

# The Incredible Shrinking Bankruptcy Case

By Michael Eisenband

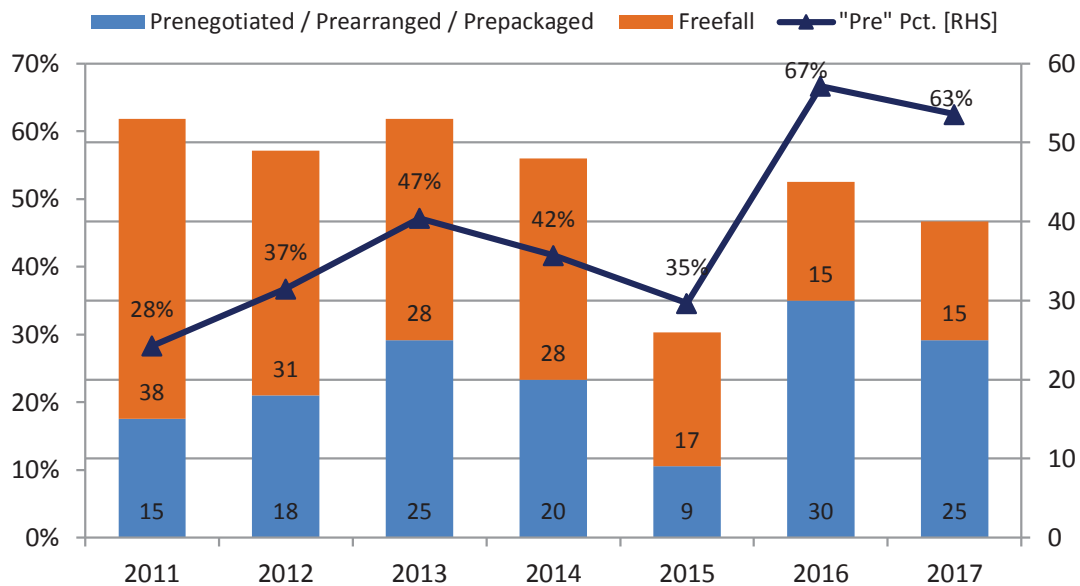
**Southeastern Grocers, LLC, which filed for bankruptcy in late March with a prepackaged plan of reorganization, emerged from Chapter 11 in 65 days with a plan that won support from key creditor groups, having equitized more than \$500 million of debt, or nearly 40% of pre-petition debt, as well as securing new exit financing, making select store closings and some M&A transactions. It's an impressive accomplishment in two months' time, even by today's "pedal to the metal" pace, and a feat that would have been hard to imagine a decade ago.**

Most restructuring professionals recognize that the average duration of Chapter 11 cases has become shorter in recent years, but the contraction in average case length has been particularly striking since 2015. The primary driver of shorter case lengths is the prevalence of prepackaged, prearranged or pre-negotiated filings (collectively referred to herein as "Pre-filings") in recent years. We summarized more than 300 Chapter 11 cases that emerged from bankruptcy in 2011-2017 via a confirmed plan of reorganization, of which nearly 66% of cases that emerged in 2016-2017 were Pre-filings compared to approximately 40% over the previous five years (**Exhibit 1**). Prepackaged cases consistently accounted for 45% of all Pre-filings — 25 of 55 Pre-filings in the last two years and 65 of 142 Pre-filings since 2011.

Consequently, the average duration of Chapter 11 reorganizations fell by nearly one-half in 2016-2017 compared to 2011-2015, to 235 days from 435 days. (See **Exhibit 2** for a breakdown by category. Note that we capped case length at a maximum of 1,000 days in order to mitigate the skewing effect of exceedingly

long cases, most of which were litigation-related.) The average case length of Pre-filings didn't change materially over this seven-year period; there were just a lot more of them in 2016-2017. Prepackaged filings were consistently within a range of 60-90 days from filing to emergence, averaging 81 days, while prearranged/pre-negotiated filings took about 230 days to emerge.

