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

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The Bankruptcy Committee considers information in addition to a district's weighted caseload when evaluating a judgeship request, including information about mega chapter 11 cases, when appropriate. At its June 1996 meeting, the Bankruptcy Committee adopted the protocol set out in the Appendix for obtaining and evaluating the judicial workload associated with mega chapter 11 cases. 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. Below we adjust the weighted caseload for the Southern District of New York in accordance with the protocol.

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 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 DURING THE THREE-YEAR PERIOD ENDING JUNE 30, 1996 AND THE WEIGHTED CASELOAD ASSOCIATED WITH THOSE CASES[1]

Three year period ending June 30, 1996. During the three-year period from July 1, 1993 through June 30, 1996, the court designated 35 lead mega cases and 327 cases that were jointly administered with lead mega cases. The mean number of filings per lead case is 9.9 (s.d. = 30.1), with a range from 1 to 180. Eliminating the case with 180 associated filings, the mean number of filings per lead case is 4.9 (s.d.= 5.4), with a range from 1 to 21.

Table 1 on the next page shows the asset levels of the cases. The weighted caseload associated with just the 35 lead cases is 368.65. 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 357 mega filings and is 3684.11 over three years. This averages to approximately 1,228 weighted hours a year.

Two year period ending June 30, 1995. During the two-year period from July 1, 1994 through June 30, 1996, the court designated 17 lead mega cases and 279 cases that were jointly administered with lead mega cases. The mean number of filings per lead case is 16.4 (s.d. = 42.6), with a range from 1 to 180. Eliminating the case with 180 associated filings, the mean number of filings per lead case is 6.1 (s.d.= 6.1), with a range from 1 to 21.

Table 2 shows the asset levels of the cases. The weighted caseload associated with the mega cases for judicial resource purposes is 3,136 over two years. This averages to approximately 1,568 weighted hours a year.

Year ending June 30, 1996. We describe the cases filed within the last year of the three-year period separately because the Administrative Office is evaluating current judgeship requests based on this time period. In the year ending June 30, 1996, the court designated 13 lead mega cases and 271 cases that were jointly administered with lead mega cases. The mean number of filings per lead case is 20.5 (s.d. = 98.4), with a range from 1

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[1]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. In calculating the weighted caseload for mega and non-mega cases, we relied primarily on machine-readable data, following conventional practice.

to 180. Eliminating the case with 180 associated filings, the mean number of filings per lead case is 7.2 (s.d.= 6.5), with a range from 1 to 21.

Table 3 shows the number of mega cases that were filed during the last year of the three-year period. The weighted caseload associated with these cases is 3018.29.

Table 1
Number of Lead and Jointly Administered by Asset Level
Cases Filed from July 1, 1993 through June 30, 1996

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	3	35	38
2. $50,000 - $99,999	4.021	0	3	3
3. $100,000 - $499,999	4.285	1	11	12
4. $500,000 - $999,999	5.143	0	9	9
5. $1,000,000 - 9,999,999	11.234	0	12	12
6. $10,000,000 - 99,999,999	11.234	12	17	29
7. $100,000,000 and above	11.234	15	237	252
8. could not determine (weighted as 11.234 in calculating weighted caseloads)	11.234	4	3	7
TOTAL		35	327	362

Note: The above table does not include a case filed outside the time period that is being administered with a lead mega case filed within the time period. Conversely, it includes 18 cases filed within the time period that are being administered with lead mega cases filed outside the time period.

Table 2
Number of Lead and Jointly Administered by Asset Level
Cases Filed from July 1, 1994 through June 30, 1996

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	12	14
2. $50,000 - $99,999	4.021	0	3	3
3. $100,000 - $499,999	4.285	1	7	8
4. $500,000 - $999,999	5.143	0	5	5
5. $1,000,000 - 9,999,999	11.234	0	8	8
6. $10,000,000 - 99,999,999	11.234	2	13	15
7. $100,000,000 and above	11.234	11	231	242
8 . could not determine (weighted as 11.234 in calculating weighted caseloads)	11.234	1	0	1
TOTAL		17	279	296

Note: The above table includes 18 cases filed within the time period that are being administered with lead mega cases filed outside the time period.

