

# ASSESSING THE JUDICIAL WORK LOAD ASSOCIATED WITH MEGA CHAPTER 11 CASES

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## Background of Bankruptcy Committee and Federal Judicial Center Activity Regarding the Mega Chapter 11 Issue

In the 1988-89 Federal Judicial Center Bankruptcy Time Study, one weight was calculated to represent the judicial time requirements of chapter 11 cases involving one million dollars or more in assets. Differentiated case weights could not be calculated for these cases because of limitations in the data that were available at the time of the study. Specifically, the highest asset category on the standard reporting form was one million dollars or more. As a result, the weighted caseloads of districts in which numerous very large chapter 11 cases are filed may underestimate the judicial workload required by their filings.

An immediate effect of the time study was a decision by the Committee on the Administration of the Bankruptcy System (Bankruptcy Committee) to create additional asset and liability categories on the form. Instead of five categories, there are now seven, with the top three being one million up to 10 million, 10 million up to 100 million, and 100 million or more. This information was needed so that the Bankruptcy Committee and the courts could track large cases more closely than before and conduct specialized studies of their management.

The Bankruptcy Committee also asked the Federal Judicial Center (Center) to further study the judicial time expenditures required by very large chapter 11 cases. Soon after the Committee's request, the Center attempted to determine the extent to which weighted caseloads underestimated the judicial work load of districts in which many chapter 11 cases involving one million dollars or more were filed. The Southern District of New York was selected for study because it has a relatively large number of such cases.

The Center's review showed that many relatively large chapter 11 bankruptcies came to the court as a set of filings (e.g., a filing for each subsidiary of a corporate parent) bundled by the debtors' attorney into a single case. This practice can have a substantial effect on the weighted caseloads associated with the bundled filings because weighted caseloads are determined by multiplying each filing by the appropriate case weight based on the reported assets for that filing. Between 50% and 60% of relatively large chapter 11 filings were

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combined to form consolidated cases.<sup>2</sup> The mean number of filings per consolidated case was nine, with a range from two to sixty-six. From a weighted caseload point of view, that means that the amount of judicial time that is "credited" to the single case comprising multiple filings gives full credit to each filing as if it were a completely separate, stand-alone case. In a case containing nine filings, for example, where the debtor had listed the assets of each filing at more than one million dollars, the weighted caseload associated with the case was  $9 \times 11.234$  hours (the case weight for a chapter 11 case with assets of more than one million) = approximately 101 hours or two-and-a-half 40-hour work weeks. This may or may not be a sufficient accounting of judicial time expected to be spent on such a case. It might not be sufficient, for example, if the debtors in the nine affiliated cases were engaged in different types of businesses with unique problems. Nevertheless, it is certainly a more accurate estimate than the single 11.234 weight would have been.

We also surveyed bankruptcy judges asking them to recommend criteria that are ascertainable at filing or soon thereafter and that predict the need for extraordinary amounts of judicial time. The results of this survey highlighted the difficulty of objectively defining a mega case. As seen in Appendix A, judges identified a variety of criteria which we roughly classified into the following somewhat overlapping categories:

- type of business in which the debtor is engaged;
- organizational structure of the business debtor;
- size of the business debtor;
- other characteristics of the business debtor;
- amount and nature of assets;
- number and type of creditors and interest holders, and nature and complexity of the debt;
- creditor involvement;
- involvement of attorneys and other professionals;
- characteristics of the case and related proceedings; and
- miscellaneous problems encountered by the debtor.

At times it was difficult to determine whether a judge thought a particular characteristic made the case more or less time-consuming, but one point came through clearly: Although a high level of assets contributes to the designation of a case as a mega for management purposes, assets do not appear to be the sole factor. Unfortunately, information about many of the other factors is not routinely maintained by the individual courts or by the Administrative Office.

At the request of the Bankruptcy Committee, the Center continued its study of mega chapter 11 cases in the Southern District of New York during the fall of 1995, and presented a preliminary study of its findings to the Bankruptcy Committee in January, 1996. The Center report examined two countervailing factors: (1) the extent to which the activity in cases identified by the Southern District of New York as mega chapter 11 cases is more voluminous and more sustained compared to that in other chapter 11 cases

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<sup>2</sup>It is unclear from the written account of this review how many of the cases were substantively consolidated versus jointly administered, but it is not critical to the analysis to distinguish between the two.

involving one million dollars or more, and (2) the degree to which mega chapter 11 cases are jointly administered or substantively consolidated.

Below we describe and evaluate two approaches for refining how the judicial workload associated with mega chapter 11 cases is assessed, and recommend one approach to the Bankruptcy Committee. We also recommend some general steps the Bankruptcy Committee can take so that the study of mega cases is facilitated in the future. We then apply the recommended approach to describe the judicial work load occasioned by mega chapter 11 cases in the Southern District of New York; the work reported here revises and extends that reported on in January, 1996.

### **Recommended Approach for Assessing the Judicial Workload Associated with Mega Chapter 11 Cases**

Two approaches for assessing the judicial workload associated with mega chapter 11 cases are (1) calculating different weights for chapter 11 cases in the top three asset categories and (2) developing a systematic approach to collecting and evaluating additional information to be considered in the judicial resource calculation.

**(1) Calculating different weights for chapter 11 cases in the top three asset categories.** For several reasons, conducting another time study so that different weights for the top three asset categories can be calculated is not recommended. Most importantly, the case weighting system works well in nearly all districts. The exceptions are the Southern District of New York and possibly the District of Delaware, which handle numerous mega cases. Changing the entire system to address anomalies may result in unanticipated problems. Moreover, because the machine-readable information needed to determine which cases belong in the top three asset categories is not reliable at this time, it would be difficult if not impossible to reliably calculate and apply the new weights.<sup>3</sup>

For very similar reasons, we also do not recommend applying a "progressive correction" based on assets to the current weight for chapter 11 cases involving over one million dollars to derive new weights for the top three categories, and then using the derived weights to calculate weighted caseloads nationwide.

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<sup>3</sup>It appears that some debtors and debtors' attorneys are mismarking the boxes on the petition requesting asset and liability information. The labels for asset and liability categories use numerals rather than words and the amounts are in thousands of dollars (e.g., ten million is represented as 10,000). For example, during our recent study of the Southern District of New York, we found 29 (perhaps 31) cases whose asset level was listed as over 100 million dollars on the petition and in the machine-readable data, but which involved smaller amounts. More generally, we reviewed the AO Statistics Division (AO-SD) information on chapter 11 cases filed between August 1, 1991 and September 30, 1992 and the related statistics in *The 1993 Bankruptcy Yearbook and Almanac*, edited by C. M. McHugh. The AO-SD information indicates that 800 chapter 11 cases involving between ten million and one-hundred million dollars in assets were filed between August 1, 1991 and September 30, 1992 and that 1911 cases involving over one-hundred million dollars in assets were filed during the same time period. In contrast to the AO-SD figures, the *Bankruptcy Yearbook and Almanac* reported that only 45 *public* bankruptcies involved over 100 million dollars in assets and 6 *public* bankruptcies involved between 50 and 100 million dollars in assets. Although these numbers include only public bankruptcies, we believe they are closer to the total number of cases involving large assets than the AO-SD figures. The errors do not seem to be limited to just a few districts or to a short time period.

