described a disconnect between the skill, time, and commitment it takes for attorneys to provide debtors with first-rate representation, and compensation that does not always reflect such excellence.

It is not just attorney personal income that is at issue—significant gross receivables are required to support a law office. A law firm’s income and cash flow must cover staffing an office with highly skilled and proficient support staff,<sup>303</sup> investments in expensive software, hardware and document storage systems,<sup>304</sup> as well as office rent, insurance, and other immutable operating costs.<sup>305</sup> Moreover, because consumer debtors are not likely to be repeat clients, at least in the short term,<sup>306</sup> lawyers

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<sup>300</sup> *Id.* at 1941.

<sup>301</sup> TALCOTT PARSONS, *ESSAYS IN SOCIOLOGICAL THEORY*, 43–46 (1964).

<sup>302</sup> *Id.*

<sup>303</sup> It was observed that practice under BAPCPA requires support staff to be “much smarter,” and thus more expensive. Focus Group of Consumer Bankruptcy Attorneys, (Sept. 23, 2010) (transcript on file with Principal Investigator).

<sup>304</sup> The necessary software investments included Best Case Solutions, Chromata, Quickbooks, and Adobe Reader, among others. Notes on File with Principal Investigator.

<sup>305</sup> Because consumer debtor representation may be as long as a five-year commitment, once an attorney invests in the practice, the attorney has the incentive to maintain the practice.

<sup>306</sup> Jean M. Lown, *Serial Bankruptcy Filers No Problem*, 26-5 AM. BANKR. INST. J. 36 (2007) (finding in a limited district study few financial and demographic variables helpful in identifying serial filers).

must take affirmative steps to ensure a steady stream of new clients. This typically requires substantial investments in advertising.<sup>307</sup>

It was repeatedly observed by those attorneys struggling with these conflicting forces and by trustees and judges observing this struggle, that there a tension inherent in the indispensability of highly skilled consumer bankruptcy attorneys, and the resources reasonably available to sustain a quality bar. If the goal is for the consumer bankruptcy system to continue to operate with the integrity it does when “best practices” are adhered to, policies directed reconciling this tension ought to be carefully considered.

## b. BAPCPA’s Unintended Consequences

Many of BAPCPA’s unintended effects have turned the concept of relief for “poor but unfortunate debtors” on its head. It was consistently observed that BAPCPA’s dictates resulted in “the poorest debtors [having] highest plan payments because their apparent disposable income cannot be taken out of the mix by high mortgage and car payments . . . .”<sup>308</sup> As numerous scholars have observed, “consumer bankruptcy suffer[s] from the irony that those who need it the most are often too poor to take advantage of its relief.”<sup>309</sup> Moreover, “additional administrative costs in increased attorney fees [result in] reduced dividends to non-priority unsecured creditors.”<sup>310</sup> As we found in our analysis of the quantitative

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<sup>307</sup> Advertisements commonly take the form of web pages, paid Google placements, yellow page ads, billboards, and less frequently, radio and television ads. In addition, a number of lawyers have established on-line blogs, to both educate their future clients, as well as to heighten their name recognition. Other lawyers with long-standing enough practices, however, reported largely relying on word of mouth and client referrals to develop and maintain their practices. We conducted a review of hundreds of consumer bankruptcy attorney websites in an effort to augment our survey sample size. We found many of these websites to have a great deal of substantive content, and for the most part, found them to be informative and consumer-centric. We also found that billboard advertising is more common in some areas of the country than others.

<sup>308</sup> Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator).

<sup>309</sup> Littwin, *supra* note, 39 at 1935.

<sup>310</sup> Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator). “Debtors are now permitted to pay less to their unsecured creditors, and to propose from the outset of their case to pay less, even if, were the pre-BAPCPA Code requirements applied, they would be required to pay more and in many cases would be required to remain in plans longer.” *Id.*

data, overall distributions to unsecured creditors were uncharged—an irony that cannot be lost on the financial services industry lobbyists.<sup>311</sup>

Respondents consistently recounted the irony of how easy it was to “game” a system that facially appeared to leave little room for discretion and flexibility, but yet left the door wide open for manipulation.<sup>312</sup> Chapter 13 Trustees confirmed this observation. “The purpose of the means test was to create uniformity. In reality it created gamesmanship and absurdity. The real losers are the debtors and creditors [who] are paying more in fees for a process that has not improved.”<sup>313</sup>

Moreover, it was observed that in an effort to achieve the goals of the bankruptcy system, judges are also working around the system’s inflexible dictates. As one Chapter 13 Trustee observed, “the means test . . . uses totally made up numbers, and our judge uses special circumstances to get around it so we can go to the actual budget.”<sup>314</sup> A Chapter 13 Trustee observed, “[based on] some comments that I get from the bench, [judges] felt that the law wasn’t in the best interest of the system as a whole. And so they kind of, through local rules, and through local practices, have refined it a little bit.”<sup>315</sup>

The vast majority of respondents were adamant, however, that the variety of “strategic approaches” to working with the system were not taken for the purpose of corrupting or abusing the bankruptcy process but in an effort to enable needed relief for financially distressed

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<sup>311</sup> See *supra* notes 139–144 and accompanying text.

<sup>312</sup> BAPCPA has removed much of the discretion that had been exercised by Trustees and judges pre-BAPCPA, and it has “turned trustees into collection agents and paper pushers rather than actively involved decision and judgment makers at the level and to the extent they were pre-BAPCPA.” It was further noted, “Section 1325(b)(1) and related provisions such as 101(10)(A) [are] designed to eliminate judicial discretion and create a formula that often punishes the prudent but unfortunate [debtors] and rewards the more wealthy [imprudent] consumer with a sizeable house and car payment . . . .” Chapter 13 Trustee Survey, questions 29, 39 (data on file with Principal Investigator).

<sup>313</sup> Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator). *But see* Mann, *Sweat Box* *supra* note 9 (predicting that creditor benefits from BAPCPA would not come from greater bankruptcy case distributions but from the effect of slowing the time of debtors’ inevitable filings).

<sup>314</sup> Chapter 13 Trustee Survey, question 39 (data on file with Principal Investigator).

<sup>315</sup> Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator).

debtors.<sup>316</sup> The strategies employed were an attempt to scale the “unproductive barriers to the success of a case.”<sup>317</sup>

With all that said, the consumer bankruptcy system still leaves room for debtors, with the help of their attorneys, to achieve “success”—although definitions of success may differ depending upon the circumstances. Despite BAPCPA’s procedural hurdles, debtors are continuing to file for bankruptcy protection and to receive, in many cases, needed discharge. Moreover, sometimes all a debtor needs is some time—to move, to refinance or modify a loan. As recounted by a Chapter 13 Trustee, “[to get] the debtor . . . 30 more days, . . . the debtor go[es] into [Chapter] 13, convert[s] to [Chapter] 7 just to get some more days. They don’t complete either one of them, but it gives them time to move or try to finance or sell.”<sup>318</sup> The “breathing room” afforded by bankruptcy may also bring stability to a household. “[A] parent or a family [may] . . . just want to keep their child in a school district until he gets out of high school, and that’s a successful 13.”<sup>319</sup>

## VI. Conclusion

Empirical study of consumer bankruptcy enables us to assess the operation of the system generally, and evaluate the extent to which its objectives are being met in the most efficient and equitable manner. More time will allow to us to further evaluate how the increased costs associated with each consumer bankruptcy case is affecting the system, the professional stakeholders as well as debtors themselves. This “exceedingly complex organism”<sup>320</sup> will continue to evolve and adapt and researchers will need to continue updating and exploring not only the nature of bankruptcy costs but other aspects of the consumer bankruptcy system as well.

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<sup>316</sup> “The system allows room for strategy.” Notes on file with Principal Investigator.

<sup>317</sup> Bankruptcy Judges Survey, question 29 (data on file with Principal Investigator).

<sup>318</sup> Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator). Another Chapter 13 Trustee observed, “Because to get a loan mod[ification] may be a success for them. That’s all they needed was the time to figure it out. If they don’t have a lien strip, they don’t really need us after they get the loan mod[ification].” *Id.*

<sup>319</sup> Focus Group of Chapter 13 Trustees (July 15, 2010) (transcript on file with Principal Investigator).

<sup>320</sup> White, *supra* note 61, at 866.

## Appendix I: Detailed Methodology

### *Quantitative Data*

#### Sample Selection

We were given access to group identifying information for all non-commercial bankruptcy cases filed from 2003 through the end of 2009.<sup>321</sup> The goal was to create a database of detailed information for 0.11% of the total population of non-commercial Chapter 7 and Chapter 13 case filings during this period, or approximately 10,225 consumer bankruptcy cases.

The “target” number of cases was identified for Chapter 7 and Chapter 13 for each judicial district by time period—2003; 2004; January 1 to October 16, 2005; October 17 to December 31, 2005; 2006; 2007; 2008; 2009). These per district target numbers represented 0.11% of the cases filed in that district for each of the time periods, for each of Chapter 7 and Chapter 13 filed cases.

Ultimately, a random selection of cases by district and by year, in proportion to the total number of consumer cases filed in each district for the corresponding period, was generated.<sup>322</sup> The sample was twice as large as our total target number in anticipation of finding a number of “dud” cases. Research Assistants were instructed to code the target number of valid cases within each district for the corresponding time period, omitting any bankruptcy cases with incomplete information. As we expected, there were cases we were not able to code—files with duplicate case numbers, cases that had been entered in error, cases without petitions or schedules online, closed cases with no Trustee Final Report, as well as cases that had been dismissed at the outset for failure to file schedules. Because of our generous list of targeted cases, we met our goal for nearly every district in each time period.

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<sup>321</sup> We are indebted to AACER/Epic for their assistance in generating this file.

<sup>322</sup> We initially asked AACER to generate our sample from the cases it identified, based upon specifically identified parameters. After a week or so of coding and reviewing the data, we recognized that the sample provided by AACER included a disproportionate number of cases filed in the earlier months of each year. We then commissioned Professor Donihue to write a program that generated a random sample that reflected cases filed in each month of each calendar year.

Cases were assigned in equal proportion to each of six research assistants. To blunt the impact of human coding error, each research assistant's distribution list included cases from a multitude of districts and time periods.

## Coding Manual, Web-based Entry, & Quality Control

As a predicate to data collection, we walked through numerous consumer bankruptcy case dockets to determine what data ought to be extracted and coded for inclusion in the data set.<sup>323</sup> After a discussion of the hypotheses, themes and objectives of the National Study, we developed a Coding Manual and data collection template.

We designed the Coding Manual to be used with an original web-based data entry form.<sup>324</sup> Each section on the data entry form was color differentiated and corresponded to a section in the Coding Manual and to a case document or section on the docket. The Coding Manual also provided information and context for each data point and directed the research assistant to where on the docket the information was likely to be found.<sup>325</sup> For each case coded, the research assistants accessed the PACER website for the particular bankruptcy court in which the case was filed. From there, the case docket report was accessed. From the docket report, the research assistants were able to read and review the relevant case documents, which typically included the petition and schedules, disclosure of compensation of attorney for the debtor(s), reaffirmation agreement/s, and the Trustee Final Report.

For each case, coders opened the web data entry form, inserted the unique case identifier (case number and state) from their unique case list and entered the case data by clicking on radio buttons, selecting

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<sup>323</sup> Our methodical review included a critique of the Pilot Study Coding Manual and coding process. This resulted in the removal of some data points, and the addition of others.

<sup>324</sup> The password protected data collection site was hosted by Colby College, where our Statistical Consultant Professor Michael Donihue is Chair of the Economics Department. *See infra* Appendix VIII for screenshots of the entry form.

<sup>325</sup> Public Access to Electronic Court Records ("PACER") system was used to access the bankruptcy case files. PACER is an online system that provides access to Bankruptcy court records. Each court maintains its own database of case information within the larger PACER system. Accordingly, each court has its own website to access its PACER system. We requested PACER fee waivers from all 90 districts in the Study. We received waivers for 88 of those districts.

choices from drop menus, and by typing data in or filling in fields by cutting and pasting from the petitions, schedules, reports, and dockets. We found that coding on this web-based form was considerably more accurate and efficient than coding directly onto a spreadsheet.

Once the data for each case was entered, it was downloaded onto a master spreadsheet.<sup>326</sup> Periodically, the data was downloaded from the master spreadsheet and a new master spreadsheet was opened. The data from each download was backed up on multiple computers and external data storage system, as well as on an external server.