Table 3
Number of Lead and Jointly Administered by Asset Level
Cases Filed from July 1, 1995 through June 30, 1996

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	9	11
2. $50,000 - $99,999	4.021	0	3	3
3. $100,000 - $499,999	4.285	1	7	8
4. $500 ,000 - $999,999	5.143	0	5	5
5. $1,000,000 - 9,999,999	11.234	0	6	6
6. $10,000,000 - $99,999,999	11.234	1	13	14
7. $100,000,000 and above	11.234	8	228	236
8. could not determine (weighted as 11.234 in calculating weighted caseloads)	11.234	1	0	1
TOTAL		13	271	284

Note: The above table includes 18 cases filed within the time period that are being administered with lead mega cases filed outside the time period.

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

We used chapter cases filed between January 1, 1993 and December 31, 1993 (hereinafter CY 93) to compare the level and duration of docketed activity in mega cases to that in non-mega cases involving one million dollars or more. We used these cases so that case activity over an extended time period could be examined.[2]

According to the court's automated docketing databases, 397 chapter 11 cases filed in the Southern District of New York in CY 93 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.[3]

The weighted caseload associated with the mega filings is 1514.95. Note that 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 case with 81 associated filings is 909.95, accounting for approximately 60% of the entire weighted mega caseload. For this reason, the weighted mega caseload may be quite variable from year to year.

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 4 for a comparison of the activity level in mega cases according to the AO versus the court definition.

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[2] 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.

[3] We do not include in our counts of CY 1993 mega cases those cases that were associated with a lead mega case filed in an earlier year.

Table 4
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	
Meets the AO Definition	8	2	10
Does Not Meet the AO Definition	9	6	15
	17	8	25

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.

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.[4]

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

The weighted caseload for the Southern District of New York for the year ending June 30, 1996 is 12,942 (1,438 per judge). Below we adjust this weighted caseload in several

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[4]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.

ways to account for the judicial time associated with mega cases. The primary adjustments and the reasoning behind them are:

1. Multiplying the weighted caseload for mega cases by 2.276 to account for the added judicial workload occasioned by mega chapter 11 cases. Recall from above that 2.276 is the ratio of docketed events in mega chapter 11 cases to docketed events in non-mega cases involving at least one million dollars.

2. Subtracting the current weighted caseload associated with mega cases and adding back in a two or three-year average. This adjustment helps moderate the effect of fluctuations in the number of mega cases filed from year to year on a district's weighted caseload.

The district's weighted caseload applying the corrective ratio and using a two-year average for mega cases is:

Weighted caseload for 7/1/95 through 6/30/96: 12,942
Weighted mega caseload for 7/1/95 through 6/30/96: 3,018
Weighted caseload for 7/1/95 through 6/30/96 excluding weighted mega caseload: 9,924
Weighted caseload for mega cases filed in the preceding two years, multiplied by ratio, and divided by two: (3,136 x 2.276) / 2 = 3,569

First adjusted weighted caseload: 9,924 + 3,569 = 13,493 (1,499 per judge)

The district's weighted caseload applying the corrective ratio and using a three-year average for mega cases is:

Weighted caseload for 7/1/95 through 6/30/96: 12,942
Weighted mega caseload for 7/1/95 through 6/30/96: 3,018
Weighted caseload for 7/1/95 through 6/30/96 excluding weighted mega caseload: 9,924
Weighted caseload for mega cases filed in the preceding three years, multiplied by ratio, and divided by three: (3,684 x 2.276) / 3 = 2,795

Second adjusted weighted caseload: 9,924 + 2,795 = 12,719 (1,413 per judge)

One might argue that adjusting the weighted caseload based on a two- or three-year average for mega cases leads to an under-estimate of the judge time necessary to meet the demands of the court's current docket, particularly when the number of mega filings is higher in the last year. This reasoning would lead one to adjust the weighted caseload using only the first adjustment above. The resulting weighted caseload should be viewed as an upper bound.

