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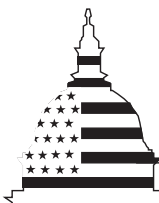
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FEDERAL BANKRUPTCY JUDGES

Weighted Case Filings as a Measure of Judges' Case- Related Workload

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



G A O

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our review and assessment of bankruptcy court-weighted case filings, the workload measure the Judicial Conference first considers in assessing the need for additional bankruptcy judgeships. Weighted filings are a statistical measure of the estimated judge time that specific types of bankruptcy cases are expected to take. For example, a business chapter 7 bankruptcy case with assets of \$50,000 to \$499,999 is expected to take about twice as much judge time as a nonbusiness chapter 7 case with assets of \$50,000 to \$499,999. You asked us to assess whether weighted case filings are a reasonable means of measuring bankruptcy judges' case-related workload and to assess the methodology of any proposal to update the current case weights.

My statement today focuses on the weighted case filings as a measure of case-related bankruptcy judge workload. My testimony is based on the results of our review of documentation provided by the Federal Judicial Center (FJC) and the Administrative Office of the U.S. Courts (AOUSC) and interviews with officials in each organization. My statement includes the following major points:

- The time demands on bankruptcy judges are largely a function of the number and complexity of the cases on their dockets. Not all cases necessarily take the same amount of judge time. Some types of cases may take more judge time than others.
- In assessing the need for new bankruptcy judgeships, the Judicial Conference relies on the weighted case filings to be a reasonably accurate measure of case-related bankruptcy judge workload. Whether weighted case filings are a reasonably accurate workload measure rests in turn on the soundness of the methodology used to develop the case weights.
- On the basis of the documentation provided for our review and discussions with FJC and AOUSC officials, we concluded that weighted case filings, as approved by the Judicial Conference in 1991 and amended in 1996, are likely to be a reasonably accurate means of measuring the case-related workload of bankruptcy judges.
- The original case weights are now about 12 years old and were based on time data that are now about 15 years old. Changes in the intervening years in such factors as case characteristics and case

management practices may have affected whether the case weights continue to be a reasonably accurate measure of case-related judge workload. Some of these changes may have increased the time demands on bankruptcy judges and others reduced time demands. To the extent that the case weights may now understate or overstate time demands on bankruptcy judges, the weights could potentially result in the Judicial Conference understating or overstating the need for new bankruptcy judgeships. The Judicial Conference's Committee on the Administration of the Bankruptcy System has approved a revision of the current weights whose methodological design is reasonable.

- The accuracy of the case weights is also dependent upon accurately assigning each case filed in each bankruptcy court to the appropriate case weight category. AOUSC said that its staff took a number of steps to ensure that individual cases were assigned to the appropriate case weight category. These are described in appendix I. We did not evaluate how effective these measures may be in ensuring data accuracy.

Background

Biennially, the Judicial Conference, the federal judiciary's principal policymaking body, assesses the judiciary's needs for additional judgeships.¹ If the Conference determines that additional judgeships are needed, it transmits a request to Congress identifying the number, type (courts of appeals, district, or bankruptcy), and location of the judgeships it is requesting. In 2003, the Judicial Conference sent to Congress requests for 93 new judgeships—11 for the courts of appeals, 46 for the district courts, and 36 for the bankruptcy courts.

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

¹The Chief Justice of the United States presides over the Conference, which consists of the chief judges of the 13 courts of appeals, a district judge from each of the 12 geographic circuits, and the chief judge of the Court of International Trade. The Conference meets twice a year.

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

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

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

How the Case Weights Were Developed

The Federal Judicial Center (FJC) developed the weights, adopted by the Judicial Conference in 1991, based on a 1988-1989 time study in which 272 bankruptcy judges (97 percent of all bankruptcy judge in those years) recorded the time they spent on specific cases for a 10-week period.

Unlike the District Court time study, whose goal was to follow each sample case from filing to disposition—a “case tracking” study—this study was a “diary study” in which judges recorded in a time diary the hours spent on each case in the study and for other judicial work for the 10-week period. This period of time may or may not have covered the entire life of the case from filing through disposition. Appendix III includes a more detailed comparison of case-tracking and diary time studies as methods of capturing judge time spent on specific cases.