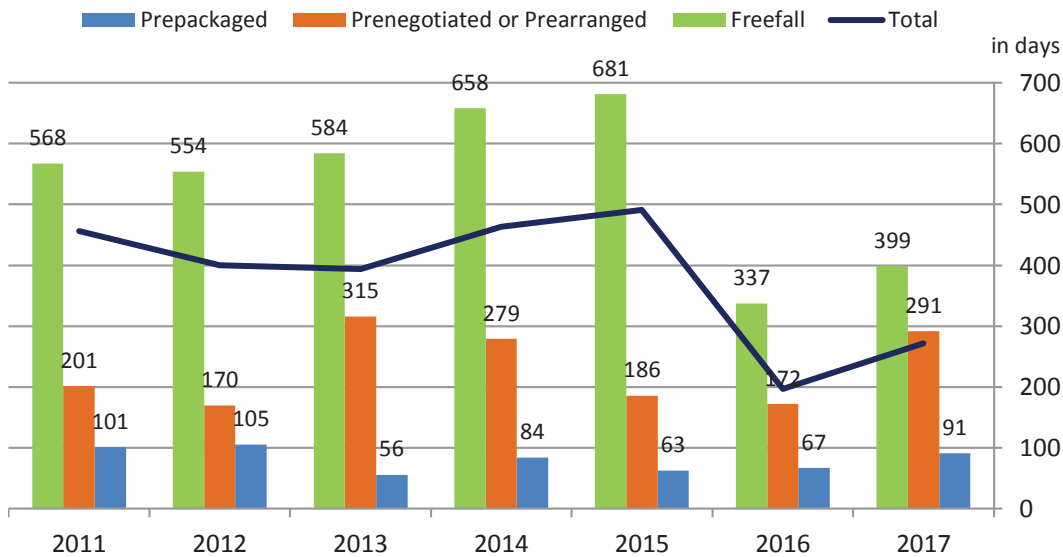
It wasn't just the increasing frequency of Pre-filings that was driving down average case length – the duration of freefall cases contracted sharply, to 370 days in 2016-2017 from 600 days in 2011-2015. We acknowledge that this recent contraction might contain an element of case-specific randomness, as there were only a total of 30 freefall cases that emerged in 2016-2017 compared to an average of nearly 30 per year from 2011-2015.

**EXHIBIT 1****Emerging Chapter 11 Cases via a POR**

Source: The DealPipeline

The impact of shorter case lengths on financial advisory work isn't as easy to discern as it might seem. The prevalence of Pre-filings does not necessarily equate to less work for advisors, particularly company-side advisors – it just means that much of the groundwork in reorganizing, mainly negotiating with creditor groups, arranging new financing and outlining a path forward, is done before filing.

In some instances, it probably does translate into less work for financial advisors. Let's be candid; Pre-filings these days are primarily quick balance sheet fixes and often little else other than the rejection of unfavorable executory contracts and leases. The concept of reorganization as a comprehensive process to fundamentally repair broken or uncompetitive businesses has become something akin to wishful thinking ever since the recession. Generally speaking, this is largely attributable to a lack of unencumbered assets at time of filing, as leveraged borrowers increasingly have relied on first-lien debt in recent years compared to the pre-recession period, which has limited financing options available to debtors during the pendency of a case. Aggressive event milestones often imposed by DIP lenders no longer afford a debtor the luxury of a lengthy reorganization. Given these developments, it could be argued that the scope and extent of financial advisor services rendered today in a typical Pre-filing reorganization is more limited than in years past.

**EXHIBIT 2****Emerging Chapter 11 Cases: Avg. Case Length**

Source: The Deal Pipeline

Moreover, for advisors who don't get a mandate until a filing is imminent or has occurred, such as UCC advisors or certain ad hoc groups, shorter case lengths associated with Pre-filings very likely reduces the scope of services provided compared to a similar role in freefall cases. Bankruptcy judges presiding over fast track reorganizations may be less inclined to approve (or more likely to limit) discovery motions and other causes of action that often motivate impaired creditors, but which would hinder the timetable of a plan that is otherwise confirmable. Lastly, plans of reorganization in Pre-filing cases increasingly have left general unsecured claims unimpaired in order to expedite plan implementation, thereby reducing or eliminating unsecured creditors' need for advisor representation in some instances.

The prevalence of prepackaged plan filings or negotiated RSAs/PSAs that quickly become the basis of a plan of reorganization is a trend that's here to stay and will continue to impact case length and the scope of advisory work. Financial advisors will continue to rack up tombstones and deal toys, but in some cases, the work may not be as extensive (or lucrative) as it once was.

**What's your take?**

What impact do you believe the prevalence of "Pre-filings" in recent years has had on the restructuring advisory business?

[Take the survey now!](#)



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