The data endured multiple rounds of “scrubbing” to catch coding errors and irregularities. Scrubbing consisted of removing typographical errors including spelling mistakes, stray punctuation, and alphabetical entries in numerical fields. For entries that were unusually high or low, the case was re-accessed to confirm that the questionable entry was correct. As an additional quality control measure, 10% of the cases coded in the first month were coded twice, and at the final stage of the data collection process, all 11,221<sup>327</sup> cases were (i) electronically checked for aberrations and outliers, and (ii) manually reviewed for errors and irregularities.<sup>328</sup>

### Under-Sampling of Discharged Chapter 13 Cases and of Chapter 7 and Chapter 13 cases Filed in Certain Districts

As noted above, our sample was developed as a percentage of all consumer cases filed in each district for each Chapter and time period. Our analysis, however, divided the sample into Chapter 7 cases and Chapter 13 cases filed pre-BAPCPA and post-BAPCPA. Moreover, we divided our Chapter 7 cases, for purposes of extracting descriptive fee data, into asset cases and no-asset cases. These were further divided by cases that were discharged, converted and dismissed. Likewise, the database of Chapter 13 cases was divided into subsets of dismissed, open, and discharged cases.

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<sup>326</sup> The Coding Manual also instructs the research assistant how the data is to be entered (the relevant “Code”). For example, numerical values (such as dollar amounts of claims and value of property) were to be entered as whole numbers without non-numerical characters.

<sup>327</sup> See *supra* notes 9-10 and accompanying text.

<sup>328</sup> The first round of coding for the National Study took place between June 2010 and January 2011. Subsequent over-sampling took place in the spring and summer of 2011.



As the data were being coded, preliminary calculations of summary statistics revealed that through random selection we had obtained what appeared to be a disproportionate number of dismissed or still open (at the time of our sampling) Chapter 13 bankruptcy filings for the post-BAPCPA period. We found that approximately 350 discharged Chapter 13 cases filed following BAPCPA's enactment had been coded. This was due to the length of time a Chapter 13 case remains open prior to discharge (three to five years) and the small number of cases that end with the debtor receiving a discharge.

To remedy this deficiency, we identified an additional 3,603 Chapter 13 cases filed in 2006, 2007, and the last two months of 2005, reasoning that cases filed in late 2005 through 2007 had the greatest possibility of being closed and discharged. We organized the cases by district and time period and prepared a target list reflecting the number of cases filed in that district for the particular time period. Only those Chapter 13 cases designated as "discharged" on the docket report were coded: a total of 785 additional cases.

When we began to develop descriptive data tables of discharged cases broken down by district, state and circuit, it was revealed that in some districts our sample was too small from which to draw reliable inferences. We examined each district, identified a target number of cases and endeavored to meet the newly identified targets in each under-sampled district. We conducted a second round of over-sampling to fill in areas where the sample was too small. In some districts we met our target numbers, and in others, we came close. In still other districts, however, there simply were not enough cases filed that had gone to discharge that could be added to our data set. In yet other districts, cases were not available on-line, and we did not have access to the data. At the end of the second round of over-sampling, we coded an additional 3,113 cases.

### Survey of "Presumptively Reasonable" Fees

The relationship between the fees attorneys receive and the relevant presumptively reasonable fee in the district was an important

issue to be studied. In order to examine this relationship over time, we developed a database of presumptive fees, by district or court, in effect from 2003 to present.<sup>329</sup> Because so many districts do not codify their presumptive fee information or keep archival records, we relied largely upon the institutional memories of obliging Chapter 13 Trustees and debtor attorneys to provide and confirm the presumptive fees of almost ten years ago.<sup>330</sup>

Coming by much of the data outlined in Appendix VI took some scouting and tenacity. We started by reviewing each bankruptcy district's website to see if the fee information was provided in the district's local rules, general orders, or standing orders. This method provided the current presumptive fees in each district that had codified or memorialized its fee. A few districts offered an on-line archive of local rules and general orders that outlined the district's earlier presumptive fees. The majority of courts' websites, however, failed to provide historical presumptive fee information.

After exhausting the material publicly available online, calls were made to bankruptcy courts in an effort to access local rules and orders archives. Unfortunately, for the most part, this effort was futile, as most clerks could not access archival rules and orders. Next, information was sought from the Standing Chapter 13 Trustee offices. Chapter 13 Trustees were able to provide varying degrees of information. For example, some Trustees provided year specific codified fees in their districts, while others provided presumptive fees that were established by custom.

After the available Chapter 13 Trustees were surveyed, we sought assistance from practicing consumer debtors' attorneys. Attorneys were chosen in five ways: (1) general internet search for practicing debtor attorneys in specific districts; (2) Chapter 13 Trustee referrals; (3) bankruptcy court clerk referrals; (4) attorney referrals; and (5) attorneys

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<sup>329</sup> See *infra* Appendix VI. The GAO Study collected information on the no-look fees in place in 48 districts, before and after BAPCPA. The GAO found that the Chapter 13 no-look fee increased in almost all of the districts (or divisions) studied. In more than half of those cases, the increase was 55% or more. As noted in the GAO Study, "a division is a sublevel below that of a federal judicial district." THE GAO REPORT, *supra* note 15, at 24-25.

<sup>330</sup> See *infra* Appendix VI.

listed on Chapter 13 cases filed pre-BAPCPA and post-BAPCPA. Debtors' attorneys proved to be the best source of information about presumptive fees set by custom or unwritten practice. It should be noted that, at times, attorneys within the same district gave us different dollar amounts when asked what the "unwritten" no-look was in their district. Interestingly, a few practicing attorneys had never heard of a presumptive or no-look fee.

## *Qualitative Data*

### **Focus Groups**

To develop a body of qualitative data, I conducted twelve focus groups over a period of eighteen months: eight comprised of consumer debtor attorneys, one of Standing Chapter 13 Trustees, one of Chapter 7 Panel Trustees, one of bankruptcy judges, and one of U.S. Trustees. In addition, I conducted dozens of one-on-one in-person, e-mail, and telephone interviews with bankruptcy professionals practicing and serving around the country. I endeavored to contact a national cross section of consumer bankruptcy lawyers, and offer the opportunity of attorneys who were not members of ABI, NACBA, or other professional bankruptcy organizations to participate.

With respect to the Focus Groups, invitations were extended to potential participants in a variety of ways. In a number of instances, I identified the debtors' attorneys with consumer practices who were planning to attend an upcoming ABI conference. I then extended e-mail invitations to these individuals to participate in a Focus Group that was to be held on the conference site. In other cases, I contacted the Chapter 13 Trustee or the bankruptcy judge in the district where ABI was organizing a conference to get his or her help in identifying bankruptcy attorneys with active consumer practices. In other instances, I solicited the assistance of members of the Study's Advisory Board to suggest names of invitees for upcoming focus groups.

In addition to five national and regional ABI conferences,<sup>331</sup> I conducted Focus Groups at each of the following professional organizations' meetings: the National Association of Consumer Bankruptcy Attorneys (April 2010, San Francisco, California); the American Consumer Bankruptcy College (September 2010, Las Vegas, Nevada); the National Association of Bankruptcy Trustees (April 2010, Savannah, Georgia); the National Association of Chapter 13 Trustees (July 2010, Grapevine, Texas); and the National Conference of Bankruptcy Judges (October 2010, New Orleans, Louisiana). In addition, I visited the Executive Office of the United States Trustee in Washington, D.C. to conduct a focus group of U.S. Trustees.

Each focus group took place in a conference room, a hotel meeting room, or in one case, an empty restaurant. Participants sat around a table, with the Principal Investigator at the head serving as the moderator and interviewer. A digital recorder was placed in the center of the table, and the discussion was recorded. Once each focus group interview concluded, the recording was transcribed.<sup>332</sup>

In each of these focus group interviews, I asked the same series of open-ended questions and raised the same series of issues. These questions included:

- How has consumer bankruptcy practice changed, following the BAPCPA amendments?
- What are the most significant changes?
- What are the least significant changes?
- Has your work-load increased?
- Have you raised your fees, post-BAPCPA?
- Have the costs of bankruptcy deterred or delayed debtors from filing?
- What other effects have you observed?

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<sup>331</sup> ABI Northeast Consumer Bankruptcy Conference, Boston, Mass. Jan. 18, 2010; ABI Caribbean Insolvency Conference, Boca Raton, Fla., Feb. 11, 2010; ABI Northeast Bankruptcy Conference, Cape Cod, Mass. July 8, 2010; ABI Southwest Bankruptcy Conference, Las Vegas, Nev., Sept. 23, 2010; Detroit Consumer Bankruptcy Conference, Detroit, Mich., Nov. 10 2010.

<sup>332</sup> After each focus group interview, I uploaded the digital recording to an on-line transcription service, GMR Transcription. Within a week, they returned a transcript of the interview in a Microsoft Word document. See GMR TRANSCRIPTION, <http://www.gmrtranscription.com/> (last visited Nov. 9, 2011).

The issues raised in the focus groups informed many of the questions in the surveys.

## Survey Instruments

In an effort to gather additional qualitative data about professionals' experiences working within the consumer bankruptcy system, four survey instruments were developed and administered. A separate survey was crafted and tailored to: (i) consumer debtors' attorneys; (ii) Standing Chapter 13 Trustees; (iii) Chapter 7 Panel Trustees; and (iv) bankruptcy judges.

The purpose of a survey is to provide statistical estimates of the characteristics of a target population.<sup>333</sup> To do that, a subset of that population is designated—a sample—from which information is collected.<sup>334</sup> With respect to the Standing Chapter 13 Trustees, the Chapter 7 Panel Trustees, and the bankruptcy judges, the task was fairly straightforward as many of the individuals in these groups had publicly available contact information and the population was finite and manageable.<sup>335</sup> We sent survey requests to every person whose contact information was publicly available. Our response rate was 48% (86 of 179) for Standing Chapter 13 Trustees, 23% (193 of 836) for Chapter 7 panel Trustees, and 29% for bankruptcy judges (99 of 342).

Developing the sample of consumer debtors' counsel was not as simple an endeavor, in large part because it was not clear what type of sample would be representative of a national, geographically, culturally, and economically diverse population of attorneys practicing consumer bankruptcy law. We ultimately decided on a multi-prong approach, accessing the population of debtors' counsel through multiple entry

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<sup>333</sup> FLOYD J. FOWLER, JR., *SURVEY RESEARCH METHODS* 11 (4th ed. 2009).

<sup>334</sup> *Id.*

<sup>335</sup> We developed our list of Standing Chapter 13 Trustees from the Department of Justice's website. DEPARTMENT OF JUSTICE, *U.S. Trustee Program, Private Trustee Information*, [http://www.justice.gov/ust/eo/private\\_trustee/locator/13.htm](http://www.justice.gov/ust/eo/private_trustee/locator/13.htm). We developed our list of Bankruptcy Judges from ABI's membership list and from individual court websites. Our list of Chapter 7 Panel Trustees was collected from the Department of Justice's website. DEPARTMENT OF JUSTICE, *U.S. Trustee Program, Private Trustee Information*, [http://www.justice.gov/ust/eo/private\\_trustee/locator/7.htm](http://www.justice.gov/ust/eo/private_trustee/locator/7.htm).

points. We had access to the American Bankruptcy Institute membership list, and from that, created a roster of e-mail contacts comprised of all attorneys who self-identified as “consumer bankruptcy lawyers.”<sup>336</sup> Because we did not want to restrict the survey respondents to ABI members, we researched (on the internet and through other sources of advertising) and developed a list of e-mail addresses for consumer bankruptcy lawyers from every part of the country. In addition, the names of the 308 attorneys who aided in the compilation of the “presumptively reasonable fee” information were added to the roster. We further contacted bankruptcy court clerks and asked if they would share contact information for their “top volume filers.” In addition, members of the Study’s Advisory Board included a link to the survey in e-mails sent out on consumer bankruptcy list-servs and arranged to have a notice and link to the survey posted in the NACBA June 2011 newsletter. Finally, we engaged in “chain referral sampling,” where respondent groups grew through referrals from others in the group. In this way, we endeavored to develop a sample that was as representative of the population as possible. In the end, using the method of purposive sampling, we developed a pool of 1,923 potential debtors’ counsel survey respondents. The response rate was 25%.<sup>337</sup>

The survey instruments were prepared using the online survey development and administration tool, Survey Monkey.<sup>338</sup> Each survey was accompanied by a cover e-mail from the Principal Investigator explaining the purpose of the Consumer Bankruptcy Fee Study, the objectives of the survey, and the period of time the survey would remain open.<sup>339</sup> Each survey began with standard demographic questions and then proceeded to pose a series of specific questions about consumer bankruptcy

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<sup>336</sup> It soon became clear to me that this list was over-inclusive. I receive a number of e-mail responses letting me know that I had made contact with an attorney with a practice that exclusively involving business representation; an attorney who exclusively represented creditors; or a financial advisor, consultant or accountant.

<sup>337</sup> A total of 479 responses. Consumer Bankruptcy Attorney Survey (data on file with Principal Investigator).