Third adjusted weighted caseload: 9,924 + (3,018 * 2.276) = 16,793 (1,866 per judge)

On the other hand, some portion of the "overhead" time for a set of filings does not depend on the number of associated filings. One 1995 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 can obtain a lower bound for the third adjusted weighted caseload by applying the corrective ratio only to mega cases unassociated with this large set of filings.

Fourth adjusted weighted caseload (uses current year mega cases; does not apply corrective ratio to set of 180 filings): 14,212 (1,579 per judge)

Thus, depending on the assumptions one makes, the adjusted weighted caseload ranges from a low of 12,719 (1,413 per judge) to a high of 16,793 (1,866 per judge). On balance, it is likely that either the first adjusted weighted caseload [13,493 (1,499 per judge)] or fourth adjusted weighted caseload [14,212 (1,579 per judge)] best represents the judicial resource needs of the court.

6. OTHER FACTORS TO CONSIDER

Number of Adversary Proceedings.[5] 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 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.

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[5] 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.

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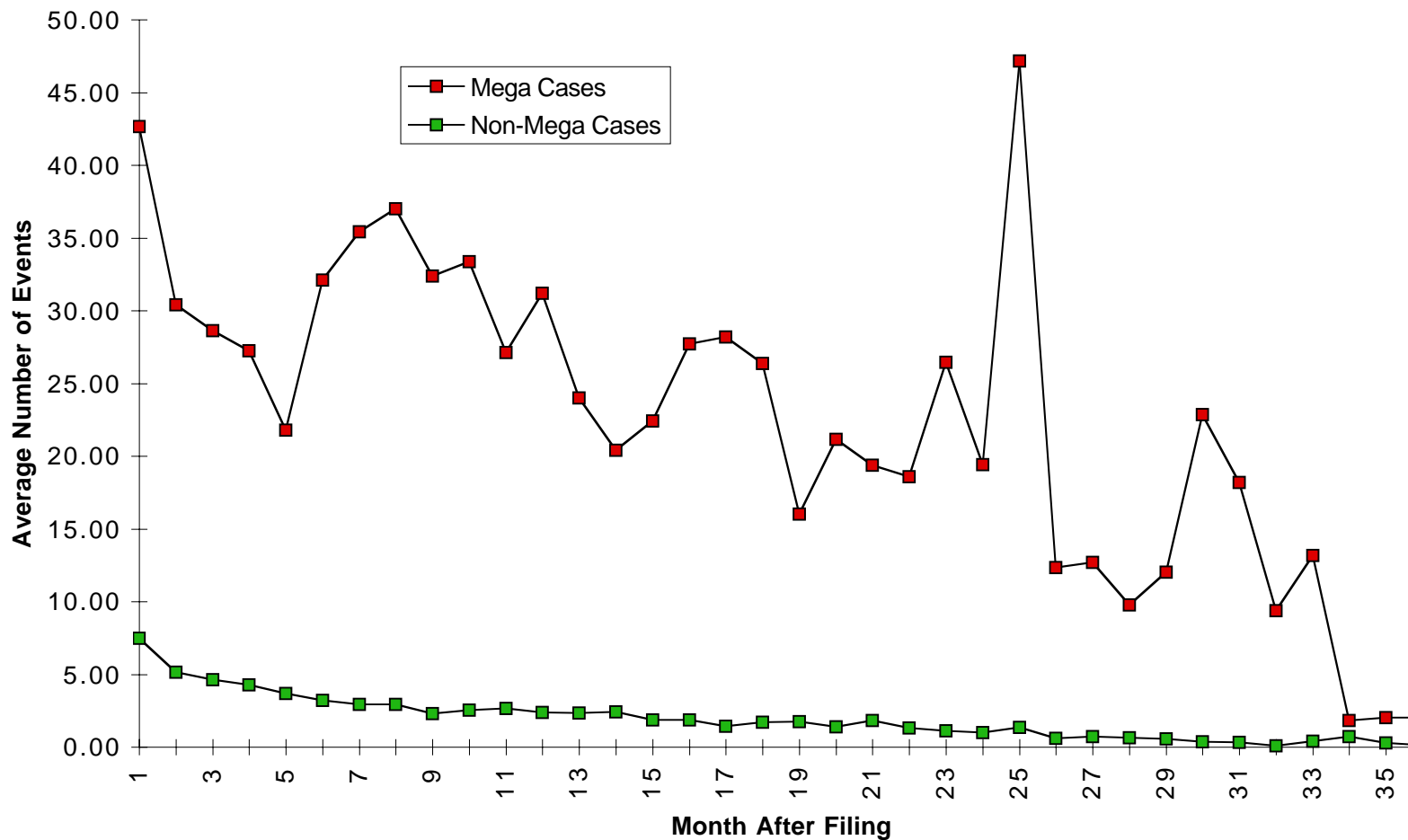**(excluding 44 non-mega cases not fully docketed electronically)**

