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Turnaround Topics

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How Have Ch. 11 Filings and Case Attributes Changed Since COVID?

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It is a peculiar moment for restructuring activity, and there is increasing conversation among some advisory professionals about where this cycle is, where our industry is headed over the next couple of years, and whether an intense and prolonged corporate default cycle is a relic of the past. Planning for the next "big one" seems to be a futile exercise, as annual large corporate chapter 11 filings since 2010 have wavered between "meh" and robust but never exceptional, other than in 2020, which was COVID-19 pandemic-induced and short-lived. The next "big one" for restructuring activity has been elusive — even in times of economic stress.

Furthermore, large chapter 11 cases are moving through the gantlet of bankruptcy faster than they did a decade ago. Nonetheless, restructuring activity has been strong enough since early 2023 that advisory professionals aren't complaining too loudly, but are keeping a watchful eye on what lies ahead.

The Roaring Twenties?

Chapter 11 filings soared in 2020 during the height of the COVID-19 pandemic, topping 200 cases for the first time since 2009, but that torrent had slowed considerably by the fourth quarter. Looking back, the deluge of filings in 2020 mostly happened in the early COVID-19 months from April through July, with filing activity moderating over the balance of that year. A once-in-a-lifetime pandemic that closed down much of the domestic economy for a while, and set off widespread business disruptions and global supply chain bottlenecks for nearly a year, turned out to be mostly a flash-in-the-pan episode for restructuring activity that had been played out by the end of 2020.

Moreover, it ushered in a period of depressed corporate chapter 11 filings in 2021-22, as massive amounts of monetary stimulus and federal financial assistance to businesses and individuals averted economic calamity and got financial markets humming again. Subsequently, monetary tightening policies implemented by the Federal Reserve starting in mid-2022 to combat the worst bout of inflation in decades caused interest rates to nearly double for speculative-grade corporate debt issuance and in situ floating rate debt.

Consequently, restructuring activity accelerated in 2023 to above-average levels, as many highly leveraged capital structures became stressed or unsustainable with the spike in rates. Large chapter 11 filings in 2023 were about 40 percent higher than an average nonrecessionary year but fell well short of 2020 totals. However, it was not the filing surge that some expected when leveraged credit markets began to seize up in late 2022 and several regional banks failed in early 2023. Filing totals to date in 2024 have moderated from last year's levels and remain above average but uninspiring. Several dozen potential corporate bankruptcies have been averted since 2022 by distressed-debt exchanges and other liability-management transactions.

These past two years have not been lean ones for filings and other restructuring activity, yet it does not necessarily feel like bountiful times either for the advisory profession. Moreover, there is apprehension that restructuring activity will slow in 2025 as interest rates ease, credit markets take on more risk, and aggressive liability-management solutions to resolve corporate distress become more routine.

Lastly, there also is a sense that formal restructurings have been moving through the courts more quickly since COVID-19 hit, often with the contours of an outcome in hand at filing, leading to fewer protracted disputes, faster dispute resolutions and shorter case lengths. This, too, could account for a feeling of wariness among some professionals even as filing activity totals in 2024 remain fairly healthy and far from substandard in any historical context. Have large chapter 11 filings and case attributes changed materially since the COVID-19 era began? If so, can this explain a prevailing impression of busy-yet-underwhelming restructuring activity at a time when corporate stress and distress seem prevalent?

To answer this question, 358 large chapter 11 cases (those with greater than $100 million of liabilities at filing) were reviewed with plan-confirmation dates from 2018 through September 2024, as per Reorg's Credit Cloud database. This six-plus-year time range can be divided nearly evenly between the Pre-COVID (2018-19), COVID (2020-21) and Post-COVID (2022-YTD 2024) periods.

Cases were restricted to filings in three jurisdictions: Delaware, Southern District of New York (SDNY) and Southern District of Texas, accounting for 44 percent, 30 percent and 26 percent of these 358 cases, respectively, although the Southern District of Texas has accounted for more of these cases than SDNY since 2020. Trends in case attributes are discussed herein.

Prepackaged/Prenegotiated Cases vs. Freefall Cases

Prepackaged and prenegotiated filings (collectively, "pre-filings") have gained in usage for two decades, with much of the negotiating between creditors and a debtor getting done and documented (often binding) weeks or months ahead of a filing. This has assumedly paved the way for a more expeditious, less contentious and less uncertain chapter 11 process than a so-called "freefall" filing.

The evolution of robust trading markets for distressed loans and bonds coupled with the accumulation of large positions in distressed securities by engaged investors has helped facilitate greater usage of prepackaged and prenegotiated filings ever since the Great Recession. A previous article on this topic[1] indicated that 2016 was a pivotal year for pre-filings. For the first time, pre-filings surpassed a 50 percent share, accounting for nearly two-thirds of emerged cases in 2016 and 2017, with the energy bust of 2015-16 encouraging the pursuit of pre-filings to quickly right-size the capital structures of stricken energy companies after oil prices plummeted.