<sup>338</sup> See SURVEYMONKEY, <http://www.surveymonkey.com/> (last visited Nov. 26, 2011). The Gold professional plan allows unlimited questions and unlimited responses, randomization of questions and answers, the ability to create text-based analysis (ex. cloud view of frequently used phrases from text answers), the ability to download responses and create charts, and the transmission of survey responses over a secured SSL connection.

<sup>339</sup> In compliance with the CAN-SPAM Act, the survey also provided the name and contact information of the Principal Investigator and the option of “opting out.”

practice, fee arrangements, professional practices, professional interactions, and questions about consumer debtors. There was ample opportunity provided for open-ended answers or elaboration of answers to multiple-choice questions. In this way, the survey instruments tracked many of the open-ended questions, prompts and issues raised in the focus group interviews.

## Appendix II: Chapter 13 Quantitative Data Tables

Table A - 1. Chapter 13 Total Direct Access Costs Pre-BAPCPA Compared to Post-BAPCPA

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	% of all cases	Total direct access costs		% of all cases	Total direct access costs			
		Current \$s	Inflation Adjusted 2005 \$s		Current \$s	Inflation Adjusted 2005 \$s		
Open cases	2.9%			29.8%				
Closed discharged cases	53.7%	\$2,169	\$2,260	41.0%	\$2,972	\$2,861	***	***
Closed dismissed cases	36.8%	\$1,409	\$1,462	25.7%	\$1,964	\$1,809	***	***

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Average values for total direct access costs do not include *pro bono* cases

Total Direct Access Costs equals attorneys' fees plus debtor education fee plus filing fee

Table A - 2. Chapter 13 *Pro Se* Debtor Cases

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance
All cases	3.0%	2.1%	**
Discharged cases	1.5%	0.8%	*
Dismissed cases	5.0%	5.9%	No
Open cases	4.7%	0.3%	***

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Table A - 3. Chapter 13 *Pro Se* Debtor Cases With a Petition Preparer

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance		
	% of cases	Preparer Fee		% of cases	Preparer Fee				
		Current \$	Inflation Adjusted 2005 \$s		Current \$	Inflation Adjusted 2005 \$s			
All <i>pro se</i> cases	40.0%	\$193	\$205	100.0%	\$201	\$181	***	No	no
Discharged cases	0%			0%			Too few cases		
Dismissed cases	33%	\$188	\$204	100%	\$185	\$164	no	No	no
Open cases	0%			0%			Too few cases		

\* Significant at the 10% level; "no" no statistically significant difference



Table A - 4. Chapter 13 *Pro Se* Debtor Cases That Hired an Attorney

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance
All cases	1.3%	0.4%	***
Discharged cases	1.1%	0.4%	**
Dismissed cases	1.5%	0.9%	No
Open cases	4.8%	0.0%	***

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Table A - 5. Average Chapter 13 Attorney Fee Pre-BAPCPA Compared to Post-BAPCPA

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	% of all cases	Total attorney fees		% of all cases	Total attorney fees			
		Current \$s	Inflation Adjusted 2005 \$s		Current \$s	Inflation Adjusted 2005 \$s		
Closed discharged cases	53.6%	\$1,978	\$2,061	40.8%	\$2,663	\$2,564	***	***
Closed dismissed cases	26.9%	\$1,217	\$1,262	19.0%	\$1,618	\$1,491	***	***

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Average values for total attorney fees do not include *pro bono* cases

## Appendix III: Chapter 7 Quantitative Data Tables

Table A - 6. Chapter 7 Total Direct Access Costs Pre-BAPCPA Compared to Post-BAPCPA

	Pre-BAPCPA				Post-BAPCPA				Statistical Significance	
	% of all cases	% of all asset / no asset cases	Total direct access costs		% of all cases	% of all asset / no asset cases	Total direct access costs			
			Current \$s	Inflation Adjusted 2005 \$s			Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All asset cases	9.9%		\$1,047	\$1,087	10.6%		\$1,591	\$1,424	***	***
Discharged cases	9.1%	92.5%	\$998	\$1,035	10.1%	95.8%	\$1,581	\$1,414	***	***
Dismissed cases	0.7%	7.5%	\$1,665	\$1,742	0.4%	4.2%	\$1,805	\$1,636	no	no
Discharged converted cases	0.5%	5.1%	\$1,857	\$1,974	0.6%	6.0%	\$2,057	\$1,830	no	no
Dismissed converted cases	0.0%	0.2%	\$1,765	\$1,936	0.2%	1.5%	\$1,344	\$1,238	Too few cases	
No asset cases	90.1%		\$840	\$866	89.4%		\$1,463	\$1,304	***	***
Discharged cases	89.0%	98.8%	\$842	\$868	86.9%	97.2%	\$1,469	\$1,309	***	***
Dismissed cases	1.1%	1.2%	\$717	\$748	2.5%	2.8%	\$1,215	\$1,099	***	***
Discharged converted cases	2.8%	3.1%	\$1,547	\$1,609	3.6%	4.0%	\$2,186	\$2,002	***	***
Dismissed converted cases	0.0%	0.0%	\$1,409	\$1,462	0.5%	0.6%	\$2,018	\$1,860	Too few cases	

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;

"no" no statistically significant difference

Average values for total direct access costs do not include *pro bono* cases

Total Direct Access Costs equals attorneys' fees plus debtor education fee plus filing fee

Table A - 7. Chapter 7 *Pro Se* Debtor Cases

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance
All cases	7.4%	5.8%	***
All asset cases	5.8%	3.3%	No
Discharged cases	6.0%	2.8%	**
Dismissed cases	3.2%	14.3%	*
No asset cases	7.6%	6.1%	**
Discharged cases	7.4%	5.5%	***
Dismissed cases	23.4%	28.2%	No

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;

"no" no statistically significant difference

Table A - 8. Chapter 7 *Pro Se* Debtor Cases With a Petition Preparer

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance		
	% of cases	Preparer Fee		% of cases	Preparer Fee				
		Current \$	Inflation Adjusted 2005 \$s		Current \$	Inflation Adjusted 2005 \$s	% of cases	Current \$s	Inflation Adjusted 2005 \$s
All <i>pro se</i> cases	97.6%	\$187	\$192	96.8%	\$208	\$184	no	**	no
All <i>pro se</i> asset cases	100%	\$210	\$216	75%	\$286	\$265	no	no	no
Discharged cases	100%	\$210	\$216	75%	\$286	\$265	no	no	no
Dismissed cases	0%			0%			Too few cases		
<i>Pro se</i> no asset cases	97.4%	\$186	\$191	97.8%	\$204	\$181	no	*	no
Discharged cases	98.0%	\$186	\$191	98.8%	\$209	\$185	no	**	no
Dismissed cases	66.7%	\$176	\$178	88.9%	\$159	\$139	no	no	no

\* Significant at the 10% level; "no" no statistically significant difference

Table A - 9. Chapter 7 *Pro Se* Debtor Cases That Hired an Attorney

	Pre-BAPCPA	Post-BAPCPA	Statistical Significance
All cases	0.7%	0.3%	*
All asset cases	1.9%	1.0%	No
Discharged cases	2.1%	0.7%	*
Dismissed cases	0.0%	7.7%	*
No asset cases	0.6%	0.2%	**
Discharged cases	0.6%	0.2%	**
Dismissed cases	0.0%	2.1%	No

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level; "no" no statistically significant difference

Table A - 10. Average Chapter 7 Attorney Fee Pre-BAPCPA Compared to Post-BAPCPA

	Pre-BAPCPA				Post-BAPCPA				Statistical Significance	
	% of all cases	% of all asset / no asset cases	Total attorney fees		% of all cases	% of all asset / no asset cases	Total attorney fees		Current \$s	Inflation Adjusted 2005 \$s
			Current \$s	Inflation Adjusted 2005 \$s			Current \$s	Inflation Adjusted 2005 \$s		
All asset cases	9.9%		\$840	\$872	10.6%		\$1,209	\$1,082	***	***
Discharged cases	9.1%	92.5%	\$791	\$821	10.1%	95.8%	\$1,199	\$1,072	***	***
Dismissed cases	0.7%	7.5%	\$1,458	\$1,526	0.4%	4.2%	\$1,423	\$1,289	No	no
Discharged converted cases	0.5%	5.1%	\$1,651	\$1,757	0.6%	6.0%	\$1,674	\$1,489	No	no
Dismissed converted cases	0.0%	0.2%	\$1,565	\$1,716	0.2%	1.5%	\$965	\$888	Too few cases	
No asset cases	90.1%		\$633	\$653	89.4%		\$1,080	\$962	***	***
Discharged cases	89.0%	98.8%	\$635	\$654	86.9%	97.2%	\$1,087	\$968	***	***
Dismissed cases	1.1%	1.2%	\$510	\$533	2.5%	2.8%	\$834	\$755	**	*
Discharged converted cases	2.8%	3.1%	\$1,340	\$1,394	3.6%	4.0%	\$1,805	\$1,655	***	**
Dismissed converted cases	0.0%	0.0%	\$1,200	\$1,245	0.5%	0.6%	\$1,640	\$1,512	Too few cases	

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;

"no" no statistically significant difference

Average values for total attorney fees do not include *pro bono* cases

Table A - 11. Number of Chapter 7 Cases in Which an *In Forma Pauperis* Motion Was Filed

	Post-BAPCPA		
	% of cases	Attorney Fees	
		Current \$	Inflation Adjusted 2005 \$s
All <i>in forma pauperis</i> cases	1.9%	\$783	\$695
<i>in forma pauperis</i> granted	71.2%	\$563	\$502
<i>in forma pauperis</i> asset cases	0%	none	
<i>in forma pauperis</i> no assets	100%	\$783	\$695

No statistically significant difference for any category

## Appendix IV: Quantitative Data Tables Showing Distribution to Unsecured Creditors in Chapter 13 and Chapter 7

Table A - 12. Distribution to Unsecured Creditors as a Percentage of Allowed Unsecured Creditor Claims in Chapter 13 Cases

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All closed cases	29.5%			26.4%				
Average unsecured claims		\$25,090	\$25,980		\$25,836	\$24,519	no	no
Median unsecured claims		\$13,532	\$14,206		\$13,918	\$13,245		
Average distributions		\$7,373	\$7,670		\$6,700	\$6,465	no	*
Median distributions		\$2,021	\$2,119		\$1,674	\$1,617		
Discharged cases	35.9%			35.7%				
Average unsecured claims		\$31,022	\$32,131		\$28,672	\$27,632	no	**
Median unsecured claims		\$19,146	\$19,721		\$16,907	\$16,297		
Average distributions		\$11,125	\$11,545		\$10,201	\$9,856	no	**
Median distributions		\$5,995	\$6,347		\$5,100	\$4,831		
Dismissed cases	11.5%			3.9%				
Average unsecured claims		\$16,875	\$17,462		\$21,105	\$19,324	**	no
Median unsecured claims		\$7,971	\$8,242		\$9,936	\$9,466		
Average distributions		\$1,885	\$2,000		\$794	\$746	no	no
Median distributions		\$0	\$0		\$0	\$0		

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Table A - 13. Distribution to Unsecured Creditors as a Percentage of Estimated Unsecured Liabilities as Reported on the Schedules in Chapter 13 Cases

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All closed cases	21.5%			18.0%				
Average unsecured liabilities		\$34,742	\$35,721		\$38,245	\$35,939	no	no
Median unsecured liabilities		\$16,702	\$17,281		\$19,257	\$18,296		
Average distributions		\$7,373	\$7,670		\$6,700	\$6,465	no	**
Median distributions		\$2,021	\$2,119		\$1,674	\$1,617		
Discharged cases	25.0%			23.6%				
Average unsecured liabilities		\$44,971	\$46,157		\$43,513	\$41,737	no	no
Median unsecured liabilities		\$22,735	\$23,632		\$23,589	\$22,908		
Average distributions		\$11,125	\$11,545		\$10,201	\$9,856	no	**
Median distributions		\$5,995	\$6,347		\$5,100	\$4,831		
Dismissed cases	8.8%			2.7%				
Average unsecured liabilities		\$22,074	\$22,798		\$30,642	\$27,569	**	no
Median unsecured liabilities		\$10,235	\$10,463		\$13,755	\$12,651		
Average distributions		\$1,885	\$2,000		\$794	\$746	no	no
Median distributions		\$0	\$0		\$0	\$0		

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Table A - 14. Distribution to Unsecured Creditors as a Percentage of Allowed Unsecured Creditor Claims in Chapter 7 Cases