**(2) Developing a systematic approach to collecting additional information to be considered in the judicial resource calculation (recommended approach).** The Bankruptcy Committee considers other information in addition to a district's weighted caseload when evaluating a judgeship request, including information about mega chapter 11 cases, when appropriate. Unfortunately, it has proved difficult to interpret the relationship of information about mega cases to judicial workload. We recommend the Committee follow the protocol set below for obtaining and evaluating relevant information. The protocol describes information to be obtained prior to and during a survey trip to a court *with a relatively high number of very large chapter 11 cases*, and provides some guidance for its interpretation.

1. How does the court define a mega case? Does the definition used by the court for "in-house" tracking and management purposes differ from the definition used by the Administrative Office in allocating resources to the clerk's office?<sup>4</sup> If so, what is the court's reason for deviating?
2. During the past three calendar years, how many cases meeting the court's definition of a mega case have been filed? How many cases meeting the AO's definition have been filed?
3. What is the weighted caseload associated with the mega cases?
4. How does the level and duration of docketed activity in mega cases differ from non-mega cases involving one million dollars or more?<sup>5</sup> Make this comparison using cases filed three years ago so that case activity over an extended time period can be examined. Exclude events unlikely to involve judicial attention from the analysis; a list of such events is attached in Appendix B, but it should be reviewed and modified with the court under study. Also discuss with the court whether activity *unique* to mega cases is not docketed because, for example, it occurs "off-the-record" in chambers.
  - For mega and non-mega cases, graph the average number of docketed events for months 1-36 after filing.
  - Calculate the following ratio:

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<sup>4</sup>The Administrative Office's definition for allocating clerk's office personnel is "a single case or a set of jointly administered or consolidated cases that involve one hundred million dollars or more, and 1000 or more creditors."

<sup>5</sup>For two interrelated reasons, examining case activity over time helps determine whether the weighting scheme systematically disadvantages a district with a large number of mega cases: (1) Because the weighted caseload scheme is based on filings, it implicitly assumes that the amount of case activity is high early after filing but declines relatively quickly. To the extent mega chapter 11 cases do not follow this pattern, but non-mega chapter 11 cases do, the weighting scheme systematically disadvantages a district with a large number of mega cases. (2) Similarly, if there is a tendency for a disproportionate amount of the judicial work associated with mega chapter 11 cases to arise more than 22 months after the case was filed, the weighting scheme systematically disadvantages a district with a large number of mega cases. Due to missing information, the FJC Bankruptcy Time Study calculated weights for chapter 11 cases by asset level only for the first 22 months of case life. The 22-month weights were adjusted within chapter by adding a constant. This adjustment assumed that all chapter 11 cases required the same amount of judicial attention after 22 months from filing.

1. Divide the number of docketed events in mega cases by the weighted caseload associated with the mega cases.

(Note that the weighted caseload associated with the mega cases is based on all the lead mega cases and all cases jointly administered with these cases.)

2. Similarly, divide the number of docketed events in non-mega cases by the weighted caseload associated with the non-mega cases.
3. Divide the ratio derived in step 1 by the ratio derived in step 2. That is, divide the number of docketed events per weighted case hour for mega cases by the number of docketed events per weighted case hour for non-mega cases.

This last ratio provides an approximate measure of how much more burdensome mega cases are to non-mega cases involving one million or more dollars in assets.

5. Adjust the weighted caseload to account for the increased judicial time associated with mega cases. One way to make this adjustment is set out below. It helps moderate the effect of fluctuations in the number of mega cases filed from year to year on a district's weighted caseload. It also adjusts for the increased judicial activity, as measured by docketed activity, associated with mega cases.
  - Subtract the weighted caseload associated with the current mega cases from the district's current weighted caseload.
  - Calculate the weighted caseload associated with mega cases for the current year and the two preceding years, and adjust each by multiplying by the ratio calculated in step 4 above.<sup>6</sup>
  - Average the adjusted weighted caseloads for the mega cases over the three years and add the average back into the district's current weighted caseload.
6. In determining the appropriate number of judgeships to be allocated the district, consider the original weighted caseload, the weighted caseloads associated with mega cases over the past three years, the adjusted weighted caseload, and other relevant factors (e.g., the number of prepackaged plans, whether activity unique to mega cases is not docketed, the extent to which the mega cases are being jointly administered or substantively consolidated, and how this varies over time,<sup>7</sup> and the number and timing of adversary proceedings in mega cases compared to non-mega cases.)<sup>8</sup>

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<sup>6</sup>A three-year average is recommended because the weighted caseload associated with mega cases may be quite variable from year to year. For example, one case with many associated filings may account for a large proportion of the weighted mega caseload associated with mega cases in any given year.

<sup>7</sup>Adjusting the weighted caseload using a three-year average for mega cases helps ameliorate the effect of a large set of jointly-administered cases filed in a given year on a district's weighted caseload. On the other hand, the weight for each individual filing is adjusted upward by the ratio: the number of docketed events per weighted case hour for mega cases by the number of docketed events per weighted case hour for non-mega cases. Thus, even if the weighted caseload is adjusted using the above procedure, the committee should still consider the extent to which the mega cases are being jointly administered or substantively consolidated, and how this varies over time.

<sup>8</sup>Under the case weighting scheme, courts receive independent credit for adversary proceedings. Nevertheless, it is useful to compare the number of adversary proceedings associated with mega and non-mega cases because the comparison provides more information about the level and timing of case activity.

## **General Recommendations for Facilitating the Study of Mega Cases**

We also make the following observations and recommendations concerning the study of mega chapter 11 cases in general.

At its March 1996 meeting, the Advisory Committee on Bankruptcy Rules approved for publication and forwarded to the Standing Committee numerous amendments to the Official Forms, including amendments to the asset and liability categories so that they are no longer in thousands of dollars and use both numerals and words to represent asset levels. The earliest possible effective date for the proposed changes is late summer or early fall, 1997. Based on the work we conducted in the Southern District of New York, we recommend that the Bankruptcy Committee request during the amendment process that the following additional changes to the petition be made. Both changes will facilitate the monitoring of chapter 11 cases nationally.