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
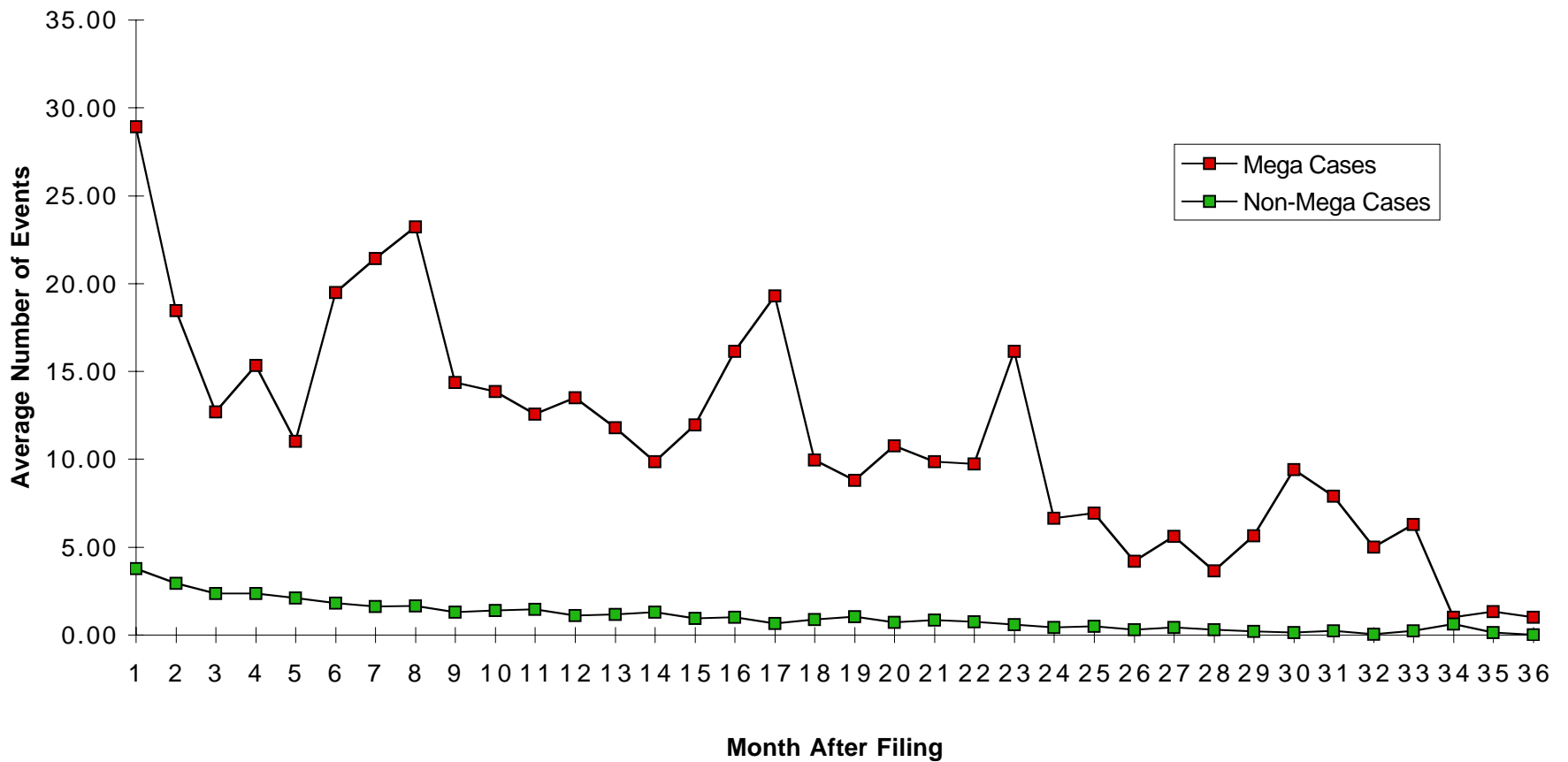**and excluding events unlikely to require judicial time)**

