HMDA data paints bleak picture
Home Mortgage Disclosure Act’s 2011 Data

The potential effect of “cramdown” in chapter 13 on mortgage credit

Interview with Felicia T. Burda, BVW’s new Sr. Bankruptcy Compliance Counsel
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Recent Study Regarding Presumptively Reasonable Attorney’s Fees in Chapter 13 Cases

By Michael Le
University of San Francisco School of Law Professor Bruce M. Price’s article “‘No Look’ Attorney’s Fees and the Attorneys who are Looking: An Empirical Analysis of Presumptively Approved Attorney’s Fees in Ch. 13 Bankruptcies and a Proposal for Reform” tackles the unclear practice of presumptively reasonable debtor’s attorney fees in chapter 13 bankruptcy cases. Presumptively reasonable fees (also called “no-look” fees) are fees courts presume to be reasonable for a routine case, and the attorney requesting the fee is not required to submit a fee application.

Presumptively reasonable fees are common practice in most courts; however, there is no explicit language in the Bankruptcy Code allowing the practice, and case law is unclear. The plain language of the Code contemplates approval of fees by a bankruptcy court only after submission and notice of a fee application. Price logically argues that courts lack the resources to hold a fee hearing on every chapter 13 case and are not the best suited statistically to analyze the individual fee requests.

Most courts have adopted some form of “no-look” fee approval. The lack and inconsistency of controlling legal authority have led the courts to deal with presumptive fees in a haphazardly local way, rather than nationally. Given the lack of clarity, Price proposes amending the Code to expressly allow presumptive fees and place the regulation of those fees under the “aegis” of the U.S. Trustee Program (“USTP”).

**The Bankruptcy Code**

Section 330(a)(1)(A) of the Bankruptcy Code allows courts to award “reasonable compensation” to a debtor’s attorney. “Reasonable compensation” takes into account the following factors:

- the time spent on such services;
- the rates charged for such services;
- whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

11 U.S.C § 330(a)(3)

The statute does not provide a formula detailing how these factors should be weighed; thus, courts typically determine reasonable compensation through a “lodestar” calculation. The lodestar method is multiplying an hourly rate by the number of hours worked, applying standards of reasonableness to both factors. Even at first glance, it is a time-consuming method for a court to endure and does not account for routine chapter 13 bankruptcies. The statute is silent as to “no-look” fees, and the plain language of the statute is in direct conflict with the “no-look” fee practice.

**Case Law**

As discussed by Price in his article and summarized here, courts are inconsistent regarding this issue. The Sixth Circuit has held that the lodestar method must be used when examining fee applications, but in recent cases presumptive fees have been allowed so long as attorneys have the option of submitting fee applications for lodestar analysis. The Fifth Circuit has held that fee applications are required, but a court may apply a pre-calculated amount for routine services. The Eighth Circuit allows presumptive fees where the lodestar method is inappropriate, such as routine chapter 13 bankruptcies. The Tenth Circuit allows presumptive fees but also permits attorneys to submit fee applications to be reviewed under the lodestar method. The Seventh Circuit has held similarly to the Tenth Circuit, allowing a presumptive fee in chapter 7 cases, but attorneys have the option to submit fee applications. The Ninth, First and Third Circuits have
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held that presumptive fees are allowable under routine cases, but for services that are “extraordinary” or outside the “normal and customary” standards, there must be an individual review. The Eleventh Circuit has not commented directly on the issue of presumptive fees. The Second Circuit allows “no-look” fees, but the attorney must still apply to be compensated under the presumptive guidelines or the lodestar method. Thus, the courts vary as to practice, but a majority allows some form of presumptive fees.

**FINDINGS**

Price’s findings are that (1) almost all courts allow presumptive fees, (2) the allowable fee varies greatly among localities without regard to economic and social concerns, and (3) the allowable presumptively reasonable fee information is often difficult for attorneys to find.

Price examined a total of 111 courts in his study. Of these courts, 90 courts have a fixed “no-look” policy, one court had a percentage-based policy and 13 did not have a “no-look” policy. At least one court in every circuit had a “no-look” policy.

The allowable fee varies from court to court without any regard to comparable and local considerations. The lowest fee is $1,200 in the Seventh Circuit (Western District of Wisconsin), while the highest is $4,800 in the Ninth Circuit (Northern District of California, Oakland Division). Even within some circuits, the fee range varies dramatically. For example, in the Fourth Circuit, the “no-look” fee for the Western Division of Virginia, Harrisonburg Division, is $2,000, but it is $4,000 in the District of Maryland. Most interesting is the Northern District of California in the Ninth Circuit, where in the San Francisco Division, the fee is $3,500, but across the bay, the fee in the Oakland Division is $4,800.

Price indicates that presumptive-fee information was difficult to obtain. Price had to filter the information through court websites, local rules, various orders, guidelines, and even calling the clerks directly. Debtors’ counsel will certainly have difficulty identifying presumptive-fee practices on their own.

**AUTHOR’S PROPOSAL**

Price proposes a statutory addition to section 330(a) of the Bankruptcy Code with express language allowing presumptively reasonable fees. Second, Price proposes that the “no-look” fees in chapter 13 cases be under the purview of the USTP and be reviewed every five years to account for social and economic changes as to local billing rates. The changes to the statute would:

1. Make it transparent that “no-look” fees are explicitly permitted;
2. Promote judicial economy by:
   a. Taking the analysis out of the courts and placing it with the USTP;
   b. Not requiring a maintenance of billing records unless the attorney is asking for a higher amount;
   c. Making it easier for attorneys to find the allowable fees instead of digging through advisory orders, local rules, court websites and calling clerks; and
   d. Making a clear procedure for attorneys seeking the higher fees, namely a hearing and the standard of review under the lodestar analysis.

Price’s proposal seems sound and logically grounded. The advantages of having a clear system and guidelines would help the courts, chapter 13 trustees and attorneys process the cases efficiently.