- **The asset and liability category of "ten to one-hundred million" be divided into two categories: "ten to fifty million" and "fifty to one-hundred million".**

Not surprisingly, the cases falling into the "ten to one-hundred million" dollar category vary in their complexity. According to Chief Judge Brozman of the Southern District of New York, many cases in the \$50 to \$99 million range are time-intensive relative to other chapter 11 cases falling into this category. Our analysis of the caseload of the Southern District of New York supports this observation. See footnote 3 in Appendix B.

- **A variation of the following question be added: Does the asset and liability information provided represent the amount for this filing only or an aggregate for related filings?**

In related cases, counsel sometimes present asset information separately for each debtor, and other times just list the same aggregate amount on all related petitions. This practice makes the identification of mega cases according to an objective criteria difficult. For example, the Administrative Office's definition of a mega case for clerk's office resource allocation is a single case or a set of jointly administered or consolidated cases that involve one hundred million dollars or more, and 1000 or more creditors. Without routinely collected and machine-readable information about how the asset information is presented, it is impossible to apply this definition without going back to the original records.

## **Mega Chapter 11 Activity in the Southern District of New York**

Following the outline set out above, we examined the judicial workload associated with mega chapter 11 cases in the Southern District of New York. Our findings are presented in Appendix B.

## APPENDIX A

### A SURVEY OF BANKRUPTCY JUDGES REGARDING CRITERIA THAT PREDICT THE NEED FOR EXTRAORDINARY AMOUNTS OF JUDICIAL TIME

During the spring of 1993, the Federal Judicial Center surveyed all bankruptcy judges to obtain information to help us develop our plans for research on the bankruptcy system. We identified fifteen issues now confronting or likely soon to confront bankruptcy policy-makers in the judicial branch and about which we thought systematic empirical information was needed. We asked judges to determine the relative importance of these issues and to help us identify other issues of importance. In addition, we asked judges several questions about allowing debtors to proceed in forma pauperis in chapter 7 and chapter 13, and finally we asked them to identify characteristics of cases that are ascertainable fairly soon after filing and that predict the need for heavy judicial time expenditures. We categorized the responses we received to this last question into the categories set forth below. Two-hundred and twenty-five bankruptcy judges responded to the survey.

#### **Type of business in which debtor is engaged**

- manufacturing or sales versus real estate holdings
- manufacturing versus service industry
- investment companies that go bankrupt causing loss of money to elderly, etc.
- law or accounting partnership and the number of general partners
- retailer or manufacturer versus a holding company whose subsidiaries are not in bankruptcy
- business that provides goods or service that are important to the public
- business involving perishable agricultural commodities
- business in a declining market (e.g., agricultural equipment manufacturer in a cycle of low prices for agricultural products and high interest rates; retail department stores competing with discounters)
- nursing homes
- no cash holding companies (basically option cases)
- business with section 1110 problems (e.g., aircraft, large ships)

#### **Organizational structure of the business debtor**

- corporation or partnership versus individually-owned business
- public versus privately held company (and the number of stockholders)
- affiliated entities - subsidiaries or upstream parent
- closely-held business, with family or other such disputes driving the case

#### **Size of the business debtor**

- vastness of entity (e.g., airline, national supplier of goods or services, public utility)
- number of facilities (e.g., plants, stores) that are operated, leased, or owned, and their location
- amount of sales (e.g., sales over one million dollars)
- number of employees
- "Ma and Pa" chapter 11 cases can require extraordinary amounts of time (e.g., emergency hearings where a bank account is frozen and employees are waiting to get paid, cash collateral hearings, appointment of professionals, conflict of interest issues)



## **Other characteristics of the business debtor**

general reputation of the business  
very marginal business debtor  
labor-intensive, particularly with unioned versus non-unioned employees  
whether or not there are continuing business operations (e.g., operating business with a large cash flow and few fixed assets will take more time than a real estate case because rapid loss of assets causes lenders to get active)  
cash needs and availability  
whether debtor owns or leases its primary producing assets  
numerous executory contracts or leases of non-residential property (may trigger motions to extend time to assume or reject motions to reject)  
complexity of business transactions (e.g., how heavily they are oriented toward UCC transactions) is a good indication of the number of adversary proceedings that will be filed  
prior litigation profile (extent and complexity)  
pre-bankruptcy cooperation between debtor and creditor groups  
leveraged buy-out in debtor's recent past  
unreliable books and record keeping by a primary debtor (reliability is important in the comfort level of debtors)

## **Amount and nature of the assets**

multiple types of assets -- not just amount  
numerous competing or conflicting liens on debtor's assets  
single asset real estate cases filed to ward off foreclosure  
amount of assets (e.g., operating asset cases worth more than \$2,000,000)  
number of equity holders  
classes of equity ownership  
whether debtor owns or leases its primary producing assets  
number of encumbered real estate holdings

## **Number and type of creditors and interest holders, and nature of the debt**

number of creditors, both secured and unsecured, and priority of their claims  
number of classes of creditors  
number of secured creditors (large number of major secured creditors) (one side effect is immediate and hotly contested cash collateral motions)  
number of creditors whose claims are listed as contingent, unliquidated, or disputed  
large number of individual investors, primarily of unsophisticated type  
  
amount of secured debt  
lower secured debt ratios  
asset/debt ration out of kilter  
  
complexity of the debt structure (e.g., stacked collateralization of specific assets, numerous equipment leases for single items or small groups thereof)  
case involves debentures (complicates creditor classification and amplifies cramdown problems)  
number of competing interests  
  
nature of debt (public, pension under funding, environmental, tax, mass tort liability. etc.)

both a mortgagee and ground lessor are creditors  
mechanics lien claimants  
(also see section below, "Problems debtor encounters")

### **Creditor involvement**

active creditor involvement (should become apparent in 30 to 60 days)  
aggressive, well heeled creditors  
number of creditor committees and whether they are active  
whether there are active creditors committees, represented by counsel, shortly after the case is filed  
difficulty of forming a creditor's committee  
the number of classes of unsecured creditors and related motions to expand committee membership to ensure adequate representation  
position of secured creditors regarding reorganization versus liquidation  
extent of creditor trust and hostility (e.g., do creditors genuinely want a trustee or is it a negotiating tactic; whether there is calm after the first substantial cash collateral hearing)  
consistently unreasonable position of debtor or creditors

### **Involvement of attorneys and other professionals**

number of professionals employed by and/or being paid through estate funds (including committees)  
whether administrative expenses are available  
number of attorneys involved in the case  
quality, experience, and knowledge of counsel representing the debtor, the major creditors and the creditors committees  
number of attorneys who enter appearances within the first two weeks  
large retainer paid to debtor's counsel  
lead time primary counsel has had prior to the bankruptcy filing  
number of attorneys from another district who are unfamiliar with local rules  
the organizational make-up of the debtor and the resulting need for separate cases and separate counsel  
involvement of national law firms  
big cases may be easier than mid-size cases because of the competency of the counsel involved  
creditor attorney handling first debtor case