The case weights were developed using a two-step process.² First, time data were collected from 272 judges (97 percent of the total of 280 bankruptcy judges at the time of the study). The judges recorded the time they spent on a sample of cases and other judgeship work over a 10-week period. The judges were subdivided into five groups and the recording time period for each group was staggered over a 1-year period. Second, the researchers assessed the relative impact on judicial workload of different types of cases—that is, which types of cases seemed to take more or less time—and developed individual case weights for specific case categories. The basic case weight computations involved calculating the average amount of time spent on cases of each type during each month of their life. These averages were then summed to determine the total amount of time for each case type.

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

When it approved the case weights in 1991, the Judicial Conference stated that it expected that in addition to other judicial duties, a bankruptcy court

²The methodology is described in detail in Gordon Bermant, Patricia Lombard, and Elizabeth Wiggins, *A Day in the Life: The Federal Judicial Center’s 1988-1989 Bankruptcy Court Time Study*, American Bankruptcy Law Journal, Vol. 65 (Lexington, SC: 1991).

should have at least 1,500 annual case-related hours per judgeship to justify additional judgeships. The federal work year is 2,080 hours per year, based on a 40-hour work week. Assuming that judges spent 1,500 hours annually on cases, there would remain 580 hours for federal holidays, annual leave, training, and noncase-related administrative tasks. Of course, the actual time that individual judges spend on case-related and non case-related work will vary.

Assessment of Case Weight Methodology

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

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

been required to complete the case. However, the method used to make these estimates was also reasonable.

Amending the Case Weights—“Mega” Chapter 11 Cases

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

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

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

Beginning in 1996, the adjustment of weighted case filings to account for mega chapter 11 cases was implemented in the two districts where most of these cases have been filed—first in the Southern District of New York and later in the District of Delaware. FJC’s research suggested there was no clear linear relationship between asset size and judge time in mega chapter 11 cases. Instead, FJC selected an adjustment method using data routinely collected on docketed events in bankruptcy cases, such as docketed

hearings. The method used to adjust the case weights for mega chapter 11 cases consists of a preliminary weighted caseload computation, followed by a ratio adjustment step. The preliminary weighted caseload is the sum of the bankruptcy case weights for each case filing associated with the mega chapter 11 cases. For example, if a mega case consisted of two consolidated cases, one with assets of between \$50,000 and \$99,999 (weight: 4.021) and one with assets greater than \$1 million (weight: 11.234), the preliminary case weight would be 15.255 (4.021 plus 11.234). In the Southern District of New York, this preliminary case weight is adjusted by the ratio of docketed events per weighted case-hour for mega chapter 11 cases to the docketed events per weighted case-

hour for nonmega chapter 11 cases involving more than \$1 million in assets.³ In the District of Delaware, where mega chapter 11 cases tended to have a larger number of consolidated filings, several ranges of the number of associated filings are used to classify mega chapter 11 cases. For each range, a separate docketing ratio adjustment is calculated in the same manner as it is for the District of Southern New York. In both districts, the final step is to report these calculations over a period of several years and use the average value across the years as the adjusted weighted caseload for mega chapter 11 cases. The purpose of this final step is to moderate the effect of fluctuations in the number of mega chapter 11 cases filed from year to year.

Assessment of Mega Case Weighting Method

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

³This determines “how the level of docketing in mega cases differs from the docketing in non-mega cases of one million dollars or more.”

Research Design for Updating the Bankruptcy Case Weights

In June 2002, the Judicial Conference Committee on the Administration of the Bankruptcy System decided to begin a study to create new bankruptcy case weights. The preliminary design for the study has a two-phase structure. In the first phase, a diary time study would be conducted, and the time study data would be used to develop new case weights. In the second phase, research is planned to assess whether it is possible to develop “event profiles” that would allow future updating of the weights without the necessity of conducting a time study for each update. Future updating of the weights could include revision of case weight values and/or developing case weights for new case categories. The data from the time study can be used to validate the feasibility of the new approach.

The preliminary design for the study appears to be reasonable. In the first phase, new weights would be constructed using objective data from the time study. The second part represents experimental research to determine if it is possible to make revisions to the weights in the future without the requirement of conducting a time study. If the research determines this is possible, it would be possible to update the case weights more frequently with less cost than required by a time study.