Consider, however, a few words of caution as to Price’s proposal. First, like most legislation imposing new duties upon the USTP, it is not accompanied by corresponding legislation for the allocation of additional funding to the USTP, an already understaffed agency, which would allow it to hire additional staff to address its constantly expanding duties and priorities.

Second, does this proposal encourage attorneys to request the “no-look” fee in every case, regardless of the actual time spent? Last, the presumptively reasonable fee may decrease the quality of an attorney’s work, encouraging attorneys to work as few hours as possible. As a practical matter, safeguards are needed to prevent this type of behavior, and attorneys should still continue to keep billing records.

HMDA data paints bleak picture

Home Mortgage Disclosure Act’s 2011 Data

BY MICHAEL R. GONZALES
The Home Mortgage Disclosure Act of 1975 (HMDA) imposed requirements on mortgage lenders to disclose detailed information regarding their home-lending on a yearly basis. Objectives of the HMDA include fairness in lending across demographic and local communities, ensuring federal institutions are serving the housing needs of local communities, and collection of information to assist public entities in distribution of funds to local communities to attract private investment. The data analyzed for 2011 consists of information acquired from over 7,600 lenders, including all of the “Big 5” (Ally, Bank of America, Citi, JP Morgan Chase and Wells Fargo). Specific data analyzed includes demographical information on borrowers; detail and disposition of each loan application; type, purpose and characteristic of each mortgage originated; and loan pricing information, amongst other data. The statistics for 2011 do not paint a rosy picture, especially when compared with the same statistics from the peak of the market in 2005. As discussed in detail below, mortgage lending in 2011 dropped to the lowest levels seen in 16 years.

The statistic that is most striking is the precipitous decline in overall lending, even from 2010. In 2010, covered lenders reported 7.9 million loans of all types. In 2011, this number dropped by 800,000 loans to 7.1 million, striking the lowest total loans originated since 6.2 million in 1995. When taking a more granular look at these numbers, owner-occupied residential mortgage loans have dropped most drastically, with a 7.2% decline from 2010 numbers. However, it must be taken into account that 2010 featured a first-time homebuyer tax credit which led to a rush to purchase homes, resulting in 50% of home sales being first-time buyer purchases. After the sunset of the program, this number declined rapidly before settling at 37% for 2011. Piggyback junior liens, usually used to reduce the first and fit in Fannie/Freddie lending guidelines, had the most drastic reduction of all – from 1.3 million in 2006 to a meager 42,000 in 2011. The lending decline combined with the interest rates having consistently hung at or below 4% indicates the weak residential market only continuing its four-year decline, despite efforts to stimulate the market through extremely low interest rates and tax breaks.

With the obvious decline of owner-occupied loans, investors are helping prop up the weak market. Contrary to the declining owner-occupied lending market, non-occupied investment is growing. While this is not a substantial increase – non-occupant lending saw a 10% increase since 2010 – any increase in a segment of borrowing is an assist to the market. While not back to the peak levels of 2005 when non-occupant lending was 16% of the market, the 13% segment of 2006 shows steady recovery each year since the crash of the market. Further, non-occupant lending specifically moves default/Shadow inventory of foreclosed properties, a crucial aspect of recovery for the housing market. Not taken into account by this data is that roughly half of non-occupant purchases are paid in cash.

**SHIFTING TRENDS DUE TO MARKET CHANGE**

In response to the high default rates of mortgages originated prior to the market crash, lending institutions have become increasingly more conservative with lending practices. One control which has significant impact in lending is the tightening of credit standards. As a result, credit scores for approved loans have significantly increased, reaching heights not seen in over a decade. To illustrate this point, the median score of borrowers has risen about 40 points since the end of 2006 with the bottom 10 percent of borrowers having score increases of roughly 50 points. While this can be seen as a clean-up mechanism, it also removes a significant population of potential borrowers who no longer qualify. This trend should ultimately result in a decreased default rate over time, but will also shrink the population of loans originated.

Another facet of the move to a more conservative lending platform is an increasingly stringent review of loan applications. Many critics of lending practices prior to the fall of the market have pointed to the “stated income loan,” which allowed borrowers to manipulate the application process and qualify for loans they otherwise would not have. The newest set of data indicates that the oversight of applications has addressed this issue as there is no evidence of overstated income, compared to peak years of the real estate market appearing to have much higher rates of overstated income. Incomes were significantly inflated on applications in high default states of Florida, California and Nevada. Coincidence? Surely not. Interestingly, application denial rates have not seen a spike. That would seem to indicate the stringent credit guidelines combined with more strictly scrutinized applications are leading to more responsible applications and borrowing. If this data analysis proves true, this should lead to less defaults long-term.
The largest lenders appear to be leading the charge in this approach as well. This is likely due to the significant government regulation, investigation and oversight that smaller lenders are not directly affected by, including consent orders with the Office of the Comptroller of the United States of America and recent national servicing standards agreed to by the Big 5. This is borne out by the fact that despite accounting for over 30% of mortgage originations, home-purchase lending by large lenders had a drastic fall of 17%, contrary to a 2.6% decline for all other financial institutions.

COMMUNITY RECOVERY

Neighborhoods experiencing the largest downturn after the crash of the housing market saw purchase loans fall 13.8%. There is a correlation among these harshly affected communities, income and race when viewing recovery from the crash of the housing market. As stated in the report, declines in home purchases amongst upper-income borrowers had no correlation to neighborhood distress and dropped by a mere 3.3%, far less than the overall decline. Conversely, lower-income communities have consistently seen a drastic decrease in lending.

According to the HMDA data, there is a direct correlation between the low-income community decline and minority-lending decline as communities consisting of mostly minorities are the areas featuring some of the largest drops in home-purchase lending. Reflective of recent lending history, credit denial rates were higher for minority-borrower applicants – 12% for non-Hispanic whites, 15% for Asians, 31% for African-Americans and 22% for Hispanics. An analysis of the data regarding reasons for denial shows collateral-related issues and debt-to-income ratios as the two categories with the highest spike since 2006. In consideration of the above-discussed restrictions on lending, this is hardly shocking. The 50-point credit score increase on approved loans for the bottom 10% of borrowers and bleak job market restricting income increases would clearly cause an immediate plummet in low-income borrowing. Illustrating this point, sub-prime borrowers (with credit scores of under 620) dropped from 19% of borrowers to 7% in 2011. Naturally, if these borrowers are even able to attain credit, the price of credit will be drastically higher than conventional lending. While this unfortunately eliminates a large swath of Americans from reaching the dream of home ownership, that dream is one of the largest contributors to the market burst. The tightening of credit requirements will directly combat such massive future defaults.