### **Characteristics of the case and related proceedings**

business versus nonbusiness case  
voluntary versus involuntary case  
number and nature of connections or affiliations with other debtors, particularly where consolidation or joint administration is necessary or contemplated; multiple related cases  
chapter 13 case closely following a chapter 7 discharge  
  
public knowledge of debtor's problems; whether the case is a "big profile" case; news media carries the stay on the day of filing  
whether legal issues are novel or of first impression in the circuit  
precipitating cause for filing (e.g., tort liability, union problems, under-financed pension benefits; operating cash flow versus debt leverage problem)

any unique aspect of case (e.g., involves mass tort claims, utility reorganization, major public carriers)  
(also see section below, "Problems debtor encounters")

extent of prefiling litigation  
pending litigation with creditor groups (e.g., union, class actions)  
pending state and federal court and administrative proceedings at the time of filing and their removal to the bankruptcy court  
pending mortgage foreclosure proceedings at the time of filing  
pending governmental actions (e.g., pending CERCLA/Superfund or state environmental remediation proceedings)

schedules and statements are filed with the petition, and they include extensive lists of receivables and executory contracts  
number of creditors and attorneys at the section 341 meeting  
amount of time spent in hearings during first 30 days  
filing of adversaries (other than dischargeability) and contested matters early in the case and circumstances indicating that a large number will be filed  
filing of adversary proceedings that will be unlikely to settle  
multi-party complex proceedings within the case

### **Miscellaneous problems encountered by the debtor**

allegations of fraud against management  
management being challenged by creditors or shareholders  
the principals (or a principal) has absconded  
cash collateral needs and conflicts (e.g., business needs to borrow immediately post-petition to keep operating; financing systems involving heavy use of cash collateral)  
large number of potential voidable transfers (e.g., transfers to or from debtor shortly before bankruptcy case was filed)  
issue regarding the capacity of the debtor  
disputes among owners of debtor (e.g., DIP partnership with battling partners)  
sale/leaseback issues

environmental issues (pending CERCLA/Superfund or state environmental remediation proceedings)  
major tax issues (e.g., debtor pursued by IRS prepetition)  
mass torts claims and likelihood of their success  
labor issues: involvement of unions, existence of labor (executory) contracts, ERISA, termination, and other pension-related issues that accompany a unionized employee force, retiree health benefits program such that 11 U.S.C. § 1114 may be an issue)  
issues involving State Attorney General's Office  
involvement of the RTC or similar entity  
involvement of the PBGC  
non-bankruptcy law questions

## APPENDIX B

### ASSESSING THE JUDICIAL WORKLOAD ASSOCIATED WITH MEGA CHAPTER 11 CASES IN THE SOUTHERN DISTRICT OF NEW YORK

#### 1. DEFINITION OF MEGA CASES

The Southern District of New York uses multiple criteria for identifying mega cases for internal management purposes, but follows a definition developed by the Administrative Office in counting the number of mega cases for assessing the resources needed in the clerk's office.

According to the Administrative Office, a mega case is a single case or a set of jointly administered or consolidated cases that involve one hundred million dollars or more, and 1000 or more creditors.

For internal management purposes in the Southern District of New York, a mega case is a single case or a set of jointly administered or consolidated cases that meets **some or all** of the following criteria:

- 100 million dollars or more in assets;
- 1000 or more entities that must be noticed;
- the type of entities to be noticed imposes burdens on the clerk's office and judges; and
- high degree of public interest in the case.

The last two criteria are related to a host of others, e.g., sophistication of the creditors, type and reputation of debtor, amount and type of pre-filing litigation, and presence of non-bankruptcy issues such as environmental and employment issues.

According to the court, the level of assets, although certainly a relevant factor, should not be determinative in the effort to differentiate mega cases from regular chapter 11 cases. Cases in the \$50 million to \$99 million range often involve thousands of creditors and sometimes media attention, two factors that can converge to greatly expand the judicial time necessary to administer the case. Moreover, transnational cases, which may or may not meet the Administrative Office's definition of mega, may consume high amounts of judicial time because of the need for cross-border cooperation, or if there is none, the jurisdictional battles that ensue.

Cases identified by the court as mega for internal management purposes are generally handled by a special staff in the court's mega case room and are docketed using a separate automated database. Occasionally, a mega case is handled in the regular course, perhaps because it was identified as mega some time after filing.

Because of limitations of the machine-readable data, the application of either the AO or the court definition requires examining the case files. Asset information must be verified by examining the schedules or other documents filed with the petition because attorneys currently make numerous errors in marking the asset categories on the petition cover sheet and this error is carried over into the automated database. For example, we found attorneys had mismarked at least 29 cases filed in CY 1993 as involving over 100 million when the cases actually involved much lower amounts. Second, depending on the amount of information known at filing, counsel either provide the assets for each affiliate covered by a set of filings individually, or list the same aggregate amount for all the affiliates. Because

counsel do not have to indicate which approach they are using, it is impossible to determine the aggregate amount of assets for a set of filings without examining the files.

## 2. NUMBER OF MEGA CASES FILED IN THE PAST THREE CALENDAR YEARS<sup>1</sup>

**Calendar Year 1993.** According to the court's automated docketing databases, 397 chapter 11 cases filed in the Southern District of New York in CY 1993 involved one million dollars or more in assets or were jointly administered with cases that involved such an amount. Of the 397 cases, 184 involved assets between one and ten million dollars; 59 cases involved assets between ten and one hundred million dollars, 137 cases involved assets of one hundred million dollars or more, and 17 cases involved less than one-million dollars in assets, but were jointly administered with a case that involved one-million or more in assets.

The court designated 144 of the 397 cases as mega cases. Of the 144 mega cases, 25 cases were identified as lead cases; the other 119 cases were jointly administered with these lead cases. The mean number of filings per lead case is 5.8 (s.d. = 15.9), with a range from 1 to 81. Eliminating the case with 81 associated filings, the mean number of filings per lead case is 2.6 (s.d. = 2.9), with a range from 1 to 12.

The following table shows how many of the 25 cases identified by the court as mega meet the AO definition and how many are handled in the mega case room. See footnote 2 for a comparison of the activity level in mega cases according to the AO versus the court definition.

**Table 1**  
**Number of Lead Mega Cases Meeting the AO Definition of Mega and Handled by the Mega Case Room**

	Handled by the Mega Case Room	Not Handled by the Mega Case Room	
<b>Meets the AO Definition</b>	8	2	10
<b>Does Not Meet the AO Definition</b>	9	6	15
	17	8	25

**Calendar Year 1994.** The court designated 11 lead mega cases and 43 cases that were jointly administered with the lead cases. The mean number of filings per lead case is 4.9 (s.d. = 5.7), with a range from 1 to 19.