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Claims	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All asset cases	10.1%			5.1%				
Average unsecured claims		\$35,091	\$36,417		\$66,993	\$60,176	***	***
Median unsecured claims		\$21,400	\$21,896		\$32,300	\$29,218		
Average distributions		\$3,553	\$3,668		\$3,379	\$3,069	no	no
Median distributions		\$1,362	\$1,439		\$813	\$755		
Discharged asset cases	10.4%			5.1%				
Average unsecured claims		\$36,614	\$37,995		\$68,944	\$61,916	***	**
Median unsecured claims		\$22,434	\$23,085		\$35,037	\$30,660		
Average distributions		\$3,826	\$3,951		\$3,489	\$3,169	no	no
Median distributions		\$1,547	\$1,590		\$900	\$818		
Dismissed asset cases	1.3%			4.0%				
Average unsecured claims		\$17,203	\$17,886		\$27,276	\$24,731	no	no
Median unsecured claims		\$5,556	\$5,785		\$1,289	\$1,173		
Average distributions		\$237	\$240		\$1,097	\$999	no	no
Median distributions		\$0	\$0		\$0	\$0		
Discharged no asset cases	1.9%			0.9%				
Average unsecured claims		\$53,841	\$55,429		\$68,530	\$60,710	***	no
Median unsecured claims		\$30,832	\$31,796		\$40,142	\$35,865		
Average distributions		\$990	\$1,030		\$598	\$546	*	**
Median distributions		\$0	\$0		\$0	\$0		

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference

Table A - 15. Distribution to Unsecured Creditors as a Percentage of Estimated Unsecured Liabilities as Reported on the Schedules in Chapter 7 Cases

	Pre-BAPCPA			Post-BAPCPA			Statistical Significance	
	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Distributions ÷ Liabilities	Current \$s	Inflation Adjusted 2005 \$s	Current \$s	Inflation Adjusted 2005 \$s
All asset cases	5.4%			4.0%				
Average unsecured liabilities		\$66,378	\$68,450		\$85,164	\$76,119	*	no
Median unsecured liabilities		\$34,644	\$35,282		\$51,548	\$45,429		
Average distributions		\$3,553	\$3,668		\$3,379	\$3,069	no	no
Median distributions		\$1,362	\$1,439		\$813	\$755		
Discharged asset cases	5.5%			4.1%				
Average unsecured liabilities		\$70,214	\$72,388		\$86,348	\$77,156	no	no
Median unsecured liabilities		\$36,080	\$36,957		\$52,368	\$47,739		
Average distributions		\$3,826	\$3,951		\$3,489	\$3,169	no	no
Median distributions		\$1,547	\$1,590		\$900	\$818		
Dismissed asset cases	1.2%			1.9%				
Average unsecured liabilities		\$19,360	\$20,183		\$58,193	\$52,487	***	no
Median unsecured liabilities		\$10,870	\$11,692		\$31,706	\$28,414		
Average distributions		\$237	\$240		\$1,097	\$999	no	no
Median distributions		\$0	\$0		\$0	\$0		
Discharged no asset cases	1.9%			0.9%				
Average unsecured liabilities		\$52,004	\$53,568		\$66,238	\$58,678	***	no
Median unsecured liabilities		\$29,965	\$31,011		\$39,200	\$35,035		
Average distributions		\$990	\$1,030		\$598	\$546	*	**
Median distributions		\$0	\$0		\$0	\$0		

\* Significant at the 10% level; \*\* Significant at the 5% level; \*\*\* Significant at the 1% level;  
 "no" no statistically significant difference



## Appendix V: Average Attorney Fees Adjusted for Inflation

Table A - 16. Average Attorney Fee by Circuit for Discharged Chapter 13 Cases Adjusted for Inflation

Circuit	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
1	\$3,151.42	\$3,349.94	\$198.52	6%
2	\$1,992.37	\$2,797.48	\$805.11	40%
3	\$1,940.39	\$2,845.58	\$905.20	47%
4	\$1,656.75	\$2,617.77	\$961.02	58%
5	\$2,080.93	\$2,620.37	\$539.44	26%
6	\$1,636.40	\$2,370.64	\$734.24	45%
7	\$2,113.35	\$2,669.44	\$556.09	26%
8	\$1,679.74	\$2,150.37	\$470.63	28%
9	\$2,267.58	\$2,925.12	\$657.54	29%
10	\$2,013.71	\$2,354.77	\$341.06	17%
11	\$1,905.68	\$2,392.88	\$487.20	26%
DC	\$1,620.11	\$2,602.86	\$982.75	61%

Table A - 17. Average Attorney Fee by State for Discharged Chapter 13 Cases Adjusted for Inflation

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
AK	\$2,390.06	\$2,048.46	-\$341.60	-14%
AL	\$1,645.99	\$1,878.74	\$232.75	14%
AR	\$1,513.56	\$2,064.18	\$550.62	36%
AZ	\$2,906.86	\$3,444.34	\$537.47	18%
CA	\$2,378.56	\$2,864.97	\$486.40	20%
CO	\$2,093.65	\$3,079.38	\$985.73	47%
CT	\$2,331.42	\$3,316.92	\$985.50	42%
DC	\$1,620.11	\$2,602.86	\$982.75	61%
DE	\$1,689.49	\$2,905.87	\$1,216.39	72%
FL	\$2,125.75	\$2,666.58	\$540.84	25%
GA	\$1,863.06	\$2,451.26	\$588.20	32%
HI	\$1,561.41	\$2,382.70	\$821.29	53%

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
IA	\$1,364.34	\$2,240.51	\$876.17	64%
ID	\$1,391.37	\$2,992.06	\$1,600.69	115%
IL	\$2,278.58	\$2,719.45	\$440.88	19%
IN	\$1,975.92	\$2,818.97	\$843.05	43%
KS	\$2,129.41	\$2,337.43	\$208.02	10%
KY	\$1,329.78	\$2,484.67	\$1,154.89	87%
LA	\$1,786.41	\$2,446.94	\$660.53	37%
MA	\$2,301.01	\$2,324.35	\$23.35	1%
MD	\$1,570.65	\$2,944.68	\$1,374.03	87%
ME	\$3,711.53	\$4,950.28	\$1,238.75	33%
MI	\$2,285.26	\$2,676.74	\$391.47	17%
MN	\$1,603.94	\$1,712.20	\$108.25	7%
MO	\$1,983.89	\$2,523.10	\$539.22	27%
MS	\$1,341.32	\$2,022.67	\$681.35	51%
MT	\$2,019.90	\$2,062.17	\$42.26	2%
NC	\$1,725.97	\$2,453.97	\$728.00	42%
ND	\$1,465.73	\$1,560.35	\$94.62	6%
NE	\$1,972.85	\$2,357.73	\$384.88	20%
NH	\$3,373.67	\$4,294.57	\$920.90	27%
NJ	\$2,120.93	\$2,528.60	\$407.67	19%
NM	\$1,789.64	\$2,717.49	\$927.86	52%
NV	\$2,344.96	\$4,335.98	\$1,991.02	85%
NY	\$1,909.17	\$2,768.86	\$859.69	45%
OH	\$1,451.73	\$2,220.92	\$769.19	53%
OK	\$1,907.30	\$1,991.58	\$84.28	4%
OR	\$2,864.75	\$3,358.27	\$493.52	17%
PA	\$1,886.01	\$2,930.50	\$1,044.49	55%
RI	\$2,768.41	\$2,832.21	\$63.80	2%
SC	\$1,806.35	\$3,007.13	\$1,200.78	66%
SD	\$1,780.62	\$2,276.03	\$495.41	28%
TN	\$1,517.91	\$2,149.73	\$631.83	42%
TX	\$2,236.77	\$2,789.28	\$552.51	25%
UT	\$2,176.52	\$2,598.45	\$421.94	19%
VA	\$1,557.99	\$2,686.47	\$1,128.49	72%

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
VT	\$1,977.79	\$2,375.53	\$397.74	20%
WA	\$1,918.26	\$2,431.02	\$512.76	27%
WI	\$1,203.11	\$1,865.14	\$662.03	55%
WV	\$1,273.81	\$1,959.52	\$685.71	54%
WY	\$2,203.40	\$1,798.04	-\$405.36	-18%

Table A - 18. Average Attorney Fee by District for Discharged Chapter 13 Cases Adjusted for Inflation

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
11	ALMB	\$1,621.05	\$2,133.01	\$511.96	32%
11	ALNB	\$1,631.70	\$1,685.06	\$53.36	3%
11	ALSB	\$1,820.81	\$2,183.64	\$362.83	20%
9	AKB	\$2,390.06	\$2,048.46	-\$341.60	-14%
9	AZB	\$2,906.86	\$3,444.34	\$537.47	18%
8	AREB	\$1,513.76	\$2,105.03	\$591.27	39%
8	ARWB	\$1,512.85	\$1,982.47	\$469.62	31%
9	CACB	\$2,572.39	\$2,671.52	\$99.13	4%
9	CAEB	\$2,379.52	\$3,265.09	\$885.57	37%
9	CANB	\$2,354.04	\$2,883.35	\$529.31	22%
9	CASB	\$2,218.05	\$2,688.59	\$470.54	21%
10	COB	\$2,093.65	\$3,079.38	\$985.73	47%
2	CTB	\$2,331.42	\$3,316.92	\$985.50	42%
3	DEB	\$1,689.49	\$2,905.87	\$1,216.39	72%
11	FLMB	\$2,062.40	\$2,668.36	\$605.96	29%
11	FLNB	\$1,981.66	\$2,515.05	\$533.39	27%
11	FLSB	\$2,292.38	\$2,813.15	\$520.76	23%
11	GAMB	\$1,307.96	\$2,178.56	\$870.60	67%
11	GANB	\$2,310.17	\$2,606.39	\$296.22	13%
11	GASB	\$1,506.15	\$2,260.53	\$754.38	50%
9	HIB	\$1,561.41	\$2,382.70	\$821.29	53%
9	IDB	\$1,391.37	\$2,992.06	\$1,600.69	115%
7	ILCB	\$1,750.52	\$2,157.86	\$407.33	23%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
7	ILNB	\$2,567.73	\$2,727.21	\$159.48	6%
7	ILSB	\$2,248.42	\$3,156.43	\$908.01	40%
7	INNB	\$2,065.26	\$2,253.48	\$188.23	9%
7	INSB	\$1,900.32	\$3,195.96	\$1,295.64	68%
8	IANB	\$1,246.26	\$2,581.11	\$1,334.85	107%
8	IASB	\$1,600.51	\$1,644.47	\$43.96	3%
10	KSB	\$2,129.41	\$2,337.43	\$208.02	10%
6	KYEB	\$945.75	\$2,396.98	\$1,451.23	153%
6	KYWB	\$1,617.79	\$2,586.97	\$969.18	60%
5	LAEB	\$1,614.87	\$2,141.59	\$526.72	33%
5	LAMB	\$1,544.74	\$2,112.32	\$567.58	37%
5	LAWB	\$1,908.32	\$2,615.65	\$707.33	37%
1	MEB	\$3,711.53	\$4,950.28	\$1,238.75	33%
4	MDB	\$1,570.65	\$2,944.68	\$1,374.03	87%
1	MAB	\$2,301.01	\$2,324.35	\$23.35	1%
6	MIEB	\$2,301.28	\$2,702.67	\$401.38	17%
6	MIWB	\$2,245.22	\$2,542.77	\$297.55	13%
8	MNB	\$1,603.94	\$1,712.20	\$108.25	7%
5	MSNB	\$1,217.04	\$2,043.71	\$826.67	68%
5	MSSB	\$1,714.16	\$1,991.11	\$276.94	16%
8	MOEB	\$1,718.50	\$2,639.35	\$920.85	54%
8	MOWB	\$2,315.62	\$2,417.43	\$101.81	4%
9	MTB	\$2,019.90	\$2,062.17	\$42.26	2%
8	NEB	\$1,972.85	\$2,357.73	\$384.88	20%
9	NVB	\$2,344.96	\$4,335.98	\$1,991.02	85%
1	NHB	\$3,373.67	\$4,294.57	\$920.90	27%
3	NJB	\$2,120.93	\$2,528.60	\$407.67	19%
10	NMB	\$1,789.64	\$2,717.49	\$927.86	52%
2	NYEB	\$2,591.89	\$3,752.23	\$1,160.34	45%
2	NYNB	\$1,740.79	\$2,198.10	\$457.32	26%
2	NYSB	\$2,089.40	\$3,258.36	\$1,168.96	56%
2	NYWB	\$1,168.57	\$1,988.32	\$819.76	70%
4	NCEB	\$1,519.22	\$2,614.70	\$1,095.47	72%
4	NCMB	\$1,694.03	\$2,399.47	\$705.44	42%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
4	NCWB	\$2,239.05	\$2,299.51	\$60.46	3%
8	NDB	\$1,465.73	\$1,560.35	\$94.62	6%
6	OHNB	\$1,209.04	\$1,548.08	\$339.05	28%
6	OHSB	\$1,729.10	\$2,656.29	\$927.18	54%
10	OKEB	\$2,147.62	\$1,942.42	-\$205.19	-10%
10	OKNB	\$1,847.11	\$1,877.97	\$30.86	2%
10	OKWB	\$1,426.83	\$2,373.94	\$947.11	66%
9	ORB	\$2,864.75	\$3,358.27	\$493.52	17%
3	PAEB	\$1,443.47	\$2,583.73	\$1,140.27	79%
3	PAMB	\$2,019.98	\$3,454.16	\$1,434.18	71%
3	PAWB	\$2,345.96	\$2,536.00	\$190.04	8%
1	RIB	\$2,768.41	\$2,832.21	\$63.80	2%
4	SCB	\$1,806.35	\$3,007.13	\$1,200.78	66%
8	SDB	\$1,780.62	\$2,276.03	\$495.41	28%
6	TNEB	\$1,179.60	\$1,916.92	\$737.32	63%
6	TNMB	\$1,758.52	\$2,201.40	\$442.87	25%
6	TNWB	\$1,507.30	\$2,306.60	\$799.31	53%
5	TXEB	\$2,271.62	\$2,819.98	\$548.36	24%
5	TXNB	\$2,128.88	\$2,876.52	\$747.65	35%
5	TXSB	\$2,069.04	\$2,435.13	\$366.10	18%
5	TXWB	\$2,483.02	\$2,914.97	\$431.95	17%
10	UTB	\$2,176.52	\$2,598.45	\$421.94	19%
2	VTB	\$1,977.79	\$2,375.53	\$397.74	20%
4	VAEB	\$1,683.24	\$2,998.49	\$1,315.25	78%
4	VAWB	\$1,140.46	\$2,156.04	\$1,015.58	89%
9	WAEB	\$1,736.75	\$1,839.55	\$102.80	6%
9	WAWB	\$2,009.01	\$2,592.33	\$583.32	29%
4	WVNB	\$1,324.69	\$2,888.56	\$1,563.88	118%
4	WVSB	\$1,121.17	\$1,262.74	\$141.57	13%
7	WIEB	\$1,547.12	\$2,072.18	\$525.05	34%
7	WIWB	\$859.10	\$1,451.08	\$591.98	69%
10	WYB	\$2,203.40	\$1,798.04	-\$405.36	-18%