FUTURE EFFECTS ON MORTGAGE LENDING?

As seen from the above analysis, the default epidemic has led to stricter lending standards and more scrutiny on borrowers to combat future defaults. Lenders are not the only entities trying to fight mass default; state and federal governments are continuing to introduce legislation to curb default. In California, the Homeowner’s Bill of Rights goes into effect on January 1, 2013. This far-reaching legislation attempts to stimulate loan modifications and eliminate dual-track foreclosures, where the lender continues the foreclosure process while reviewing a loan-modification application. As of January 1, 2013, foreclosure activity will be frozen during loan-modification review. Despite the best of intentions, it is doubtful that this will actually help create long-term loan modifications. What such legislative efforts will absolutely do is hinder efforts to move the distressed-loan inventory, which is necessary to see any true recovery of the housing market. Indeed, historically low interest rates are failing to stimulate the market concurrent with federal and state governments creating a hostile lending environment.

Rather than focusing on working together for recovery, lenders are forced to react to legislation to remain compliant with ever more stringent regulation, which is clearly not conducive to opening up lending to borrowers. The silver lining of the HMDA report is that hopefully the cleaner, more accurate application/lending process will help avoid future mass defaults and avoid a reoccurrence of this morass ten years down the road.

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DOES
"CRAMDOWN"
RAISE THE COST OF CREDIT?

Study by Professors Goodman and Levitin suggests giving bankruptcy judges the power to modify primary mortgage loans may do just that.

BY FELICIA T. BURDA
In reaction to the housing crisis, Congress has considered many proposals in recent years to address aspects of the situation. One such proposal was legislation to permit bankruptcy judges to modify mortgage loans on primary residences in chapter 13 bankruptcy cases. Better known as “cramdown,” it would permit bankruptcy courts to approve bifurcation of the lender’s claim into a secured portion equal to the value of the collateral and an unsecured portion equal to the deficiency, such that lenders would likely only receive mere pennies on the dollar for the unsecured claim with the remainder discharged. A recent study by two professors, summarized herein, concludes that such a change to bankruptcy law would raise the cost of credit (Goodman/Levitin Study).1

CURRENT STATE OF THE LAW
Currently, as interpreted by the Supreme Court of the United States in 1993, the Bankruptcy Code does not permit a bankruptcy judge to “cram down” a primary residential mortgage in a chapter 13 bankruptcy case. Section 1322(b)(2) of the Bankruptcy Code provides that a chapter 13 plan may modify the rights/claims of secured creditors, but it explicitly excludes claims secured only by an interest in a debtor’s principal residence.

From the enactment of this provision in 1978 until 1993, there was question among the courts as to whether the prohibited modification actually prohibited cramdown in particular or just modification in general. Some courts viewed cramdown as simply a determination of the classification of the loan in the context of bankruptcy and not an actual modification of the loan.2 In fact, of approximately 60 lower-court rulings on the issue during this period, nearly 40 found that cramdown was permissible, and three of four federal circuit courts on the issue during this period, nearly 40 found that cramdown was “allowed.” The professors’ research shows that at the start of the period in question, very few jurisdictions allowed cramdown. By early 1993, however, there were judicial rulings permitting cramdown in over 30 states, covering approximately 60% of U.S. home loans. The professors

THE CRISIS AND PROPOSED LEGISLATION
The Goodman/Levitin Study cites statistics from the last quarter of 2011 suggesting that nearly 25% of mortgages are underwater, with many borrowers owing more than 150% of their collateral’s value. This estimated $700 billion in negative equity is perceived to be a critical factor attributing to foreclosures, preventing a housing market recovery and delaying an economic recovery through consumer spending. Despite these problems, however, Goodman and Levitin report very little effort by lenders or mortgage servicers to voluntarily reduce principal for home mortgage loans, noting that the largest mortgagees, Fannie Mae and Freddie Mac, prohibit principal reduction and third-party servicers’ contracts sometimes prohibit modification. They further note that government action to encourage such voluntary reductions, like the Home Affordable Modification Program (HAMP), has had limited success.3

Levitin, who was recently appointed to the new consumer advisory board for the Consumer Financial Protection Bureau, believes that legislative proposals to allow cramdown in chapter 13 were a result of recognition of the “various frictions that impede loan modification, and in particular principal reduction” and meant to encourage voluntary modifications.6 The House of Representatives passed the highly contentious legislation in 2008, and President Obama endorsed it, but it failed in the Senate without the required 60 votes for cloture. The Mortgage Bankers Association led the lobbying effort against the legislation; it argued that allowing cramdown in bankruptcy would cause a 150-200 basis point increase in the average cost of mortgages. The Goodman/Levitin Study is careful to note that the authors of that study were clear that this number was an approximation.7

THE GOODMAN/LEVITIN STUDY
Goodman and Levitin purport to provide the first such evidence on the effect of cramdown on mortgage credit.8 They collected data for all rulings from federal bankruptcy, district and circuit courts on the issue of cramdown from October 1979, the effective date of section 1322, to June 1993 when the Supreme Court issued its decision in Nobelman v. American Savings Bank when it unanimously held that cramdown was indeed a modification of the mortgage prohibited by the Bankruptcy Code.4

As to the professors’ empirical strategy, they employed a “difference-in-difference” strategy regarding the differences in lending conditions between states that allowed cramdown and states that did not, comparing to periods before and after cramdown was “allowed.” The professors’ research shows that at the start of the period in question, very few jurisdictions allowed cramdown. By early 1993, however, there were judicial rulings permitting cramdown in over 30 states, covering approximately 60% of U.S. home loans. The professors
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WHY IT’S GETTING MORE EXPENSIVE