If enacted, it is likely that the bankruptcy reform legislation passed by the House of Representatives would probably affect the time bankruptcy judges would need to devote to personal bankruptcy cases. Personal bankruptcy filings accounted for 97 percent of the total 1,547,669 bankruptcy filings in fiscal year 2002. Currently, the great majority of those who file for personal bankruptcy (70 percent in fiscal year 2002), file under chapter 7, in which their eligible debts are discharged. Under the terms of the proposed legislation, a greater proportion of those who file for personal bankruptcy will be required to file under chapter 13 and enter into a 5-year debt repayment plan. If the bankruptcy reform is enacted during the course of the new bankruptcy time study, FJC officials said they would recommend halting the time study and allowing some period for the implementation of the new law before restarting the study. Because personal bankruptcy filings represent the vast majority of bankruptcy filings, this seems to be a prudent plan.

Conclusions

On the basis of the documentation provided for our review and discussions with FJC and AOUSC officials, we concluded that weighted case filings, as approved by the Judicial Conference in 1991 and amended in 1996, was a reasonably accurate means of measuring the case-related workload of bankruptcy judges. The 1991 bankruptcy case weights—which cover all but mega chapter 11 business filings—are now about 12

years old, and the data on which they were based are about 15 years old. Changes since 1991 in such factors as case characteristics and case management may have affected whether the weights continue to be a reasonable measure of case-related bankruptcy judge workload. The design for revising the current bankruptcy case weights seems reasonable. The new weights would be based on the same type of objective time data as are the current weights, and the time data from the new bankruptcy case weight study can be used to validate the feasibility of using an event-based approach for future updates of the weights.

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

Contacts and Acknowledgments

For further information regarding this testimony, please contact William Jenkins, Jr., at (202) 512-8777. Individuals making key contributions to this testimony included David Alexander, Kriti Bhandari, Chris Moriarity, and R. Rochelle Burns.

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

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

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

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

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

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- Detailed and extensive statistical reporting guidance is provided to courts for reporting bankruptcy statistics. This guidance includes information on general reporting requirements, data entry procedures, and data processing and reporting programs.
 - Periodic training sessions are conducted for bankruptcy court staff on measures and techniques associated with data quality control procedures.

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

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

Type of case	Case weight in hours	Confidence interval
Chapter 7—Business		
Assets less than \$50,000	0.335	0.312 - 0.359
Assets \$50,000-\$499,999	0.413	0.382 - 0.444
Assets greater than \$499,999	1.704	1.426 – 1.982
Chapter 7—Nonbusiness		
Assets less than \$50,000	0.089	0.079 - 0.099
Assets \$50,000-\$499,999	0.160	0.144 - 0.176
Assets greater than \$499,999	0.302	0.239 – 0.365
Chapter 11		
Assets less than \$50,000	5.372	5.054 – 5.690
Assets \$50,000-\$99,999	4.021	3.692 – 4.350
Assets \$100,000-\$499,999	4.285	3.991 – 4.579
Assets \$500,000-\$999,999	5.143	4.769 – 5.517
Assets of \$1 million or more	11.234	10.397 – 12.071
Chapter 12	4.040	3.558 – 4.522
Chapter 13		
Liabilities less than \$50,000	0.310	0.269 - 0.351
Liabilities at least \$50,000	0.457	0.410 - 0.504
Other cases	0.194	0.074 - 0.314
Adversary proceedings		
Dischargeability	1.346	1.232 – 1.460
Other	2.016	1.722 – 2.310

Source: Federal Judicial Center.

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

The current Bankruptcy Court and District Court workload measures were developed using data collected from time studies. The District Court time study took place between 1987 and 1993, and the Bankruptcy Court time study took place between 1988 and 1989. Different procedures were used in these two time studies. The Bankruptcy Court time study protocol is an example of a “diary” study, where judges recorded time and activity details for all of their official business over a 10 week period. The District Court time study protocol is an example of a “case-tracking” study, where a sample of cases were selected, and all judges who worked on a given sample case recorded the amount of time they spent on the case. Time studies, in general, have the substantial benefit of providing quantitative information that can be used to create objective and defensible measures of judicial workload, along with the capability to provide estimates of the uncertainty in the measures.

Estimating Judge Time in Diary and Case Tracking Studies

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

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

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

Comparing Case-Tracking Studies and Diary Studies

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

Burden on Participants

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

Timeliness of Data Collection

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

Post Data Collection Steps

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

Data Accuracy

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

Comprehensiveness and Efficiency

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

simultaneously stay open for a long period and require a substantial amount of judicial effort, it is possible that a diary study would not be able to produce suitable estimates of judicial workload due to a lack of data.

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