Table A - 19. Average Attorney Fee by State for Dismissed Chapter 13 Cases Adjusted for Inflation

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
AK	\$712	\$960	\$248	34.8%
AL	\$1,343	\$799	-\$544	-40.5%
AR	\$1,281	\$1,191	-\$90	-7.1%
AZ	\$1,481	\$3,782	\$2,301	155.4%
CA	\$1,445	\$2,342	\$897	62.1%
CO	\$1,782	\$1,111	-\$671	-37.6%
CT	\$1,854	\$2,143	\$288	15.5%
DC	\$744	\$199	-\$545	-73.3%
DE	\$1,425			
FL	\$1,347	\$1,757	\$409	30.4%
GA	\$1,415	\$1,598	\$184	13.0%
HI		\$2,093		
IA	\$1,064	\$979	-\$85	-8.0%
ID		\$1,699		
IL	\$1,269	\$1,807	\$538	42.4%
IN	\$1,296	\$1,663	\$367	28.3%
KS	\$1,130	\$1,841	\$711	62.9%
KY	\$1,263	\$1,157	-\$106	-8.4%
LA	\$1,279	\$1,327	\$49	3.8%
MA	\$1,333	\$1,533	\$200	15.0%
MD	\$975	\$1,796	\$821	84.2%
ME	\$5,238	\$1,293	-\$3,945	-75.3%
MI	\$1,669	\$2,332	\$662	39.7%
MN	\$764	\$1,700	\$937	122.7%
MO	\$1,047	\$1,298	\$250	23.9%
MS	\$680	\$995	\$315	46.4%
MT	\$855	\$255	-\$600	-70.2%
NC	\$1,315	\$1,873	\$558	42.4%
ND				
NE	\$2,028	\$2,228	\$200	9.8%
NH	\$543			
NJ	\$1,523	\$3,015	\$1,492	97.9%

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
NM	\$1,581	\$1,187	-\$394	-24.9%
NV	\$1,363	\$2,521	\$1,158	84.9%
NY	\$1,537	\$1,810	\$273	17.8%
OH	\$1,160	\$1,291	\$131	11.3%
OK	\$1,136	\$1,388	\$252	22.2%
OR	\$1,135	\$2,582	\$1,447	127.4%
PA	\$1,471	\$1,730	\$259	17.6%
RI	\$411	\$1,396	\$985	239.9%
SC	\$1,249	\$1,291	\$42	3.3%
SD		\$1,409		
TN	\$886	\$1,041	\$155	17.5%
TX	\$1,406	\$1,525	\$119	8.5%
UT	\$1,511	\$940	-\$571	-37.8%
VA	\$1,225	\$2,235	\$1,011	82.5%
VT				
WA	\$970	\$1,836	\$867	89.4%
WI	\$1,542	\$1,808	\$267	17.3%
WV	\$337	\$1,517	\$1,181	350.8%
WY		\$1,646		

Table A - 20. Average Attorney Fee by District for Dismissed Chapter 13 Cases Adjusted for Inflation

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
11	ALMB	\$540	\$877	\$337	62.5%
11	ALNB	\$1,352	\$781	-\$571	-42.2%
11	ALSB	\$1,587	\$914	-\$673	-42.4%
9	AKB	\$712	\$960	\$248	34.8%
9	AZB	\$1,481	\$3,782	\$2,301	155.4%
8	AREB	\$1,305	\$1,191	-\$115	-8.8%
8	ARWB	\$1,136			
9	CACB	\$1,564	\$2,479	\$915	58.5%
9	CAEB	\$832	\$1,889	\$1,056	127.0%
9	CANB	\$3,230	\$2,988	-\$242	-7.5%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
9	CASB	\$964			
10	COB	\$1,782	\$1,111	-\$671	-37.6%
2	CTB	\$1,854	\$2,143	\$288	15.5%
3	DEB	\$1,425			
11	FLMB	\$1,314	\$1,750	\$436	33.2%
11	FLNB	\$1,146	\$817	-\$328	-28.7%
11	FLSB	\$2,455	\$1,926	-\$529	-21.5%
11	GAMB	\$1,145	\$1,013	-\$133	-11.6%
11	GANB	\$1,485	\$1,916	\$431	29.0%
11	GASB	\$1,184	\$1,571	\$387	32.7%
9	HIB		\$2,093		
9	IDB		\$1,699		
7	ILCB	\$1,964	\$2,015	\$52	2.6%
7	ILNB	\$1,371	\$1,785	\$414	30.2%
7	ILSB	\$916	\$1,762	\$847	92.5%
7	INNB	\$1,244	\$899	-\$344	-27.7%
7	INSB	\$1,349	\$2,122	\$773	57.3%
8	IANB	\$1,064	\$979	-\$85	-8.0%
8	IASB				
10	KSB	\$1,130	\$1,841	\$711	62.9%
6	KYEB	\$1,214	\$769	-\$444	-36.6%
6	KYWB	\$1,311	\$2,061	\$750	57.2%
5	LAEB	\$880	\$189	-\$691	-78.5%
5	LAMB		\$1,844		
5	LAWB	\$1,423	\$1,393	-\$30	-2.1%
1	MEB	\$5,238	\$1,293	-\$3,945	-75.3%
4	MDB	\$975	\$1,796	\$821	84.2%
1	MAB	\$1,333	\$1,533	\$200	15.0%
6	MIEB	\$1,758	\$2,491	\$732	41.6%
6	MIWB	\$1,558	\$1,695	\$137	8.8%
8	MNB	\$764	\$1,700	\$937	122.7%
5	MSNB	\$646	\$596	-\$50	-7.7%
5	MSSB	\$845	\$1,023	\$178	21.0%
8	MOEB	\$832	\$925	\$93	11.2%



Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
8	MOWB	\$1,354	\$2,229	\$874	64.6%
9	MTB	\$855	\$255	-\$600	-70.2%
8	NEB	\$2,028	\$2,228	\$200	9.8%
9	NVB	\$1,363	\$2,521	\$1,158	84.9%
1	NHB	\$543			
3	NJB	\$1,523	\$3,015	\$1,492	97.9%
10	NMB	\$1,581	\$1,187	-\$394	-24.9%
2	NYEB	\$1,555	\$2,606	\$1,052	67.6%
2	NYNB	\$1,283	\$1,493	\$210	16.4%
2	NYSB	\$2,045	\$1,478	-\$567	-27.7%
2	NYWB	\$1,474	\$1,348	-\$127	-8.6%
4	NCEB	\$969	\$1,677	\$708	73.1%
4	NCMB	\$1,160	\$2,046	\$886	76.4%
4	NCWB	\$2,279	\$1,812	-\$467	-20.5%
8	NDB				
6	OHNB	\$1,095	\$1,025	-\$70	-6.4%
6	OHSB	\$1,275	\$1,533	\$257	20.2%
10	OKEB	\$2,390	\$2,358	-\$32	-1.3%
10	OKNB		\$791		
10	OKWB	\$823	\$1,338	\$516	62.7%
9	ORB	\$1,135	\$2,582	\$1,447	127.4%
3	PAEB	\$1,251	\$1,753	\$502	40.1%
3	PAMB	\$2,011	\$1,786	-\$225	-11.2%
3	PAWB	\$1,878	\$1,519	-\$359	-19.1%
1	RIB	\$411	\$1,396	\$985	239.9%
4	SCB	\$1,249	\$1,291	\$42	3.3%
8	SDB		\$1,409		
6	TNEB	\$1,473	\$1,574	\$101	6.9%
6	TNMB	\$996	\$1,076	\$81	8.1%
6	TNWB	\$835	\$1,002	\$167	20.0%
5	TXEB	\$1,618	\$2,458	\$839	51.9%
5	TXNB	\$1,342	\$1,436	\$94	7.0%
5	TXSB	\$1,752	\$1,612	-\$140	-8.0%
5	TXWB	\$910	\$896	-\$14	-1.5%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
10	UTB	\$1,511	\$940	-\$571	-37.8%
2	VTB				
4	VAEB	\$1,444	\$2,570	\$1,126	78.0%
4	VAWB	\$457	\$1,567	\$1,109	242.5%
9	WAEB	\$744	\$199	-\$545	-73.3%
9	WAWB	\$1,253	\$1,640	\$387	30.9%
4	WVNB	\$781	\$1,869	\$1,088	139.4%
4	WVSB		\$1,620		
7	WIEB	\$337	\$1,211	\$874	259.7%
7	WIWB	\$1,542	\$1,762	\$221	14.3%
10	WYB		\$1,946		

Table A - 21. Average Attorney Fee by Circuit for Discharged No-Asset Chapter 7 Cases Adjusted for Inflation (Including Converted Cases)

Circuit	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
1	\$862.48	\$1,134.62	\$272.14	32%
2	\$749.81	\$1,050.40	\$300.59	40%
3	\$785.36	\$1,025.40	\$240.04	31%
4	\$708.55	\$974.32	\$265.77	38%
5	\$856.50	\$1,185.39	\$328.89	38%
6	\$610.02	\$808.23	\$198.21	32%
7	\$709.55	\$904.20	\$194.66	27%
8	\$675.20	\$998.76	\$323.56	48%
9	\$713.55	\$1,209.00	\$495.45	69%
10	\$600.87	\$914.38	\$313.51	52%
11	\$719.68	\$1,120.96	\$401.28	56%
DC	\$533.02	\$904.07	\$371.05	70%

Table A - 22. Average Attorney Fee by State for Discharged No-Asset Chapter 7 Cases Adjusted for Inflation (Including Converted Cases)

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
AK	\$1,470.20	\$1,298.76	-\$171.44	-12%
AL	\$653.84	\$934.41	\$280.57	43%
AR	\$631.54	\$698.66	\$67.12	11%
AZ	\$918.67	\$1,530.21	\$611.54	67%
CA	\$861.91	\$1,310.55	\$448.65	52%
CO	\$718.81	\$1,076.86	\$358.05	50%
CT	\$795.15	\$1,304.59	\$509.44	64%
DC	\$533.02	\$904.07	\$371.05	70%
DE	\$824.09	\$996.08	\$171.99	21%
FL	\$824.92	\$1,223.12	\$398.20	48%
GA	\$638.63	\$1,093.39	\$454.77	71%
HI	\$626.87	\$1,084.97	\$458.11	73%
IA	\$719.47	\$1,106.08	\$386.61	54%
ID	\$503.19	\$692.32	\$189.13	38%
IL	\$805.23	\$931.05	\$125.82	16%