Pre-filings consistently accounted for a majority (61 percent) of cases that emerged over the entirety of our six-plus-year period, ranging from lows of 52 percent and 51 percent in 2021 and 2022, respectively, to highs of 66 percent and 71 percent in 2018 and 2019 (see Exhibit 1). However, there has been no discernible trend or drift in pre-filing's share of confirmed cases during this time frame, with year-to-year variations appearing to be without pattern and likely random. The number of pre-filing cases with confirmed plans over this entire period was nearly evenly divided between prepackaged and prenegotiated filings (see Exhibit 1).

Despite some impressions to the contrary, the proportion of pre-filings has not increased over these six-plus years, though it remains the preferred option for filing preparation and efficient bankruptcy resolution. If anything, the pre-filings share of confirmed cases has decreased slightly in the post-COVID period compared to 2016-19, when they consistently accounted for two-thirds of cases. Pre-filings are most suitable in "good company/bad balance sheet" situations, so their usage in any given year depends on the relative prevalence of these types of cases.

Freefall filings are more apt to occur when a company's business performance deteriorates dramatically or unexpectedly, often accompanied by a liquidity crisis, when negotiating with creditors or arranging for debtor-in-possession financing well in advance of a filing is not feasible. More simply, a freefall filing is the least desirable reorganization option but often is unavoidable. This would explain the uptick in the share of freefalls with confirmed plans in 2021 and 2022 following sudden COVID-19 period filings, only to retreat toward historical norms in 2023-24 after the pandemic period had passed.

Average Case Length

As for average case length (measured as the number of days between the filing and plan-confirmation dates), there is little evidence of material trend changes, with prepacks taking approximately two months on average to reach plan

1 John Yozzo & Samuel Star, "For Better or Worse, Prepackaged and Pre-Negotiated Filings Now Account for Most Reorganizations," XXXVII *ABI Journal* 11, 18, 65-67, November 2018, *available at* abi.org/abi-journal.

Exhibit 1: Numbers and Percentages of Cases

	Number of Cases					Percentage of Cases			
Year	Prepack.	Preneg.	Prepack. or Preneg.	Freefall	Total	Prepack.	Preneg.	Prepack. or Preneg.	Freefall
2018	14	11	**25**	**13**	**38**	37%	29%	**66%**	**34%**
2019	15	17	**32**	**13**	**45**	33%	38%	**71%**	**29%**
2020	23	25	**48**	**27**	**75**	31%	33%	**64%**	**36%**
2021	12	17	**29**	**27**	**56**	21%	30%	**52%**	**48%**
2022	6	13	**19**	**18**	**37**	16%	35%	**51%**	**49%**
2023	18	20	**38**	**24**	**62**	29%	32%	**61%**	**39%**
2024	16	10	**26**	**19**	**45**	36%	22%	**58%**	**42%**
Total	**104**	**113**	**217**	**141**	**358**	**29%**	**32%**	**61%**	**39%**

Note: "Year" means "Confirmation Year," "Prepack," means "Prepackaged," and "Preneg." means "Prenegotiated."

confirmation, and prenegotiated filings taking three times as long to get there, while freefall filings were nearly double that, at 310 days (see Exhibit 2). There was a fair degree of variability from these averages from year to year that did not reveal any distinct pattern and would be a function of overall case particulars and complexities.

The average length of confirmed cases jumped in 2021-22, mostly due to the higher proportion of freefall filings during COVID-19, which have since retreated, but even pre-filings took longer in those two years. Average case lengths fell sharply in 2023-24 compared to the two preceding years but were not outlier values relative to their long-term averages. It might feel like cases are moving more quickly through chapter 11 in the post-COVID period, but average case lengths are not materially different compared to pre-COVID averages.

Lastly, the proportion of very large cases (those with greater than $1 billion of liabilities at filing) has trended lower since 2018 (see Exhibit 2), most likely attributable to leveraged credit markets shunning more struggling middle-market companies during the periods of COVID-19 and monetary tightening. However, case-length differences between the two size cohorts were not material, 202 days vs. 182 days (not shown), and also were erratic from year to year, suggesting that case size might not influence case length as much as some may believe.

Section 363 Sales

One notable trend since 2018 has been the increasing prevalence of § 363 sales, with 67 percent of cases completed in 2024 and 61 percent in 2023 involving a § 363 sale, both markedly higher than the preceding five years. In fact, the proportion of confirmed cases that involved a § 363 sale has increased each year since 2018 and has nearly doubled since that year (see Exhibit 2). The steadily increasing share of § 363 sales over these six-plus years is the most pronounced trend of any case attribute that has been noted. In recent years, the proliferation of hedge funds and distressed investors willing to cash bid for assets at auction or credit bid their securities holdings has contributed to the growing share of § 363 sales.

What might be an overlooked aspect of § 363 sales is that often they are time-consuming. A robust auction sale can be a lengthy process from conception to closing — even if it is contemplated at filing. The process can certainly take longer than equitizing a creditor class via a prepackaged reorganization plan or a prenegotiated restructuring-support agreement intent on equitizing creditors. The data bears this out.