**Calendar Year 1995.** The court designated 14 lead mega cases and 238 cases that were jointly administered with the lead cases. The mean number of filings per lead case is 18 (s.d.=46.9), with a range from 1 to 180. Eliminating the case with 180 associated filings, the mean number of filings per lead case is 5.5 (s.d.=5.0), with a range from 1 to 17.

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<sup>1</sup>Because of their small number and additional information provided by the court, we were able to verify the information contained in BANCAP regarding joint administration and consolidation for “mega” cases. We relied primarily on the BANCAP information for “non-mega” cases. We do not include in our counts of mega cases CY 93, CY 94, and CY 95 cases that were associated with a lead mega case filed in an earlier year.

### 3. WEIGHTED CASELOAD ASSOCIATED WITH THE MEGA CASES<sup>2</sup>

Table 2 shows the number of lead and jointly administered CY 93 mega cases by asset level. The weighted caseload associated with just the 25 lead cases is 273.90. Recall, however, that the court receives weighted caseload credit for each individual filing. Thus, the weighted caseload associated with the mega cases for judicial resource purposes is based on all 144 mega filings and is 1514.95.

One case with many associated filings may account for a large proportion of the weighted caseload associated with mega cases. For example, the weighted caseload for the CY 93 case with 81 associated filings is 909.95, accounting for approximately 60% of the entire CY 93 weighted mega caseload. For this reason, the weighted mega caseload may be quite variable from year to year.

**Table 2**  
**Number of Lead and Jointly Administered CY 93 Mega Cases**  
**by Asset Level**

ASSET CATEGORY	ASSOCIATED CASE WEIGHT	NUMBER OF LEAD MEGA CASES	NUMBER OF JOINTLY ADMINISTERED MEGA CASES	ALL MEGA CASES
1. Less than \$50,000	5.372	0	11	11
2. \$50,000 - \$99,999	4.021	0	0	0
3. \$100,000 - \$499,999	4.285	1	1	2
4. \$500,000 - \$999,999	5.143	0	4	4
5. \$1,000,000 - 9,999,999	11.234	0	4	4
6. \$10,000,000 - 99,999,999	11.234	8	10	18
7. \$100,000,000 and above	11.234	16	89	105
<b>TOTAL</b>		<b>25</b>	<b>119</b>	<b>144</b>

Tables 3 and 4 show the number of lead and jointly administered cases filed in 1994 and 1995 that were identified by the court as mega cases. The weighted caseload associated with the CY 94 cases is 432.36 and that associated with the CY 95 cases is 2754.70. Eliminating the CY 95 case with 180 associated filings the weighted caseload is 732.58.

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<sup>2</sup>In calculating the weighted caseload for mega and non-mega cases, we relied primarily on machine-readable data, following conventional practice.

**Table 3**  
**Number of Lead and Jointly Administered CY 94 Mega Cases**  
**by Asset Level**

ASSET CATEGORY	ASSOCIATED CASE WEIGHT	NUMBER OF LEAD MEGA CASES	NUMBER OF JOINTLY ADMINISTERED MEGA CASES	ALL MEGA CASES
1. Less than \$50,000	5.372	1	21	22
2. \$50,000 - \$99,999	4.021	0	0	0
3. \$100,000 - \$499,999	4.285	0	3	3
4. \$500 ,000 - \$999,999	5.143	0	4	4
5. \$1,000,000 - 9,999,999	11.234	0	3	3
6. \$10,000,000 - \$99,999,999	11.234	6	3	9
7. \$100,000,000 and above	11.234	3	6	9
8. could not determine (weighted as 11.234 in calculating weighted caseloads)	11.234	1	3	4
<b>TOTAL</b>		<b>11</b>	<b>43</b>	<b>54</b>

**Table 4**  
**Number of Lead and Jointly Administered CY 95 Mega Cases**  
**by Asset Level**

ASSET CATEGORY	ASSOCIATED CASE WEIGHT	NUMBER OF LEAD MEGA CASES	NUMBER OF JOINTLY ADMINISTERED MEGA CASES	ALL MEGA CASES
1. Less than \$50,000	5.372	2	4	6
2. \$50,000 - \$99,999	4.021	0	1	1
3. \$100,000 - \$499,999	4.285	1	3	4
4. \$500 ,000 - \$999,999	5.143	0	1	1
5. \$1,000,000 - 9,999,999	11.234	0	3	3
6. \$10,000,000 - \$99,999,999	11.234	1	7	8
7. \$100,000,000 and above	11.234	9	219	228
8. could not determine (weighted as 11.234 in calculating weighted caseloads)	11.234	1	0	1
<b>TOTAL</b>		<b>14</b>	<b>238</b>	<b>252</b>

#### **4. ACTIVITY LEVEL IN MEGA CHAPTER 11 CASES VERSUS OTHER CHAPTER 11 CASES INVOLVING ONE MILLION DOLLARS OR MORE**

The Southern District of New York provided us with the following information about every event that was docketed in the CY 93 mega chapter 11 cases, as well as for other cases involving one million dollars or more in assets (hereinafter referred to as non-mega cases): (1) type of event and relief sought or obtained, (2) date of the event; (3) who initiated the event; and (4) any cross-references to other events in the case. The district also provided us with basic information about the adversary proceedings associated with these cases.

**Number of Events.** As seen in Figures 1 and 2, the amount of activity, as reflected by docketed events, was higher and more sustained in mega cases compared to non-mega cases. Activity in both types of cases declined over time: Activity in the non-mega cases almost ceased two years after filing but activity in the mega cases continued well into the third year. Figure 1 is based on all docketed events; Figure 2 excludes events we thought unlikely to involve judicial attention. A list of the types of events we included/excluded from the second analysis is attached.

Excluding events unlikely to involve judicial attention, the number of docket events per weighted case hour for mega cases is 6.657 and that for non-mega cases is 2.925. Thus, the level of judicial activity in mega cases, as measured by docketed events, is 2.276 times that for non-mega cases.<sup>3</sup>

#### **5. ADJUSTING THE WEIGHTED CASELOAD TO ACCOUNT FOR INCREASED JUDICIAL TIME ASSOCIATED WITH MEGA CASES**

- Subtract the weighted caseload associated with the current mega cases from the district's current weighted caseload.

CY 95 weighted caseload: 14,796

CY 95 weighted caseload for mega cases only: 2,754.7

CY 95 weighted caseload excluding weight for mega cases: 12,041.3

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<sup>3</sup>This ratio is based on all filings jointly administered with the 25 cases filed in 1993 that were identified by the court as "mega". We also calculated the ratio in several other ways.