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
IN	\$620.30	\$839.60	\$219.30	35%
KS	\$659.74	\$992.44	\$332.70	50%
KY	\$614.80	\$749.33	\$134.53	22%
LA	\$731.10	\$1,039.48	\$308.38	42%
MA	\$956.64	\$1,172.37	\$215.73	23%
MD	\$660.12	\$819.87	\$159.74	24%
ME	\$872.30	\$1,271.85	\$399.55	46%
MI	\$684.75	\$919.87	\$235.13	34%
MN	\$772.35	\$1,268.75	\$496.39	64%
MO	\$650.83	\$880.77	\$229.94	35%
MS	\$516.93	\$941.15	\$424.22	82%
MT	\$673.56	\$1,282.88	\$609.32	90%
NC	\$891.96	\$1,103.56	\$211.61	24%
ND	\$591.32	\$1,014.23	\$422.91	72%
NE	\$666.25	\$834.56	\$168.31	25%
NH	\$831.55	\$1,039.35	\$207.79	25%
NJ	\$828.34	\$1,054.39	\$226.05	27%
NM	\$595.50	\$881.35	\$285.85	48%
NV	\$725.32	\$1,070.79	\$345.47	48%
NY	\$748.11	\$1,012.32	\$264.22	35%
OH	\$603.97	\$748.13	\$144.17	24%
OK	\$559.08	\$728.97	\$169.90	30%
OR	\$519.67	\$961.49	\$441.83	85%
PA	\$756.95	\$997.74	\$240.79	32%
RI	\$538.34	\$908.03	\$369.68	69%
SC	\$895.69	\$1,094.81	\$199.12	22%
SD	\$785.97	\$1,238.67	\$452.70	58%
TN	\$473.39	\$855.85	\$382.47	81%
TX	\$947.36	\$1,314.59	\$367.23	39%
UT	\$396.98	\$714.21	\$317.23	80%
VA	\$539.34	\$1,011.05	\$471.71	87%
VT	\$708.77	\$781.63	\$72.86	10%
WA	\$484.14	\$702.61	\$218.47	45%
WI	\$602.33	\$967.93	\$365.59	61%

State	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
WV	\$585.36	\$749.40	\$164.04	28%
WY	\$691.88	\$878.87	\$186.99	27%

Table A - 23. Average Attorney Fee by District for Discharged No-Asset Chapter 7 Cases Adjusted for Inflation (Including Converted Cases)

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
11	ALMB	\$610.72	\$1,016.28	\$405.57	66%
11	ALNB	\$689.38	\$947.93	\$258.55	38%
11	ALSB	\$562.13	\$678.43	\$116.30	21%
9	AKB	\$1,470.20	\$1,298.76	-\$171.44	-12%
9	AZB	\$918.67	\$1,530.21	\$611.54	67%
8	AREB	\$638.95	\$650.46	\$11.51	2%
8	ARWB	\$617.30	\$766.14	\$148.85	24%
9	CACB	\$891.12	\$1,377.95	\$486.83	55%
9	CAEB	\$778.01	\$1,131.19	\$353.18	45%
9	CANB	\$796.80	\$1,179.31	\$382.51	48%
9	CASB	\$886.90	\$1,514.72	\$627.82	71%
10	COB	\$718.81	\$1,076.86	\$358.05	50%
2	CTB	\$795.15	\$1,304.59	\$509.44	64%
3	DEB	\$824.09	\$996.08	\$171.99	21%
11	FLMB	\$788.75	\$1,148.59	\$359.84	46%
11	FLNB	\$814.89	\$1,080.60	\$265.72	33%
11	FLSB	\$1,920.67	\$1,388.69	-\$531.98	-28%
11	GAMB	\$625.65	\$813.59	\$187.94	30%
11	GANB	\$633.96	\$1,100.16	\$466.20	74%
11	GASB	\$711.99	\$1,581.89	\$869.90	122%
9	HIB	\$626.87	\$1,084.97	\$458.11	73%
9	IDB	\$503.19	\$692.32	\$189.13	38%
7	ILCB	\$410.75	\$543.87	\$133.12	32%
7	ILNB	\$946.83	\$1,089.73	\$142.91	15%
7	ILSB	\$589.51	\$623.68	\$34.17	6%
7	INNB	\$607.76	\$803.32	\$195.56	32%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
7	INSB	\$631.18	\$856.00	\$224.82	36%
8	IANB	\$707.30	\$1,306.66	\$599.36	85%
8	IASB	\$735.29	\$968.18	\$232.88	32%
10	KSB	\$659.74	\$992.44	\$332.70	50%
6	KYEB	\$615.88	\$750.23	\$134.35	22%
6	KYWB	\$613.79	\$748.28	\$134.48	22%
5	LAEB	\$661.05	\$981.59	\$320.53	48%
5	LAMB	\$708.81	\$911.06	\$202.26	29%
5	LAWB	\$787.67	\$1,123.02	\$335.35	43%
1	MEB	\$872.30	\$1,271.85	\$399.55	46%
4	MDB	\$660.12	\$819.87	\$159.74	24%
1	MAB	\$956.64	\$1,172.37	\$215.73	23%
6	MIEB	\$706.05	\$985.06	\$279.01	40%
6	MIWB	\$658.46	\$864.00	\$205.54	31%
8	MNB	\$772.35	\$1,268.75	\$496.39	64%
5	MSNB	\$539.88	\$1,075.75	\$535.87	99%
5	MSSB	\$443.49	\$842.44	\$398.95	90%
8	MOEB	\$626.18	\$832.46	\$206.28	33%
8	MOWB	\$675.02	\$922.38	\$247.36	37%
9	MTB	\$673.56	\$1,282.88	\$609.32	90%
8	NEB	\$666.25	\$834.56	\$168.31	25%
9	NVB	\$725.32	\$1,070.79	\$345.47	48%
1	NHB	\$831.55	\$1,039.35	\$207.79	25%
3	NJB	\$828.34	\$1,054.39	\$226.05	27%
10	NMB	\$595.50	\$881.35	\$285.85	48%
2	NYEB	\$814.81	\$1,128.61	\$313.80	39%
2	NYNB	\$639.47	\$738.28	\$98.80	15%
2	NYSB	\$774.32	\$1,232.88	\$458.55	59%
2	NYWB	\$736.83	\$887.27	\$150.44	20%
4	NCEB	\$821.95	\$1,174.16	\$352.21	43%
4	NCMB	\$880.69	\$944.61	\$63.92	7%
4	NCWB	\$1,008.70	\$1,151.68	\$142.98	14%
8	NDB	\$591.32	\$1,014.23	\$422.91	72%
6	OHNB	\$579.17	\$748.18	\$169.01	29%

Circuit	District	Average Fee Pre-BAPCPA	Average Fee Post-BAPCPA	Difference	% Difference
6	OHSB	\$641.44	\$748.08	\$106.63	17%
10	OKEB	\$621.80	\$763.33	\$141.53	23%
10	OKNB	\$507.63	\$607.13	\$99.50	20%
10	OKWB	\$569.88	\$805.07	\$235.19	41%
9	ORB	\$519.67	\$961.49	\$441.83	85%
3	PAEB	\$739.03	\$1,047.37	\$308.34	42%
3	PAMB	\$937.26	\$968.08	\$30.81	3%
3	PAWB	\$719.70	\$959.06	\$239.37	33%
1	RIB	\$538.34	\$908.03	\$369.68	69%
4	SCB	\$895.69	\$1,094.81	\$199.12	22%
8	SDB	\$785.97	\$1,238.67	\$452.70	58%
6	TNEB	\$583.67	\$941.81	\$358.15	61%
6	TNMB	\$356.59	\$680.77	\$324.18	91%
6	TNWB	\$468.62	\$884.70	\$416.09	89%
5	TXEB	\$977.49	\$1,300.86	\$323.37	33%
5	TXNB	\$1,018.95	\$1,419.61	\$400.65	39%
5	TXSB	\$842.21	\$1,285.53	\$443.32	53%
5	TXWB	\$991.51	\$1,241.45	\$249.95	25%
10	UTB	\$396.98	\$714.21	\$317.23	80%
2	VTB	\$708.77	\$781.63	\$72.86	10%
4	VAEB	\$534.39	\$1,073.65	\$539.26	101%
4	VAWB	\$714.99	\$876.91	\$161.92	23%
9	WAEB	\$400.61	\$538.27	\$137.66	34%
9	WAWB	\$508.98	\$771.53	\$262.55	52%
4	WVNB	\$670.59	\$810.63	\$140.03	21%
4	WVSB	\$529.63	\$688.16	\$158.53	30%
7	WIEB	\$538.71	\$987.43	\$448.72	83%
7	WIWB	\$689.28	\$940.07	\$250.79	36%
10	WYB	\$691.88	\$878.87	\$186.99	27%

## Appendix VI: Presumptively Reasonable Fees in Chapter 13

Table A - 24: Presumptively Reasonable Fees in Chapter 13 by District

District	2003	2004	2005	2006	2007	2008	Current
ALMB	\$1,600 (AO)	\$1,600 (AO)	\$2,000 (AO)	\$2,000 (AO)	\$2,500 (AO)	\$2,500 (AO)	\$2,750 (AO)
ALNB	\$2,500 (LR/AO)	\$2,500 (LR/AO)	\$2,500 (AO)	\$2,500 (AO)	\$2,500 (AO)	\$2,500 (AO)	\$2,750 (AO)
ALSB	\$1,800 (GO)	\$1,800 (GO)	\$1,800 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,000 (GO)
AKB	\$1,750 (LR)	\$1,750 (LR)	\$1,750 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$2,750 (LR)
AZB – Tuscon	\$2,750 (UP)	\$2,750 (UP)	\$2,750 (UP/CL)	\$3,500 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$4,000 (UP)
AZB – Phoenix	\$2,500, \$2,750, or \$3,000 (UP)	\$2,500, \$2,750, or \$3,000 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$4,000 (UP)	\$4,000 (UP)
AREB	\$1,500 (GL)	\$1,500 (GL)	\$1,500 (GL)	\$1,500 (GL)	\$3,000 (GL)	\$3,000 (GL)	\$3,000 (GL) or \$3,500 (debtor above median income) (GL)
ARWB	\$1,500 (GL)	\$1,500 (GL)	\$1,500 (GL)	\$1,500 (GL)	\$3,000 (GL)	\$3,000 (GL)	\$3,000 (GL) or \$3,500 (debtor above median income) (GL)
CACB	\$3,500 (GO)	\$3,500 (GO)	\$3,500 (GO)	\$3,000 (GO)	\$4,000 (LR)	\$4,000 (LR)	\$4,000 (LR)
CAEB	\$2,500 (GL)	\$2,500 (GL)	\$3,500 (GL)	\$3,500 (GL)	\$3,500 (GL)	\$3,500 (GL)	\$3,500 (GL)
CANB – Oakland*							\$4,800 (GL)
CANB – San Jose*							\$2,750 (GL)
CANB – San Francisco	\$1,800 (GL)	\$1,800 (GL)	\$2,400 (GL)	\$2,400 (GL)	\$2,800 (GL)	\$3,500 (RR)	\$3,500 + \$850 if involves real property claims (GL)
CANB – Santa Rosa	NF	NF	NF	NF	NF	NF	NF or \$5,000 (UP)
CASB	\$1,700 (UP) or \$2,100 (RR)	\$2,100 (UP) or (RR)	\$2,100 (UP) or (RR)	\$2,800 (UP)	\$2,800 (GO)	\$3,300 (GO)	\$3,300 (GO)
COB	\$1,500 (GO)	\$1,500 (GO)	\$1,500 (GO)	\$1,500 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,300 (GO)
CTB	NF	NF	NF	NF	NF	NF	NF