TO GO BROKE

FEE STUDY SUGGESTS 2005 REFORMS INCREASED DIRECT-ACCESS COSTS TO FILE BANKRUPTCY

BY ALEXANDER WOLFE
WHY IT’S GETTING MORE EXPENSIVE TO GO BROKE • BY ALEXANDER WOLFE
One of the most pressing concerns faced by a debtor who is contemplating bankruptcy is how much it will cost him in cash up front to file. Less so, but still relevant, is the concern over how much the case will cost him over the life of the matter. In that context, a study conducted by University of Maine law professor Lois R. Lupica and commissioned by the American Bankruptcy Institute sought to survey the impact of the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) on not only fees assessed by attorneys to represent debtors, but on the difficulty or ease for debtors to obtain access to the bankruptcy system. The study, which was published in December 2011, relied on two approaches to gathering information: “qualitative” data consisting of surveys sent to individual attorneys, judges and trustees, as well as interviews with and focus groups comprised of these bankruptcy professionals, and “quantitative” data derived from a random sample of 11,221 chapter 7 and chapter 13 cases filed in 90 judicial districts between 2003 and 2009. The study concludes that generally, the 2005 reforms have made both the chapter 7 and chapter 13 process more costly and burdensome to debtors, their attorneys and trustees.

BAPCPA imposed several new requirements on debtors and their attorneys, beginning with a “means test” that restricted eligibility of debtors under chapter 7 of the Bankruptcy Code. Another reform requires debtors to file additional documents with the court (or produce to the trustee in some districts), including payment advices, tax returns and other financial documents. Lastly, the Code now requires individual debtors in chapters 7, 11 and 13 cases to obtain pre-petition credit counseling and pre-discharge financial education.

These new requirements have had an impact on all who participate in the bankruptcy system, from debtors to attorneys to judges. One group especially burdened by the 2005 reforms was chapter 7 trustees. One chapter 7 trustee reported that it now takes two or three times as long to administer a no-asset chapter 7 case as it did before the reforms, a figure that was confirmed by numerous chapter 7 trustees surveyed. This is partly the result of new duties imposed upon chapter 7 trustees as a result of the reforms, including gathering and reviewing required additional documentation from debtors and debtors’ counsel, notifying appropriate parties of domestic support obligations, and complying with new requirements for uniform final reports. Chapter 7 trustees must also deal with continuances filed by debtors who are unable to obtain the BAPCPA required paperwork in a timely manner. A trustee interviewed for the study observed that it was not unusual for at least half of new cases to be continued because of the debtor’s failure to produce documents in time for the meeting of creditors.

Chapter 7 trustees are paid a flat fee of $60 for each case, which comes from the filing fee paid by the debtor. In asset cases, chapter 7 trustees also receive a commission based on a sliding scale formula set forth in the Bankruptcy Code. This $60 fee has remained unchanged since 1994, and many chapter 7 trustees who participated in the fee study indicated that the fee level should be increased to reflect the time and effort put forth in these cases, especially since the enactment of BAPCPA. Many were also concerned that the low fee in no-asset cases, combined with few opportunities to earn a commission in cases where assets are present, discourage attorneys from applying to be trustees.

BAPCPA also imposed new requirements on debtors who file for bankruptcy. One of these is the requirement to produce documents pertaining to the debtor’s financial condition, including six months of pre-petition payment advices and three years of tax returns. Debtors’ attorneys reported that this requirement is one of the most difficult for debtors to meet, as many do not retain these documents as a matter of course and efforts to obtain the documents can be time consuming, or even impossible if the debtor is self employed, a contract employee or one who works on commission.

The reforms also impose a requirement that debtors participate in a pre-filing credit counseling course and a pre-discharge financial management course. Many of the lawyers surveyed for the study reported that their clients describe the pre-filing credit counseling course as unnecessary and time consuming, and one judge reported that he was not aware of any case in which the course resulted in the debtor not filing for bankruptcy. The requirement that debtors attend a pre-discharge course was reported to be less burdensome and of more use to the debtors, though some judges reported that they were seeing more chapter 7 dismissals solely due to a debtor’s failure to take the course.

BAPCPA has also imposed additional burdens on debtors’ attorneys. Attorneys who represent debtors in chapter 7 cases reported “a disconnect between the time it takes to responsibly represent a consumer debtor in a chapter 7 case, and the legal fee the market will support.” Chapter 7 debtors’ attorneys are already dealing with issues such as a high level of competition, market saturation, and downward pressure on fees by petition preparers. One attorney reported that most debtors cannot afford to pay a fee sufficient to compensate the attorney for the amount of time it requires to represent the debtor thoroughly, and some attorneys go so far as to enter into unenforceable agreements with the debtor to receive payment post-petition. The BAPCPA reforms have only added to the strain by increasing the amount of time and effort required to represent debtors in chapter 7 cases.

The impact of the BAPCPA reforms also depends to some extent on the manner in which chapter 13 debtors’ attorneys...
are paid. Many jurisdictions permit the chapter 13 attorney to charge a “presumptively reasonable fee” so as to avoid the necessity of filing a fee application that requires court approval (though attorneys may still file a fee application for unusual or extraordinary expenses that fall outside the scope of the flat fee, or may elect not to charge a flat fee at all). Jurisdictions also structure the attorneys' fees in different manners. Some jurisdictions permit the debtor to pay the fee over the life of the plan. In others, payments to the attorney are made prior to plan confirmation, those fees being paid out of funds that might otherwise go to pre-confirmation adequate protection payments to mortgage creditors. Still other jurisdictions require that the attorney’s fee be paid in a set monthly installment, thus reducing the amount of the debtor's plan payment once the attorney’s fee is paid in full. The structure of these fee payments can have an outcome on the success rate of debtors, as debtors’ attorneys are more likely to accept riskier cases when they can anticipate that they will receive most or all of their fees near the front end of the case. The impact of these arrangements is necessarily exaggerated by the BAPCPA reforms, which have made cases more challenging and complex, and provided more opportunities for even experienced attorneys to make mistakes.