Cases handled in the mega case room versus all other cases: 2.07

Cases classified as mega by the AO criteria versus all other cases: 1.16

Cases either handled in the mega case room or meeting the AO criteria versus all other cases: 2.08

Cases handled in the mega case room versus all cases not classified as mega under any definition: 2.24

Cases classified as mega by the AO criteria versus all cases not classified as mega under any definition: 1.63

Cases either handled in the mega case room or meeting the AO criteria versus all cases not classified as mega under any definition: 2.23.

These ratios indicate that the court is identifying cases beyond those meeting the AO criteria that impose extraordinary burdens.



- Calculate the weighted caseload associated with mega cases for the current year and the two preceding years, and adjust each by multiplying by the ratio calculated in step 4 above.<sup>4</sup>

Adjusted weighted caseload for mega cases:

$$\text{CY 1993: } 1,514.95 \times 2.276 = 3,448.03$$

$$\text{CY 1994: } 432.46 \times 2.276 = 984.28$$

$$\text{CY 1995: } 2,754.70 \times 2.276 = 6,269.69$$

- Average the adjusted weighted caseloads associated with the mega cases over the three years and add the average back into the district's current weighted caseload.

$$\text{Average } (3,448.03 + 984.28 + 6,269.69) = 3,567.33$$

$$\text{Adjusted Weighted Caseload: } 12,041 + 3,567 = 15,608 \text{ (1,734 per judge)}$$

- Some portion of the "overhead" time for a set of filings does not depend on the number of associated filings. One CY 95 mega case had 180 associated filings but the largest set of filings in the CY 93 data on which the corrective ratio was based was 81. Because the overhead time is less per case in a set of 180 filings versus a set of 81 filings, the ratio may "over-adjust". We obtained a lower bound weighted caseload for the CY 95 mega cases by applying the corrective ratio only to mega cases unassociated with this large set of filings and recalculating the district's adjusted weighted caseload for CY 1995.

Second adjusted weighted caseload for CY 95 mega cases: 3689.46

Second adjusted weighted caseload for CY 95 for all cases:

$$\text{Average } (3,448.03 + 984.28 + 3689.46) = 2,707.26$$

$$\text{Adjusted Weighted Caseload: } 12,041 + 2,707 = 14,748 \text{ (1,639 per judge)}$$

## 6. OTHER FACTORS TO CONSIDER

**Number of Adversary Proceedings.** Under the case weighting scheme, courts receive independent credit for adversary proceedings. Nevertheless, we compare the number of adversary proceedings associated with mega and non-mega cases because the comparison provides more information about the level and timing of case activity. As seen in Figure 3, the number of adversary proceedings is greater in mega versus non-mega cases, with the heaviest activity being in the second year. Figure 4 depicts the same information but excludes 840 adversary proceedings filed in month 25 that are associated with just two cases.

Judge Brozman commented that although the dockets reflect higher numbers of adversary proceedings in mega cases, they do not tell the whole story. Because, in mega cases, the dollar value at issue in the adversary proceedings is much higher than in the

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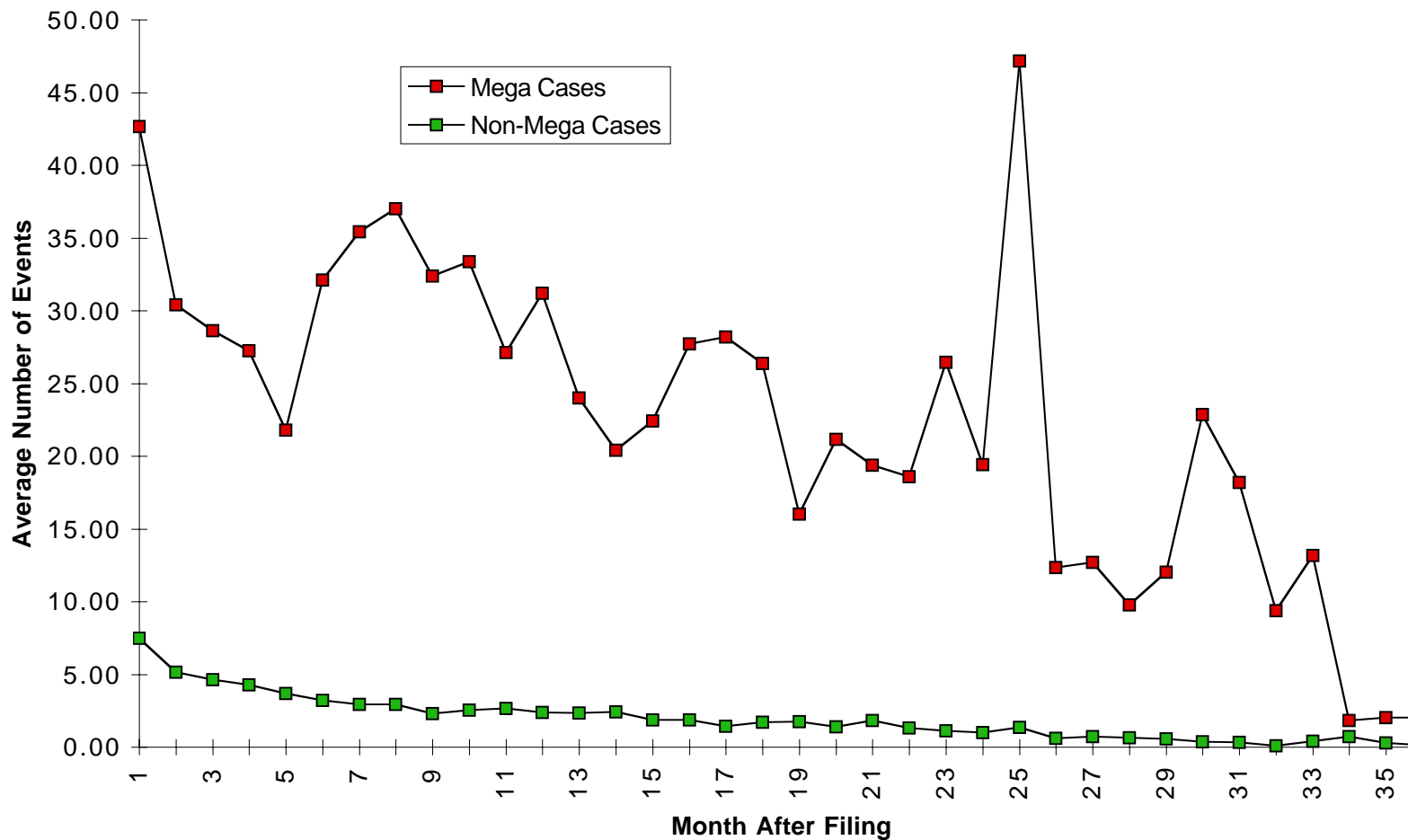
<sup>4</sup>A three-year average is recommended because the weighted caseload associated with mega cases may be quite variable from year to year. For example, one case with many associated filings may account for a large proportion of the weighted mega caseload associated with mega cases in any given year.

smaller cases, the number of disputes about discovery skyrockets. Pursuant to local rule, discovery disputes are to be conferenced before any motions are filed. Accordingly, much time is spent on such disputes which is not reflected on the docket sheets.