Pre-filing cases with a § 363 sale took considerably longer to complete than other pre-filing cases, which was nearly twice as long on average (158 days vs. 86 days (not shown)). However, it is another story entirely for freefall cases, where those featuring a § 363 sale took, on average, 273 days to

Exhibit 2: Average Case Lengths

	# of Cases	# of Cases	# of Cases	% of Cases	Average Case Length (in Days)				
Year	>$1B+ Liab. at Filing	<$1B+ Liab. at Filing	All Confirmed Cases	% of >$1B+ Cases	Prepack.	Preneg.	Prepack. or Preneg.	Freefall	All Confirmed Cases
2018	21	17	**38**	**55%**	63	193	120	479	**243**
2019	24	21	**45**	**53%**	40	144	95	283	**149**
2020	33	42	**75**	**44%**	63	144	105	224	**148**
2021	26	30	**56**	**46%**	29	183	119	338	**225**
2022	15	22	**37**	**41%**	96	206	171	419	**292**
2023	19	43	**62**	**31%**	52	125	91	227	**143**
2024	17	28	**45**	**38%**	58	231	125	296	**197**
Total	**155**	**203**	**358**	**43%**	**55**	**166**	**113**	**310**	**190**

	# of Cases	# of Cases	# of Cases	% of Cases	Average Case Length (in Days)		
Year	§ 363 Sale & Prepack./ Preneg.	§ 363 Sale & Freefall	§ 363 Sale: Total	§ 363 Sale: Total	§ 363 Sale & Prepack./ Preneg.	§ 363 Sale & Freefall	§ 363 Sale: Total
2018	6	7	**13**	**34%**	192	251	**224**
2019	11	8	**19**	**42%**	152	307	**217**
2020	15	19	**34**	**45%**	122	211	**172**
2021	9	20	**29**	**52%**	207	359	**312**
2022	9	12	**21**	**57%**	173	338	**267**
2023	17	21	**38**	**61%**	115	218	**172**
2024	13	17	**30**	**67%**	201	256	**232**
Total	**80**	**104**	**184**	**51%**	**158**	**273**	**223**

Note: "Year" means "Confirmation Year," "Prepack," means "Prepackaged" and "Preneg." means "Prenegotiated."

confirmation compared to 414 days (not shown) for other freefall cases. Overall, § 363 sales completed in a freefall filing consistently accounted for a majority of all cases with § 363 sales, at approximately 55 percent.

Cases by Industry Sector

Filings by industry sector changed notably over this six-plus-year period, and there was a pronounced rotation of cases by industry across this time frame. The energy sector handily led all industries in cases that emerged from 2018-24 (see Exhibit 3), but the vast majority of these occurred prior to and during COVID-19. Energy sector filings in the post-COVID period have slowed to a crawl, as oil prices are more supportive of profitability while the industry has gone through wrenching changes to reduce leverage, operating expenses and capital spending. Cases in the consumer discretionary sector soared during the two years of COVID-19, as many store-based retailers and their surrounding ecosystem suffered badly during months of stay-at-home living conditions.

Conversely, the health care sector has seen filings soar since COVID-19 struck, especially facility-based health care providers, due primarily to labor shortages, rising wage costs and modest reimbursement rate increases.[2] The financial services industry has experienced a spike in cases post-COVID, as high interest rates since mid-2022 have upended many business-plan forecasts. The information-technology sector also saw an appreciable increase in post-COVID cases due to aggressive topline scaling assumptions that did not materialize, often combined with levered capital structures. The uptick in utility sector cases in the post-COVID period mostly reflects alternative energy companies that badly missed growth targets due to industrywide business and profitability challenges for some segments of the renewable-energy sector. Consequently, none of the top industry sectors in the post-COVID period held that rank before COVID-19, with the exception of consumer discretionary.

Conclusion

The last several years have been turbulent for our nation and economy. Businesses and individuals experienced unprecedented disruption from the COVID-19 pandemic, soon followed by spiking inflation and soaring interest rates. Business failures, specifically large corporate restructuring activity, certainly have been elevated during the most precarious moments of this decade, but the dam has held, and the bankruptcy process has worked as it should during a most stressful time.

Given such turbulence occurring broadly since 2020, it was surprising to find that the analysis of confirmed cases since 2018 yielded few discernible or enduring changes in chapter 11 case attributes and outcomes during and after COVID-19 compared to the pre-pandemic period, with the growing prevalence of § 363 sales and the rotation of cases by industry sector being two noteworthy takeaways. Other than that, most case attributes or outcomes that changed during the COVID-19 period have reverted toward pre-COVID values since then.

This is not to say that case trends are static. In-court restructurings have become more efficient (as judged by average case lengths) ever since the Great Recession for a variety of reasons, but their impact on the entire body of case outcome statistics is one of gradual change and is not necessarily evident from year to year. However, given the entrenched usage of tactics meant to facilitate bankruptcy resolution wherever possible, such as prepackaged filings or § 363 sales, and the oft-demonstrated ability of large creditors to quickly coalesce and help shepherd timely outcomes, there may be only limited opportunities for additional case length reduction from these sources. abi

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2 The health care sector is likely underrepresented in this analysis, as many filings have been single facility operators and smaller chains, as well as smaller biotech and life sciences companies whose product pipelines failed to monetize and that did not meet the size threshold of this review.