The direct impact of these additional requirements on the cost of access for debtors considering bankruptcy was measured by the quantitative element of the study. The study found that since BAPCPA was enacted, there has been an increase in total direct-access costs (defined to include debtors’ attorneys fees and expenses, filing fees, credit counseling course fees and debtor education course fees) across the board. Specifically, there has been a 24 percent increase in total direct-access costs for dismissed chapter 13 cases, a 27 percent increase for discharged chapter 13 cases, a 37 percent increase for discharged chapter 7 asset cases, and a 51 percent increase for discharged chapter 7 no-asset cases. In addition, the study found that the national mean attorney fee increased from $2,061 to $2,564 in chapter 13 cases, from $821 to $1072 in chapter 7 asset cases, and from $654 to $968 in chapter 7 no-asset cases.

The author of the study concludes that the BAPCPA reforms have had several unintended consequences, such as the poorest debtors having the highest plan payments because their apparent disposable income is not impacted by allowed deductions for high mortgage and car payments, or reduced dividends to non-priority unsecured creditors as a result of additional administrative costs and fees (although distributions to secured creditors were unchanged). Some chapter 13 trustees also observed that bankruptcy judges have developed “workarounds” to the strict income requirements of BAPCPA using local rules and local practices. Despite this, the author also concludes, the bankruptcy system still leaves room for debtors to achieve some measure of success, even outside of reaching discharge in their particular bankruptcy cases, as many debtors need only buy a little time to complete a more limited objective such as obtaining a loan modification, moving, or selling property. Overall the study makes it clear that when considering reforms to the bankruptcy system, it is important to consider the overall impact reforms will have on all participants in the system, and whether the reforms will make the avowed goal of a “fresh start” more difficult (or in some cases impossible) for a debtor to obtain.

2. Id. at 5.
3. Id. at 94.
5. Id.
6. Id.
8. Id. at 94.
9. Id. at 90.
10. Id. at 94.
11. Id. at 95.
12. Id. at 98.
13. Id. at 88.
14. Id. at 91.
15. Id.
16. Id. at 91.
17. Id.
18. Id. at 93.
19. Id.
20. Id. at 99.
21. Id.
22. Id. at 105.
23. Id.
24. Id.
25. Id. at 114.
26. Id. at 115.
27. Id. at 116.

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### 2012 YTD STATE-BY-STATE HOUSEHOLDS PER FILING

#### TOP 10

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<tr>
<th>State</th>
<th>Households per filing</th>
<th>Percent Change</th>
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<tr>
<td>Georgia</td>
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<td>Tennessee</td>
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<tr>
<td>Colorado</td>
<td>51.3</td>
<td>-11.8%</td>
</tr>
<tr>
<td>Michigan</td>
<td>53.6</td>
<td>-13.8%</td>
</tr>
</tbody>
</table>

#### BOTTOM 10

<table>
<thead>
<tr>
<th>State</th>
<th>Households per filing</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas</td>
<td>131.2</td>
<td>-6.4%</td>
</tr>
<tr>
<td>Iowa</td>
<td>132.0</td>
<td>-18.6%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>133.2</td>
<td>-17.4%</td>
</tr>
<tr>
<td>Montana</td>
<td>137.8</td>
<td>-17.3%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>140.1</td>
<td>-15.4%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>154.7</td>
<td>0.0%</td>
</tr>
<tr>
<td>Vermont</td>
<td>173.3</td>
<td>-10.8%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>198.0</td>
<td>-20.4%</td>
</tr>
<tr>
<td>Washington D.C.</td>
<td>210.6</td>
<td>-8.4%</td>
</tr>
<tr>
<td>Alaska</td>
<td>227.8</td>
<td>-22.7%</td>
</tr>
</tbody>
</table>

As of Oct 2012; Percent Change Based on Comparison of Jan/Oct 2012 Filings vs Previous Year

Source: LCI 10/31/2012
## State-by-State Total 2012 YTD Bankruptcy Filings and Percentages of Chapter 7 vs. Chapter 13