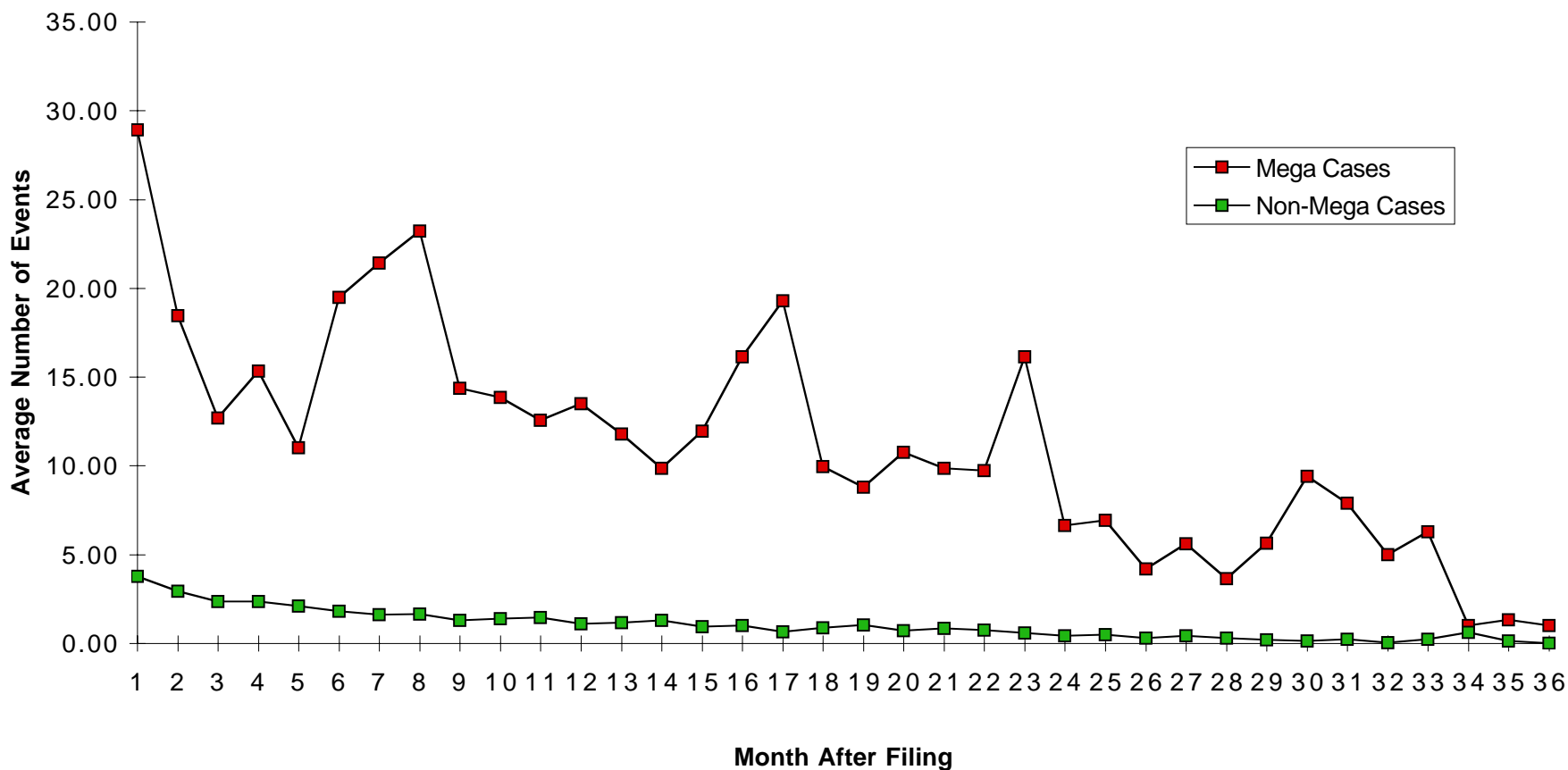
**Number of Prepackaged Plans.** We were not able to determine conclusively how many of the mega cases involved a pre-packaged plan, but the clerk of court and the mega case room supervisor indicated that the number was small (estimated 1 in 10).

**Activity Unique to Mega Cases That is Not Docketed.** Judge Brozman commented that reviewing docket entries alone does not give an accurate picture of judicial time in a mega case because many hours are spent in chambers conferences in case management (progress of the case, how notices to thousands of creditors should be formulated, what is anticipated to be upcoming on the calendar, whether a budgeting process should be instituted, what types of professionals should be retained and for whom), in settlement discussions, and in discovery disputes. This time is not reflected on the docket sheets although it is usually accounted for on each judge's daily calendar.

**Figure 1**  
**Mega and Non-Mega Cases Filed in Calendar Year 1993**  
**Average Number of Events per Case during 1-36 Months after Filing**  
**(excluding 44 non-mega cases not fully docketed electronically)**



**Figure 2**  
**Mega and Non-Mega Cases filed in Calendar Year 1993**  
**Average Number of Events per Case during 1-36 Months after Filing**  
**(excluding 44 non-mega cases not fully docketed electronically**  
**and excluding events unlikely to require judicial time)**



**Figure 3**  
**Mega and Non-Mega Cases**  
**Average Number of Adversary Proceedings**  
**During 1-36 Months After Filing**