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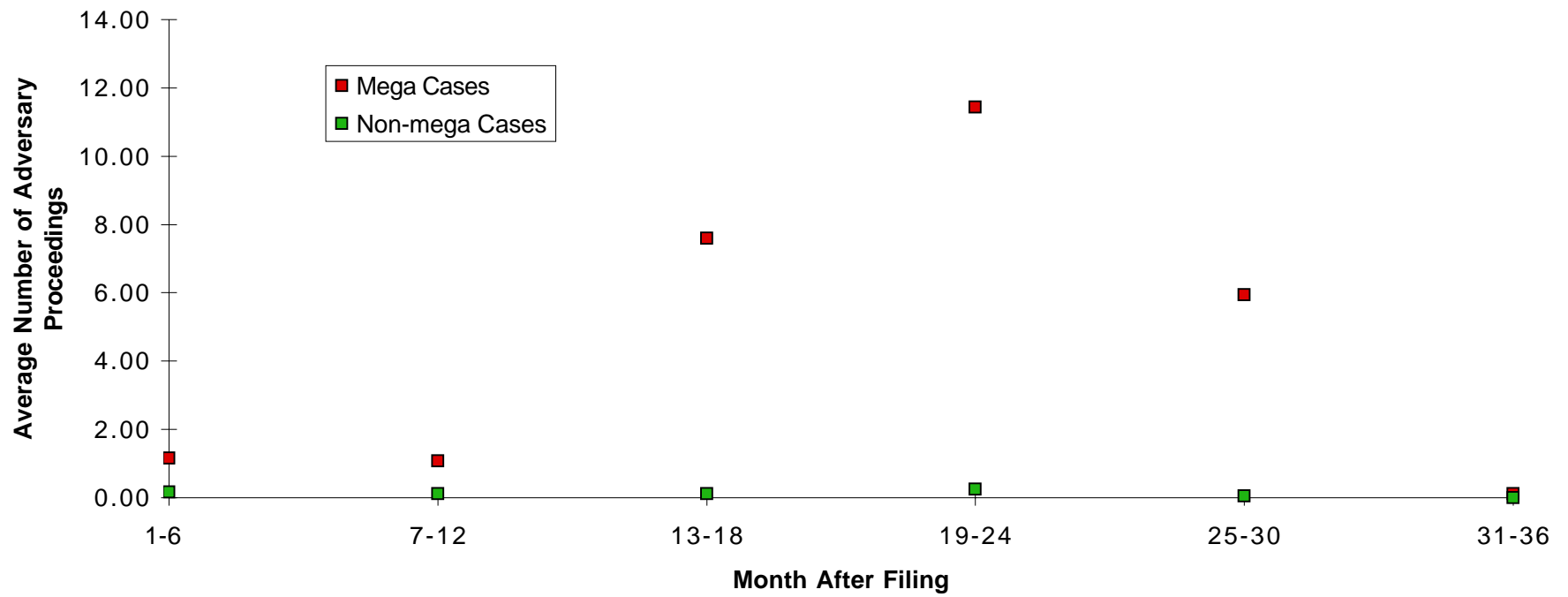**During 1-36 Months After Filing**

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

APPENDIX

The folloing 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 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?[1] 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?[2] 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; the list of excluded events should be reviewed with the court under study.

    •   For mega and non-mega cases, graph the average number of docketed events for months 1-36 after filing.

    •   Calculate the following ratio:

        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.

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[1]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."

[2]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.

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 by multiplying by the ratio calculated in step 4 above.[3]

- 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,[4] and the number and timing of adversary proceedings in mega cases compared to non-mega cases.)[5]

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[3]An 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.

[4]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.

[5]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.