<table>
<thead>
<tr>
<th>State</th>
<th>Total 2012</th>
<th>Chapter 7 Filings</th>
<th>Chapter 13 Filings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>23,091</td>
<td>38.1%</td>
<td>61.8%</td>
</tr>
<tr>
<td>Alaska</td>
<td>652</td>
<td>82.7%</td>
<td>17.2%</td>
</tr>
<tr>
<td>Arizona</td>
<td>23,317</td>
<td>85.8%</td>
<td>13.5%</td>
</tr>
<tr>
<td>Arkansas</td>
<td>10,337</td>
<td>52.1%</td>
<td>47.7%</td>
</tr>
<tr>
<td>California</td>
<td>154,063</td>
<td>74.9%</td>
<td>24.7%</td>
</tr>
<tr>
<td>Colorado</td>
<td>22,303</td>
<td>83.0%</td>
<td>16.9%</td>
</tr>
<tr>
<td>Connecticut</td>
<td>6,943</td>
<td>86.9%</td>
<td>12.7%</td>
</tr>
<tr>
<td>Washington DC</td>
<td>699</td>
<td>86.7%</td>
<td>12.2%</td>
</tr>
<tr>
<td>Delaware</td>
<td>2,503</td>
<td>71.2%</td>
<td>28.7%</td>
</tr>
<tr>
<td>Florida</td>
<td>66,825</td>
<td>72.7%</td>
<td>27.0%</td>
</tr>
<tr>
<td>Georgia</td>
<td>52,916</td>
<td>48.8%</td>
<td>51.0%</td>
</tr>
<tr>
<td>Hawaii</td>
<td>2,139</td>
<td>75.7%</td>
<td>24.1%</td>
</tr>
<tr>
<td>Idaho</td>
<td>5,308</td>
<td>89.2%</td>
<td>10.4%</td>
</tr>
<tr>
<td>Illinois</td>
<td>56,911</td>
<td>70.9%</td>
<td>29.0%</td>
</tr>
<tr>
<td>Indiana</td>
<td>29,950</td>
<td>72.7%</td>
<td>27.2%</td>
</tr>
<tr>
<td>Iowa</td>
<td>5,408</td>
<td>90.9%</td>
<td>8.9%</td>
</tr>
<tr>
<td>Kansas</td>
<td>7,581</td>
<td>65.3%</td>
<td>34.6%</td>
</tr>
<tr>
<td>Kentucky</td>
<td>16,421</td>
<td>72.7%</td>
<td>27.1%</td>
</tr>
<tr>
<td>Louisiana</td>
<td>13,281</td>
<td>34.4%</td>
<td>65.4%</td>
</tr>
<tr>
<td>Maine</td>
<td>2,583</td>
<td>85.8%</td>
<td>13.7%</td>
</tr>
<tr>
<td>Maryland</td>
<td>19,600</td>
<td>80.7%</td>
<td>19.1%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>14,088</td>
<td>73.6%</td>
<td>25.9%</td>
</tr>
<tr>
<td>Michigan</td>
<td>41,415</td>
<td>83.5%</td>
<td>16.7%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>14,308</td>
<td>83.0%</td>
<td>16.9%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>10,224</td>
<td>51.5%</td>
<td>48.3%</td>
</tr>
<tr>
<td>Missouri</td>
<td>21,657</td>
<td>72.7%</td>
<td>27.3%</td>
</tr>
<tr>
<td>Montana</td>
<td>1,705</td>
<td>82.5%</td>
<td>17.1%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>4,797</td>
<td>70.3%</td>
<td>29.6%</td>
</tr>
<tr>
<td>Nevada</td>
<td>14,516</td>
<td>18.2%</td>
<td></td>
</tr>
<tr>
<td>New Hampshire</td>
<td>3,307</td>
<td>75.5%</td>
<td>24.4%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>26,048</td>
<td>78.3%</td>
<td>21.5%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>3,936</td>
<td>91.2%</td>
<td>8.4%</td>
</tr>
<tr>
<td>New York</td>
<td>34,226</td>
<td>84.1%</td>
<td>15.7%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>17,628</td>
<td>43.8%</td>
<td>55.7%</td>
</tr>
<tr>
<td>North Dakota</td>
<td>826</td>
<td>89.0%</td>
<td>10.8%</td>
</tr>
<tr>
<td>Ohio</td>
<td>42,128</td>
<td>76.7%</td>
<td>23.3%</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>9,781</td>
<td>83.8%</td>
<td>16.0%</td>
</tr>
<tr>
<td>Oregon</td>
<td>12,795</td>
<td>78.9%</td>
<td>21.0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>24,083</td>
<td>68.4%</td>
<td>31.4%</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>3,426</td>
<td>85.1%</td>
<td>14.8%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>6,641</td>
<td>44.1%</td>
<td>55.6%</td>
</tr>
<tr>
<td>South Dakota</td>
<td>1,328</td>
<td>90.9%</td>
<td>9.0%</td>
</tr>
<tr>
<td>Tennessee</td>
<td>36,510</td>
<td>45.7%</td>
<td>54.1%</td>
</tr>
<tr>
<td>Texas</td>
<td>38,861</td>
<td>43.7%</td>
<td>56.0%</td>
</tr>
<tr>
<td>Utah</td>
<td>13,676</td>
<td>67.7%</td>
<td>32.2%</td>
</tr>
<tr>
<td>Vermont</td>
<td>863</td>
<td>79.6%</td>
<td>20.0%</td>
</tr>
<tr>
<td>Virginia</td>
<td>24,798</td>
<td>64.8%</td>
<td>35.1%</td>
</tr>
<tr>
<td>Washington</td>
<td>22,866</td>
<td>80.3%</td>
<td>19.5%</td>
</tr>
<tr>
<td>West Virginia</td>
<td>3,249</td>
<td>86.7%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>21,572</td>
<td>76.3%</td>
<td>23.5%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>1,062</td>
<td>85.9%</td>
<td>13.5%</td>
</tr>
<tr>
<td><strong>Total States and DC</strong></td>
<td><strong>995,151</strong></td>
<td><strong>73.3%</strong></td>
<td><strong>26.4%</strong></td>
</tr>
</tbody>
</table>

2012 YTD AS OF OCT 31
DISTRICT-BY-DISTRICT
BANKRUPTCY FILINGS

Source: LCI 10/31/2012
TOTAL 2012 YTD AS OF OCT 31: 995,151
LITIGATION AGAINST MERS

IF EVERY LOAN NEEDS A M.O.M., WHY ARE SOME COUNTIES TRYING TO TERMINATE THEIR PARENTAL RIGHTS?

BY JOE M. LOZANO, JR.

In 1993, industry efforts resulted in the creation of a company called Mortgage Electronic Registration Systems, Inc. (more commonly known as “MERS”), which was designed to facilitate the transfer and tracking of beneficial interests in and servicing rights to residential mortgage loans through its national electronic registry. Prior to creation of MERS and with non-MERS mortgages today, the transfer of a mortgage from one entity to another entity is memorialized in writing through an assignment of mortgage. After review and execution, that assignment of mortgage is then recorded in the public land records in the county where the real property is located. Unfortunately, there were times when assignments did not exist, were not recorded or were recorded in the wrong sequence, creating confusion in chain of title.

In response to these issues, MERS was born. The objective was for MERS to act as the identified mortgagee in the county deed record for loans originating with or assigned to MERS. Thereafter, any residential mortgage transfer occurring between members of MERS would be electronically tracked and maintained through the MERS system, eliminating the need for assignments to be recorded in the public land records. At all times, the original mortgage or assignment of mortgage to MERS would remain a part of the public land records until the mortgage was transferred to a non-MERS member. At that point an assignment out of MERS to the non-MERS member would be recorded in the public land records. Effectively, this would remove the loan from MERS.