District	2003	2004	2005	2006	2007	2008	Current
DEB	\$1,500 (JA)	\$1,500 (JA)	\$2,000 (JA)	\$3,000 (JA)	\$3,000 (JA)	\$3,200 (JA)	\$3,200 (JA)
FLMB – Ft. Myers*							\$3,525 (AO)
FLMB – Jacksonville	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$3,000 (UP)	\$3,500 (UP)
FLMB – Orlando	Depends on attorney (UP)	Depends on attorney (UP)	Depends on attorney (UP)	Depends on attorney (UP)	Depends on attorney (UP)	\$2,500 (UP)	\$4,500 (UP)
FLMB – Tampa	\$2,500 (CL)	\$2,500 (CL)	\$2,500 (CL)	\$2,500 (CL)	\$3,300 (plans for 36 months) \$3,450 (duration of plan 36-60 months) \$3,600 (duration of plan 60 months) (AO)	\$3,300 (plans for 36 months) \$3,450 (duration of plan 36-60 months) \$3,600 (duration of plan 60 months) (AO)	3,300 (plans for 36 months 9/17/07) \$3,450 (duration of plan 36-60 months) \$3,600 (duration of plan 60 months) (AO)
FLNB	\$1,500 (until 9/9/03) (SO) \$2,000 (SO)	\$2,000 (SO)	\$2,000 (until 11/10/05) (SO) \$2,500 (SO)	\$2,500 (SO)	\$2,500 (SO)	\$2,500 (until 7/17/08) (SO) \$3,000 (SO)	\$3,500 (SO)
FLSB*				\$3,000 (GL)	\$3,000 (GL)	\$3,000 (GL)	\$3,500 (GL)
GAMB	NF	NF	\$1,501 (AO)	\$1,501 (AO)	\$2,500 (AO)	\$2,500 (AO)	\$2,500 (AO)
GANB	\$2,501 (GO)	\$2,501 (GO)	\$2,501 (GO)	NF (GO)	NF (GO)	NF (GO)	NF (GO)
GASB	\$1,500 (GO)	\$1,500 (GO)	\$2,500 (GO)	\$2,500 (GO)	\$2,500 (GO)	\$2,500 (GO)	\$3,000 (GO)
HIB*				\$2,100 (GL)	\$2,100 (GL)	\$2,100 (GL)	\$3,200 \$3,500 (if plan is confirmed without continuance of the initially scheduled confirmation hearing) (GL)
IDB*				\$2,500 (GO)	\$2,500 (GO)	\$2,500 (GO)	\$3,000 (GO)
ILCB – Danville	\$1,700 (SO)	\$1,700 (SO)	\$2,000 (SO)	\$2,500 (SO)	\$2,500 (SO)	\$3,000 (SO)	\$3,300 (SO)
ILCB – Peoria	\$1,700 (SO)	\$1,700 (SO)	\$2,000 (SO)	\$2,500 (SO)	\$2,500 (SO)	\$3,000 (SO)	\$3,300 (SO)

District	2003	2004	2005	2006	2007	2008	Current
ILCB – Springfield	\$1,700 (SO)	\$1,700 (SO)	\$2,000 (SO)	\$2,500 (SO)	\$2,500 (SO)	\$3,000 (SO)	\$3,300 (SO)
ILNB	\$2,200 (representati on through confirmation) \$2,700 (representati on through closing) (SO)	\$2,200 (representati on through confirmation) \$2,700 (representati on through closing) (SO)	\$2,500 (representati on through confirmation) \$3,000 (representati on through closing) (SO)	\$2,500 (representati on through confirmation ) \$3,000 (representati on through closing) (SO)	\$3,500 (GO)	\$3,500 (GO)	\$3,500 (GO)
ILSB	\$2,200 (GO)	\$2,200 (GO)	\$3,500 (GO)	\$3,500 (GO)	\$3,500 (GO)	\$3,500 (GO)	\$4,000 (GO)
INNB – Fort Wayne	\$1,500- \$1,800 (UP)	\$1,500- \$1,800 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$3,500 (UP)	\$3,500 (UP)
INNB – Hammond	\$1,800 (UP)	\$1,800 (UP)	\$2,800 (UP)	\$2,800 (UP)	\$2,800 (UP)	\$2,800 (UP)	\$2,800 (UP)
INNB – Lafayette	\$1,800 (UP)	\$1,800 (UP)	\$2,800 + 200 for each matter after requiring court appearance (UP)	\$2,800 + 200 for each matter after requiring court appearance (UP)	\$2,800 + 200 for each matter after requiring court appearance (UP)	\$2,800 + 200 for each matter after requiring court appearance (UP)	\$2,800 + 200 for each matter after requiring court appearance (UP)
INNB – South Bend*						\$3,200 (UP)	\$4,000 (UP)
INSB	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 (LR)
IANB	\$1,001 (GO)	\$1,251 (GO)	\$1,251 (GO)	\$1,251 (GO)	\$1,751 (GO)	\$1,751 (GO)	\$3,001 (GO)
IASB	NF	NF	NF	NF	NF	NF	NF
KSB – Kansas City	NF	NF	NF	NF	NF	NF	\$3,000 (UP)
KSB - Topeka	\$2,500 (GL)	\$2,500 (GL)	\$2,800 (GL)	\$2,800 (GL)	\$2,800 (debtor is below median income) \$3,300 (debtor is above median income) (GL)	\$2,800 (debtor is below median income) \$3,300 (debtor is above median income) (GL)	\$3,100 (debtor is below median income) \$3,600 (debtor is above median income) (GL)
KSB - Wichita	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$3,000 (CL)	\$3,000 (CL)
KYEB	NF	NF	NF	NF	NF	NF	NF

District	2003	2004	2005	2006	2007	2008	Current
KYWB*							\$2,750 (amount paid into plan is more than \$10,000) \$1,500 (amount paid into plan is less than \$10,000) (LR)
LAEB*	\$1,500 (GO)	\$1,500 (GO)			\$2,250 (fee below the means test debtor) \$2,520 (fee above the means test debtor) (GO)	\$2,250 (fee below the means test debtor) \$2,520 (fee above the means test debtor) (GO)	\$2,250 (fee below the means test debtor) \$2,520 (fee above the means test debtor) (GO)
LAMB	NF	NF	NF	\$2,500 (JA)	\$2,500 (JA)	\$2,500 (JA)	\$2,800 (SO)
LAWB – Alexandria	\$1,500 (UP)	\$1,500 (UP)	Gradual increase (UP)	Gradual increase (UP)	Gradual increase (UP)	Gradual increase (UP)	\$2,800 (SO)
LAWB – Lafayette and Lake Charles	\$1,500 (UP)	\$1,500 (UP)	\$2,250 (under median income) \$2,750 (above median income) (UP)	\$2,250 (under median income) \$2,750 (above median income) (UP)	\$2,250 (under median income) \$2,750 (above median income) (UP)	\$2,700 (UP)	\$2,800 (SO)
LAWB – Shreveport and Monroe*			\$2,650 (under median income) \$3,000 (above median income) (SO)	\$2,650 (under median income) \$3,000 (above median income) (SO)	\$2,650 (under median income) \$3,000 (above median income) (SO)	\$2,650 (under median income) \$3,000 (above median income) (SO)	\$2,800 (SO)
MEB							\$2,500 - \$3,000 (UP)

District	2003	2004	2005	2006	2007	2008	Current
MDB*	\$1,500 (LR)	\$1,500 (LR)					\$3,500 (all matters in main case) \$4,500 (waives any future opportunity for fees) \$2,000 (all matters relating to plan confirmation) (LR)
MAB	\$2,500 + \$500 for post – confirmation (CL)	\$2,500 + \$500 for post – confirmation (CL)	\$2,500 + \$500 for post – confirmation (CL)	\$2,500 + \$500 for post – confirmation (LR)	\$2,500 + \$500 for post – confirmation (LR)	\$3,500 + \$500 for post – confirmation (LR)	\$3,500 + \$500 for post – confirmation (LR)
MIEB	\$1,800 (UP)	\$1,800 (UP)	\$1,800 (UP)	\$3,000 (UP)	\$3,000 (UP)	\$3,000 (UP)	\$3,500 (LR)
MIWB	\$1,800 (MO)	\$1,800 (MO)	\$1,800 (MO)	\$2,400 \$2,600 (attys receive “chapter 13 expertise” status) \$2,900 (attys certified by ABC) (MO)	\$2,400 \$2,600 (attys receive “chapter 13 expertise” status) \$2,900 (attys certified by ABC) (MO)	\$2,400 \$2,600 (attys receive “chapter 13 expertise” status) \$2,900 (attys certified by ABC) (MO)	\$2,400 \$3,000 (attys receive “chapter 13 expertise” status) \$3,300 (attys certified by ABC) (MO)
MNB	\$1,250 (LR)	\$1,250 (LR)	\$1,250 (LR)	\$2,000 (LR)	\$2,500 (below applicable median income) \$3,000 (above median income) (LR)	\$2,500 (below applicable median income) \$3,000 (above median income) (LR)	\$2,500 (below applicable median income) \$3,000 (above median income) (LR)
MSNB*	\$1,300 (SO)	\$1,500 (SO)			\$2,200 (SO)	\$2,500 (SO)	\$2,900 (SO)
MSSB	\$1,500 (SO)	\$1,500 (SO)	\$1,700 (SO)	\$2,200 (SO)	\$2,200 (SO)	\$2,500 (SO)	\$2,500 (SO)
MOEB	\$2,300 (LR)	\$2,300 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$4,000 (LR)
MOWB	\$1,500 (LR)	\$1,500 (LR)	\$2,000 (LR)	\$2,000 (LR)	\$3,000 (LR)	\$3,000 (GO)	\$3,000 (LR)
MTB	\$1,750 (LR)	\$1,750 (LR)	\$1,750 (LR)	\$1,750 (LR)	\$1,750 (LR)	\$1,750 (LR)	\$3,500 (LR)

District	2003	2004	2005	2006	2007	2008	Current
NEB	\$1,100 (LR)	\$1,100 (LR)	\$1,800 (LR)	\$1,800 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (below median) \$3,500 (above median) (LR)
NVB*	~\$2,500 (UP)	~\$2,500 (UP)	\$5,000 (UP)	\$5,000 (UP)	\$5,000 (UP)	\$5,000 (UP)	
NHB	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)	\$2,500 (pre confirmation) \$1,000 (post confirmation) (AO)
NJB	\$2,000 (LR)	\$2,000 (LR)	\$2,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 (LR)
NMB	NF or \$2,000 (UP)	NF or \$2,000 (UP)	NF or \$2,000 (UP)	NF or \$3,000 (UP)	NF or \$3,000 (UP)	NF or \$3,000 (UP)	NF or \$3,500 (UP)
NYEB	Case specific (UP)	Case specific (UP)	Case specific (UP)	Case specific (UP) \$4,000 (one trustee) (UP)	Case specific (UP) \$4,000 (one trustee) (UP)	Case specific (UP) \$4,500 (one trustee) (UP)	Case specific (UP) \$5,000 (one trustee) (UP)
NYNB – Albany Division	\$1,650 - 1690 (UP)	\$1,650 - 1,890 (UP)	\$2,650 (UP)	\$2,650 - \$3,500 (UP)	\$2,650 - \$3,500 (UP)	\$3,700 (GO)	\$3,700 (GO)
NYNB – Utica Division	NF	NF	NF	NF	NF	NF	\$3,700 (AO)
NYNB – Syracuse	NF	NF	NF	NF	NF	NF	NF
NYSB – Poughkeepsie	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)	\$2,500-\$3,500 (UP)
NYSB	NF	NF	NF	NF	NF	NF	NF
NYWB	NF	NF	NF	NF	NF	NF	NF or \$2,100-\$2,500 (one judge) (UP)
NCEB	\$1,400 or \$1,600 (AO)	\$1,600 (AO)	\$1,600 (AO)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)
NCMB	\$1,500 (SO)	\$1,500 (SO)	\$2,500 (SO)	\$2,500 (SO)	\$3,000 (SO)	\$3,000 (SO)	\$3,000 (SO)
NCWB	\$1,600 (LR)	\$1,600 (LR)	\$1,600/2,000 (LR)	\$3,000 (AO)	\$3,000 (LR)	\$3,000 (LR)	\$3,250 (LR)
NDB			\$2,500 (UP)	\$2,500 (UP)	\$3,000 (UP)	\$3,000 (UP)	\$3,000 (UP)