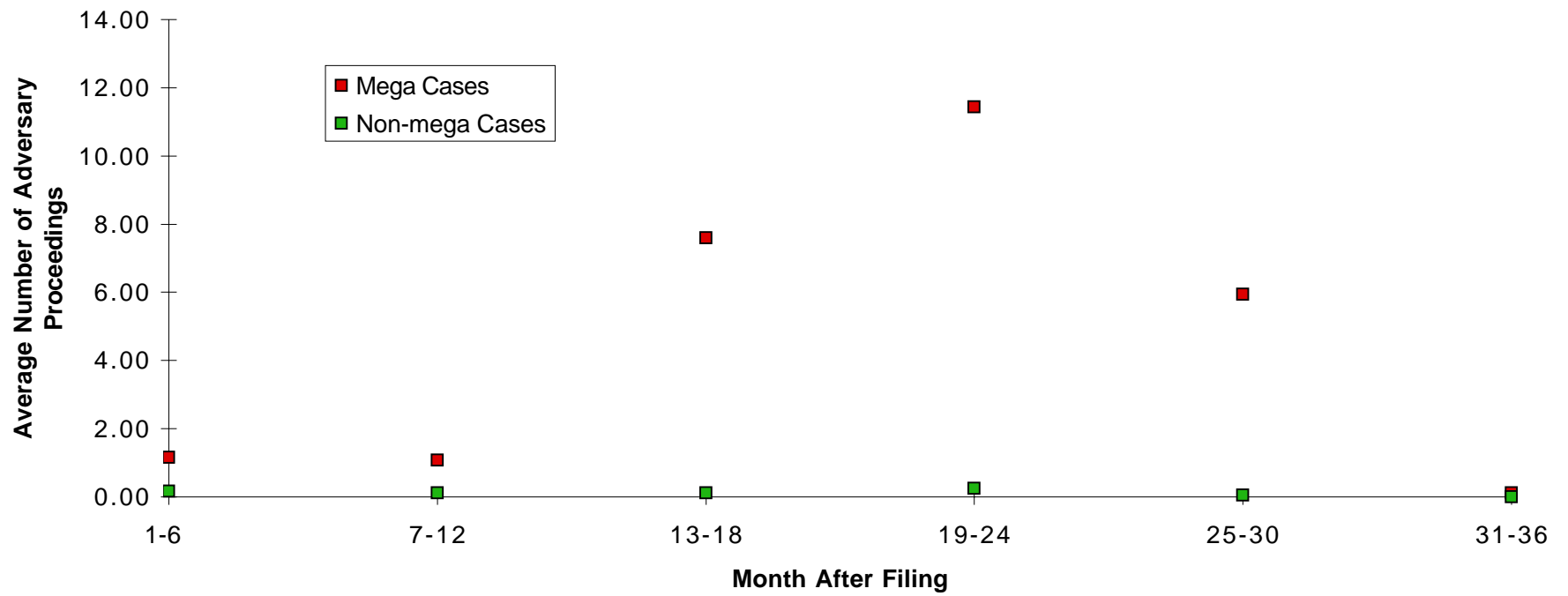


Figure 4 is missing. The chart will be appended during the next update to the file.

<b>EXCLUDED EVENTS</b>	
Notice Apptg Trustee	267
Court's Certificate of Mailing	268
341(a) Satisfied	269
Close Case - Bankruptcy	285
Summons Service Executed	299
Order for Relief	307
Bond	369
Notice of Appeal	375
Appellant Designation	376
Notice Apptg Cred Committee	379
Statement of Operations	388
Entry	399
Transcript	401
Notice of Intent to Sell	411
Disclosure of Compensation	412
Notice Request	446
Notice to Take Deposition	454
Civil Cover Sheet	464
Notice of Removal	480
Notice of Dismissal	482
Affidavit of Service	483
Case Reassigned	485
Notice of Appearance & Request	495
Case Reopened	499
341(a) Notice	505
Order (dc) Re: Appeal	522
Notice of Entry of Judgment	523
Notice of Abandonment	532
Summons Issued	573
Appeal-Related Deadlines	586
Update Deadline	604
Cross Appeal	607
Stipulation	608
Affidavit	651
Request For Admissions	654
Interrogatories	655
Counter Designation	657
Filing Fee Paid in Full	662
Appeal Filing Fee Paid	663
Exhibits	666
Notice of Entry of Service	668
Certification of Publication	669
Notice of Withdrawal	671

Notice of Proposed Order	674
Local Rule 52 Affidavit	677
Ntc Post-Confirm Requirements	681
Withdrawal of Claim	693
Withdrawal of Trustee's Narpt	695
Notice	697
Unsigned Order	706
Transfer Agreement e24	708
Notice with Certificate of MI.	709
Form Letter with Notice Form	710
Objection Notice w/Certificate	711
Transfer Agreement e13	716
Acknowledgment to Transferee	717
Acknowledgment to Transferor	718
Cert. of Ballots	719
Notice of Lien	720
Claim pursuant to B.R. 3004	721
Notice of Defective Transfer	723
Letter	724
Case Jointly Administered	726
Lead Case	727
Calendar Entry	728
Special Fees Paid	729
Case Converted Flag	732
Affidavit of Svcs. of Subpoena	737
Statement of Issues (Appeal)	739
Satisfaction of Judgment	741
Case Sent for Closing	743
Notice of No Objection	744
Designation	751
Hold Back Flag	753
Court's Certificate of Mailing	756
Notice of Inability to Serve	760
Proposed Ntc. of Distribution	765
Administrative Bar Date	773
Trustee's No Distribution Rpt.	135
Voluntary Petition	277
Trustee's Interim Report	294
Amended Document	297
Schedules	310
Amended Schedules	311
Document	398
Statement of Financial Affairs	409
Statement of Intent	410
Trustee's Report Of Sale	535
Amended Matrix	537



Matrix	617
Chapter 11 Final Report & Acct	649
Certif. of Trustee Acceptance	650
Local Rule 58 Report	676
Post Confirmation Report	678
List of Creditors	722
Notice of Hearing	667
Complaint	416
Close Case - Adversary	481
Counterclaim	595
Disposition of Adversary	620
<b>INCLUDED EVENTS</b>	
Involuntary Petition	136
Order	281
Dismissal Order	306
Order to Show Cause (Case)	317
Motion	318
Application for Compensation	335
Application to Employ	343
Trustee Rpt Concerning Claims	358
Order Concerning Claims	359
Objection	367
Response	368
Disclosure Statement	380
Chapter 11 Plan	381
Order Approving Disclosure Stm	386
Order Confirming Chp 11 Plan	387
Findings of Fact	413
Support Brief/Memorandum	414
Opposition Brief/Memorandum	415
Judgment	425
Objection to Claim	452
Obj to Confirmation of Plan	453
Application	501
Hearing Schd/Cntd/Rschd	510
CAL: Hearing Held & Concluded	511
Reaffirmation Agreement	514
Application for Admin Expenses	517
Order Vacating An Order	521
Order Transferring Case	526
Application for Removal	538
Objection to motion deadline	593
Amended Motion	613
Amended Application	626

Order/Final Decree	627
Endorsed Order	640
Support Document	645
Order Payment of Spec. Charges	652
Order to Set Hearing	653
Cross Motion	665
Decision/Opinion	672
Memo Endorsed	673
Order Show Cause (Motion)	682
Order Setting Bar Dates	683
Memorandum of Law	687
Hearing Held and Continued	689
Submission	698
Opposition	699
Statement	700
Under Seal Order	701
Request	702
Declaration	703
Lease	704
So Ordered Stipulation	705
Order Transferring Claims	714
Late Objection	715
Amended Plan	731
Temporary Restraining Order	733
Order to Remand	740
Event for CDI	742
Supplemental	745
Objection - For Mega Cases	746
Response - For Mega Cases	747
Voluntary Petition as Answer	750
Amended Disclosure Statement	752
Post Confirmation Order & Ntc.	758
Mediator Appointed	759
Mediator Final Report	761
Motion by UST	768