So how does MERS become a mortgagee of record?

1) The loan originates with MERS listed on the deed of trust as the nominee for the lender. This is sometimes referred to as a M.O.M. loan (“MERS as Original Mortgagee”); or

2) The loan is transferred via a recorded assignment of mortgage to MERS so that MERS becomes the mortgagee in the land records where the mortgage was originally registered.

With catchy slogans such as “Every Loan needs a M.O.M.,” MERS was intended to increase efficiency and reduce mortgage-lending costs related to assignment preparation. For the mortgage servicing industry and its attorneys who were often struggling with gaps in chain of title, the concept seemed to present a remarkable solution to a routine quandary.

Fast forward to 2011.

On September 20, 2011, attorneys for Dallas County, Texas, (“Dallas County”) brought a lawsuit against MERSCORP, Inc. and Mortgage Electronic Registration Systems, Inc. in County Court at Law No. 5 in Dallas County, Texas. This suit was removed
Since 1987, we’ve focused on helping companies deal with the maze of bankruptcy cases by consistently increasing recovery results, reducing loan losses, and improving the bottom-line performance of their bankruptcy portfolio. Contact NBS and let us help you stay ahead of the game.
from the county court to the Dallas division of the U.S. District Court for the Northern District of Texas on October 11, 2011, under cause number 11-dv-02733. The case is currently assigned to Judge Reed C. O’Connor. After its removal to federal court, Dallas County amended its original lawsuit to a class action complaint, seeking to represent all 254 Texas counties in which a deed of trust had been filed identifying MERS as a “beneficiary.”

In its original suit, Dallas County claimed that mortgages were transferred without properly recording those transactions via assignments of mortgage with the county and without paying the appropriate fee. The suit further stated that after conducting a search of its clerk’s website, 285,525 records were found with MERS indexed as a “grantor” or “grantee.” As remuneration for its loss, Dallas County sought $10,000 per alleged violation plus additional damages.

On March 6, 2012, Dallas County, Texas, was joined by Harris County, Texas, and Brazoria County, Texas, as plaintiffs in the suit via an amended complaint. This amended complaint stated that the statutory damages sought by all Texas counties may exceed $10 billion. The general legal theories and claims brought against MERS include allegations of conspiracy, unjust enrichment and fraudulent misrepresentation.

While we native Texans like to think that “everything is bigger in Texas,” that “the stars at night are big and bright [clap, clap, clap, clap] deep in the heart of Texas” and that we are stewards of innovation, it would appear that counties in other states have beat Texas to the punch as many have already filed similar lawsuits claiming the MERS system cheated them out of filing fees.

On October 13, 2011, trailing behind Texas, Geauga County, Ohio, brought a statewide class action lawsuit against MERS alleging that MERS wrongfully failed to file mortgage assignments, which impacted the accuracy of Ohio’s land records and denied its counties the recording fees. The case was filed in the Geauga County Court of Common Pleas and is styled as State of Ohio, ex rel. David P. Joyce Prosecuting Attorney of Geauga County, Ohio v. MERSCORP, Inc., et al., No. 11-M-001087. The suit is currently pending and active.

On October 31, 2011, Jim Fuller, the clerk of circuit court, Duval County, Florida, filed suit seeking to represent its 67 counties in an action against MERS for failing to record assignments and pay recording fees. The lawsuit was dismissed with prejudice on June 27, 2012, by federal Judge Harvey Schlesinger out of the Middle District of Florida, stating that Florida statutes did not provide a remedy for unfiled assignments and that until the Florida legislature modified its statutes to provide such a remedy, the court could not rules in favor of the plaintiffs.

On March 29, 2012, Plymouth County, Iowa, by and through Darin J. Raymond, Plymouth County Attorney, initiated as a class action lawsuit on behalf of the counties in the State of Iowa seeking relief under the provisions of Iowa’s recording statutes. On August 21, 2012, the case was ruled upon by Northern District of Iowa U.S. District Judge Mark W. Bennett, who dismissed the claims of the Plaintiff stating that no requirement to record assignments existed under Iowa law. The Plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the Eighth Circuit on November 1, 2012.

Similar cases have been filed in Michigan, Kentucky, Oklahoma and Arkansas. The Kentucky lawsuit was dismissed in February 2012 by Chief Judge Joseph H. McKinley Jr. out of the U.S. District Court for the Western District of Kentucky, and the Arkansas suit was dismissed on September 17, 2012, by the Hon. Susan O. Hickey out of the U.S. District Court for the Western District of Arkansas. Rulings in both cases have been appealed.

In reviewing these lawsuits against MERS, it appears that many states do not currently have recording requirements defined within their statutes. However, change may be on the horizon with the onslaught of litigation and ensuing appeals.
Felicia Turner Burda has been practicing law in the field of bankruptcy for over 18 years. She was in private practice for nine years, including as a partner at Troutman Sanders LLP, a large international law firm based in Atlanta. Thereafter, she served as the U.S. Trustee for Region 21 (Florida, Georgia, Puerto Rico and the U.S. Virgin Islands) and Region 20 (Kansas, New Mexico and Oklahoma) for several years. In such capacity, she oversaw the administration of over 15% of the nation’s bankruptcy caseload. She also worked closely with the Executive Office for U.S. Trustees and its Director on implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, as well as relationships with bankruptcy judges through the liaison committee of the National Conference of Bankruptcy Judges. During this time, and subsequently during her tenure as the Deputy Executive Director of the American Bankruptcy Institute, she was a sought-after speaker at national, state and local conferences and bar events for her expertise on bankruptcy matters and current developments. Ms. Burda graduated from Duke University School of Law in 1994 and from DePauw University in Greencastle, Indiana, with a degree in mathematics, magna cum laude, in 1991.

After several months consulting with NBS and BVW, Ms. Burda joined BVW full time as its Senior Bankruptcy Compliance Counsel on Nov. 1, 2012. Ms. Burda’s career path makes her truly unique, and her background and experience as a practicing lawyer with a large firm, a U.S. Trustee and a senior manager of an over-13,000 member association in the field of bankruptcy will provide immeasurable value to BVW, NBS and their clients.