District	2003	2004	2005	2006	2007	2008	Current
OHNB – Akron	\$1,250 (max of \$350 up front, only allowed \$1,000 in atty fees if atty gets more than \$350 up front) (AO)	\$2,000 (max of \$600 up front) (AO)	\$2,000 (max of \$600 up front) (AO)	\$2,000 (AO)	\$2,000 (AO)	\$3,000 (AO)	3,000 (AO)
OHNB – Canton	\$1,050- \$1,250 (AO)	\$1,250 or \$1,750 (if \$500 paid up front) (AO)	\$1,500 or \$2,000 (if \$500 paid up front) (AO)	\$1,500 or \$2,000 (if \$500 paid up front) (AO)	\$1,500 or \$2,000 (if \$500 paid up front) (AO)	\$2,000 or \$3,000 (AO)	\$2,000 or \$3,000 (AO)
OHNB – Cleveland	\$1,700 (AO)	\$1,700 (AO)	\$3,000 (AO)	\$3,000 (AO)	\$3,000 (AO)	\$3,000 (AO)	\$3,000 (AO)
OHNB – Youngstown*		\$1,500 (AO)	1,500 (AO)	2,000 (AO)	\$2,000 (AO)	\$3,000 (AO)	\$3,000 (AO)
OHNB - Toledo	\$950 (UP)	\$950 (UP)	\$950 (UP)	\$1,500 (UP)	\$1,500 (UP)	\$1,500 (UP)	\$1,500 (UP)
OHSB	\$1,500 (LR)	\$1,500 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,500 (LR)
OKEB	\$2,000 (GO)	\$2,000 (GO)	\$2,000 (GO)	\$3,750 (GO)	\$3,750 (GO)	\$3,750 (GO)	\$3,750 (GO)
OKNB	\$2,000 (two judges recognize) (UP)	\$2,000 (two judges recognize) (UP)	\$2,000 (two judges recognize) (UP)	\$2,000 (two judges recognize) (UP)	\$2,000 (two judges recognize) (UP)	\$2,500 (two judges recognize) (UP)	\$2,500 (two judges recognize) (UP)
OKWB	\$1,500 (GL)	\$1,500 (GL)	\$1,500 (GL)	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$3,500 (LR)
ORB*				\$4,500 (total compensation) or \$3,250 (flat fee with no itemization) (LR)	\$4,500 (total compensation) or \$3,250 (flat fee with no itemization) (LR)	\$4,500 (total compensation) or \$3,250 (flat fee with no itemization) (LR)	\$4,500 (total compensation) or \$3,250 (flat fee with no itemization) (LR)
PAEB*						\$3,000 (below median income) \$3,500 (above median income) (LR)	\$3,000 (below median income) \$3,500 (above median income) (LR)
PAMB	\$3,000 (UP)	\$3,000 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$3,500 (UP)	\$3,500 (UP)
PAWB	2,000 (GO)	2,000 (GO)	\$2,000 (GO)	\$2,000 (GO)	\$2,500 (GO)	\$3,100 (GO)	\$3,100 (GO)
RIB	\$2,500 (LR)	\$2,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 (LR)	\$3,500 + \$500 (LR)	\$3,500 + \$500 (LR)
SCB	\$1,500 or \$1,800 (UP)	\$1,500 or \$1,800 (UP)	\$3,000 (UP)	\$3,000 (UP)	\$3,000 (OO)	\$3,000 (OO)	\$3,000 (OO)
SDB	\$1,000 (LR)	\$1,000 (LR)	NF	NF	NF	NF	NF

District	2003	2004	2005	2006	2007	2008	Current
TNEB	\$2,000 (LR)	\$2,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)	\$3,000 (LR)
TNMB	NF	NF	NF	NF	NF	NF	NF
TNWB	\$1,500 (UP)	\$1,500 (UP)	\$2,400 (UP)	\$2,400 (UP)	\$2,400 (UP)	\$2,400 (UP)	\$3,000 (UP)
TXEB	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$3,000 (GO)	\$3,000 (LR)
TXNB	\$2,000 (GO)	\$2,000 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,000 (GO)	\$3,000 (GO)
TXSB	\$2,250 (GO)	\$2,050 (paid out in first available funds) (GO) \$2,460 (receive payment out of only portion of available funds) (GO)	\$2,050 (paid out in first available funds) (GO) \$2,460 (receive payment out of only portion of available funds) (GO)	\$3,085 (GO) \$2,700 (dismissed before confirmation is effective) (GO)	\$3,085 (GO) \$2,700 (dismissed before confirmation is effective) (GO)	\$3,085 (GO) \$2,700 (dismissed before confirmation is effective) (GO)	\$3,085 (GO) \$2,700 (dismissed before confirmation is effective) (GO)
TXWB – Austin Division	\$2,000 (SO)	\$2,300 (SO)	\$2,500 (SO)	2,800 (SO)	\$3,200 (pre-confirmation) (SO) \$3,500 (post-confirmation) (SO)	\$3,200 (pre-confirmation) (SO) \$3,500 (post-confirmation) (SO)	\$3,200 (pre-confirmation) (SO) \$3,500 (post-confirmation) (SO)
TXWB – El Paso Division	\$2,000 or \$2,500 (SO)	\$2,000 or \$2,500 (SO)	\$2,750 (SO)	\$2,750 (SO)	\$3,000 (SO)	\$3,000 (SO)	\$3,200 (SO)
TXWB – San Antonio Division	\$2,000 (SO)	\$2,000 (SO)	2,000 (SO)	\$3,200 (SO)	\$3,200 (SO)	\$3,200 (SO)	3,200 (SO)
TXWB – Waco Division	\$2,000 - \$2,500 (UP)	\$2,000 - \$2,500 (UP)	\$2,750 (SO)	\$2,750 (SO)	\$3,000 (SO)	\$3,000 (S)	\$3,000 (SO)
UTB	\$1,800 (UP)	\$1,800 (UP)	\$2,000 (UP)	\$2,750 (MO)	\$2,750 (MO)	\$2,750 (MO)	\$3,000 (below median income & chapter 13 plan payment of less than \$150) \$3,250 (below median income & chapter 13 payment over \$150) \$3,500 (above median income) (GL)

District	2003	2004	2005	2006	2007	2008	Current
VTB	\$1,500 (LR)	\$1,500 (LR)	\$1,500 (LR)	\$1,500 or \$2,500	\$2,500 (SO)	\$2,500 (LR)	\$2,500 (LR)
VAEB	\$1,500 (LR)	\$1,500 (LR)	\$3,000 (SO)	\$3,000 (SO)	\$3,000 (SO)	\$3,000 (SO)	\$3,000 (SO)
VAWB	\$1,500 - \$1700 (UP)	\$1,500 - \$1700 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 - \$3,000 (UP)
WAEB	\$1,500 (LR)	\$1,500 (LR)	\$1,500 (LR)	\$2,000 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$2,500 (LR)
WAWB	\$1,300 (until 7/1/03) (GO) \$1,800 (after 7/1/03) (GO)	\$1,800 (GO)	\$1,800 (GO)	\$1,800 (GO)	\$1,800 (GO)	\$1,800 (GO)	\$3,500 (GO)
WVNB	NF	NF	NF	NF	~\$3,500 (UP)	~\$3,500 (UP)	~\$3,500 (UP)
WWSB	\$750 + 4% (GO)	\$750 + 4% (GO)	\$750 + 4% (GO)	\$750 + 4% (GO)	\$750 + 4% (GO)	\$750 + 4% (GO)	\$750 + 4% (GO)
WIEB	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$2,500 (UP)	\$3,000 (CP)	\$3,000 (CP)	\$3,500 (CP)
WIWB	NF	NF	NF	NF	NF	NF	NF
WYB	\$1,500 (LR)	\$1,500 (LR)	\$2,000 (LR)	\$2,000 (LR)	\$2,500 (LR)	\$2,500 (LR)	\$3,000 (LR)

CP = Court Policy

OO = Operating Order

NF = No Presumptively Reasonable Fee

RR = Rights and Responsibilities

UP = Unwritten Practice

GL = Guidelines

CL = Case law

LR = Local Rule

GO = General Order

SO = Standing Order

AO = Administrative Order

MO = Memorandum

JA = Judge announced

\*court did not provide no look fee, and repeated calls to local professionals went unanswered



## Appendix VII: Macroeconomic Variables

Table A - 25. Average Unemployment Rates and Employment Growth Rates by State

State	Pre-BAPCPA		Post-BAPCPA	
	Unemployment Rate	Monthly Change in Employment	Unemployment Rate	Monthly Change in Employment
AK	7.2%	18.0%	6.7%	0.0%
AL	4.4%	19.0%	5.4%	-15.9%
AR	5.5%	14.2%	5.9%	-11.9%
AZ	4.8%	25.0%	7.8%	-7.7%
CA	5.9%	13.7%	9.0%	-24.4%
CO	5.5%	18.3%	5.7%	-6.1%
CT	4.9%	10.3%	6.6%	-8.8%
DC	6.8%	17.1%	6.8%	14.0%
DE	4.0%	7.0%	6.1%	-21.4%
FL	4.4%	26.6%	7.7%	-17.5%
GA	5.0%	22.5%	7.0%	-17.0%
HI	3.3%	14.2%	5.1%	-21.4%
IA	4.4%	-3.0%	4.7%	-2.2%
ID	4.5%	21.8%	5.6%	-10.6%
IL	6.2%	12.0%	7.6%	-19.3%
IN	5.4%	9.8%	6.5%	-14.9%
KS	5.4%	6.1%	5.2%	-3.3%
KY	6.0%	9.7%	7.7%	-6.3%
LA	7.1%	-26.2%	5.0%	6.2%
MA	5.2%	1.0%	6.0%	-8.7%
MD	4.3%	11.7%	5.3%	-15.8%
ME	4.8%	4.7%	6.0%	-18.2%
MI	6.8%	6.0%	8.3%	-19.9%
MN	4.4%	2.3%	6.0%	-4.2%
MO	5.5%	7.3%	6.7%	-14.6%
MS	7.7%	-50.0%	7.7%	-8.3%
MT	4.0%	10.7%	4.4%	1.4%
NC	5.7%	15.1%	7.0%	-7.3%
ND	3.5%	12.0%	3.6%	1.7%
NE	3.9%	2.6%	3.6%	-5.0%
NH	3.9%	10.6%	4.6%	-6.0%
NJ	5.0%	11.3%	6.6%	-12.9%
NM	5.4%	20.4%	5.0%	-2.5%
NV	4.8%	28.2%	9.1%	-20.7%

State	Pre-BAPCPA		Post-BAPCPA	
	Unemployment Rate	Monthly Change in Employment	Unemployment Rate	Monthly Change in Employment
NY	5.8%	9.2%	6.2%	-8.8%
OH	6.0%	7.8%	7.5%	-17.5%
OK	5.1%	5.4%	4.8%	-5.9%
OR	6.7%	17.1%	8.0%	-7.8%
PA	5.3%	8.6%	6.0%	-12.2%
RI	5.3%	4.7%	8.7%	-11.0%
SC	6.8%	16.5%	8.2%	-12.6%
SD	3.6%	4.0%	3.9%	1.7%
TN	5.5%	19.2%	7.4%	-5.4%
TX	5.9%	13.9%	5.7%	9.8%
UT	4.9%	28.0%	5.1%	-3.8%
VA	3.8%	16.4%	4.7%	-0.4%
VT	3.3%	10.0%	4.7%	0.0%
WA	6.3%	24.7%	6.9%	-3.7%
WI	5.0%	5.6%	6.5%	-15.9%
WV	5.3%	10.2%	5.6%	-7.7%
WY	4.0%	15.5%	3.5%	11.1%
US	5.5%	11.7%	6.9%	-12.6%

## Appendix VIII: Screenshots of the Coding Entry Form

Bodie Colwell  
Claire DeWitte  
Brie Dietrich  
Haley Hall  
Lindsay Laxon  
Colin Morrow

### BAPCPA Cost Study Data Entry Form

Reset Form!

#### Docket Report

Case ID:   
District Filed:   
Chapter 7 or 13? ☒ 7 ☐ 13  
Date Case Filed:  /  /  (mm / dd / yy)  
Single ☐ Joint ☐  
Attorney Name:   
Judge Name:   
In Forma Pauperis Filed? Yes ☐ No ☐  
In Forma Pauperis Granted? Yes ☐ No ☐  
Case Dismissed? Yes ☐ No ☐  
Number of Motions:   
Number of Ammendments to the Plan:   
Adversary Proceeding? Yes ☐ No ☐  
No Asset Case? Yes ☐ No ☐  
Chapter 13 converted to Chapter 7? Yes ☐ No ☐

#### Petition and Schedules

Pro Se Debtor? Yes ☐ No ☐  
Current Monthly Income: \$   
Above or Below Median Income? Above ☐ Below ☐ N/A ☐  
Estimated Value of Real Estate Assets: \$   
Estimated Value of Personal Property Assets: \$   
Estimated Secured Liabilities: \$   
Estimated Unsecured Liabilities: \$   
Estimated Priority Liabilities: \$   
Petition Preparer? Yes ☐ No ☐  
Petition Preparer Fee: \$   
Debtor Attorney Prepetition Fees: \$

#### Attorney Fee Application

Fee Applications - Number Filed   
Amount Requested in Fee Application: \$   
Amount Ordered in Response to Fee Application: \$   
Debtor Attorney Expenses: \$   
Debtor Attorney Hourly Rate: \$  (per hour)  
Debtor Attorney Paralegal Hourly Rate: \$  (per hour)

#### Reaffirmations and Mortgages

Number of Reaffirmation Agreements   
Amount of Reaffirmed Loans: \$   
Mortgage Paid Outside the Plan? Yes ☐ No ☐

#### Trustee Report

Debtor Attorney Post Petition Fees: \$   
Trustee Fees: \$   
Trustee Expenses: \$   
Fee for Attorney for Trustee: \$   
Other Professional Fees: \$   
Unsecured Creditor Claims: \$   
Distribution to Unsecured Creditors: \$   
Secured Creditor Claims: \$   
Distribution to Secured Creditors: \$   
Payment to Debtor/Debtor Refund: \$

Submit!