THE LEDGER: Tell us about yourself Ms. Burda.

FB: I was born and raised in Owensboro, Kentucky – a small town of around 56,000 residents at the time, but actually the third-largest city in Kentucky. After leaving for seven years right after high school to attend college and law school, I returned to practice law in my hometown to be near my parents who were struggling with health issues. I eventually moved my career and personal life to Atlanta, where I still reside with my amazing husband and beautiful one-and-a-half-year-old daughter Colleen (named after my mother). I started my family a little later in life!

THE LEDGER: How did you become interested in the field of bankruptcy?

FB: When I was in law school at Duke, one of my brothers, a practicing attorney in Los Angeles, helped me secure a summer externship with the then-Chief Judge of the U.S. Bankruptcy Court for the Central District of California, the Hon. Calvin K. Ashland, who was also a member of the Bankruptcy Appellate Panel for the Ninth
Circuit. There began my love of bankruptcy. After law school, I became an associate at the largest law firm in my hometown – Sullivan, Mountjoy, Stainback & Miller P.S.C. – it had 12 lawyers! My law firm represented Big Rivers Electric Corporation in its chapter 11 bankruptcy case, which was considered one of the 10 largest company bankruptcy filings at the time. I was the only associate assigned to the case full time and saw it through from preparation to closing – a successful plan of reorganization that paid creditors 100 cents on the dollar plus interest - a rarity, if it even exists, in today’s environment. From that point on, it was only bankruptcy for me, and one thing led to another . . .

**THE LEDGER:** As Senior Bankruptcy Compliance counsel for the law firm BVW, what type of work have you been or will you be doing?

**FB:** Since May 2012, I have been assisting BVW with a variety of matters. Of primary significance, I assist BVW’s attorneys and NBS’ staff in handling inquiries or objections from U.S. Trustee offices all over the country regarding chapter 13 proofs of claim. Also important, I review BVW’s and NBS’ systems, policies and procedures for compliance with bankruptcy law, rules and policy. I am also developing an education and certification program for attorneys and NBS staff on bankruptcy, lending and related issues.

**THE LEDGER:** What type of work have you been or will you be doing directly for BVW’s clients?

**FB:** I have assisted clients directly with U.S. Trustee matters of concern. I am also available and prepared to work in-house with clients to educate staff and refine systems to comply with the bankruptcy rules, which recently changed and will be changing again, as well as implementation of national mortgage servicing standards. It is very important that lenders and servicers have someone advising them that understands the intricacies of bankruptcy. I recently attended the annual convention of the National Association of Bankruptcy Trustees. Clifford J. White III, the Director of the Executive Office for U.S. Trustees and my former boss, was the keynote luncheon speaker. During his speech and in conversations with me, he made it clear that a main priority of the U.S. Trustee Program is to “police” lenders’ and servicers’ proper compliance with the Federal Rules of Bankruptcy Procedure, as well as implementation of the national mortgage servicing standards embodied in the recent national settlement. Of course, the latter is mandatory for the “big five,” but the U.S. Trustee Program also believes that all lenders and servicers should implement those same standards as “best practices” and will be monitoring same.

**THE LEDGER:** Do you have any spare time, and if so, what do you do during that time?

**FB:** Is that a serious question? With a toddler and a job, I have no spare time! But I have managed to make time to serve as a director for the Georgia Chapter of IWIRC (the International Women’s Insolvency and Restructuring Confederation) and as a director and volunteer (teaching a monthly budgeting course) for the Breakthru House, a long-term residential recovery program for women in Georgia struggling with drug and alcohol addiction, as well as for various activities at my local church.
**IN DEPTH**

**NBS SYSTEM**

**CLIENT SYSTEM**

**COURT DATA**

**TRUSTEE DATA**

**DATA**

**ISSUES**

**FOCUS**

**PROOF OF CLAIM PROCESSING**

- Verify Information Received Systemically
- Review Jurisdictional Requirements and Systemic Constraints
- Open Impediment as Needed
- Track and Clear Impediments
- Compile Proof of Claim
- Operational Quality Control Review

**PLAN REVIEW**

- Review Debtor’s Schedules, Statements, and Plan
- Determination of Plan Treatment and Feasibility
- Identification of Plan Type
- Identify Abuse or Inadequate Treatment Issues
- Recommendation on Actions on Inadequate Plan Provisions, in Conjunction with Jurisdictional Tables and Client Matrixed Authority
- Object or Litigate as Necessary
- Client Website Interface Offering Visibility into All Processes

**RULES ENGINE**

**LASER FICHE**

**QUALITY CONTROL APPLICATION**

**DOCS GEN**

**PACKAGE BUILDER**

**ELECTRONIC CASE FILING**

**TRUSTEE DATA**

**ELECTRONIC DOCKET MONITORING**

**RULES ENGINE**

**LASER FICHE**

**QUALITY CONTROL APPLICATION**

**DATA**

**ISSUES**

**FOCUS**
**NBS NEWS DESK**

**A NOTE OF APPRECIATION**

We would like to take a moment to thank you for allowing us the time to share our perspective with you, and we hope you continue to find our periodic newsletters both insightful and beneficial. Please continue to look for new editions of The Ledger and Proceedings in 2013.

Thank you again for your time and interest. If we don’t see you before the end of the year, please have a joyous holiday season and a happy new year.

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**NBS TRADESHOW PRESENCE**

NBS continues to take an active role at many of the industry’s top events.

Look for NBS next at these conferences:

- **AFSA Vehicle Finance Conference & Expo; February 6-8; Orlando, FL**
- **MBA National Mortgage Servicing Conference & Expo, February 19-22; Grapevine, TX**
- **CBA Live, March 11-13, Phoenix, AZ**

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**ABOUT NBS**

**OUR MISSION IS SIMPLE.** We strive to improve the bottom line performance of our clients’ bankruptcy portfolios through careful, efficient, and client-specific management of each individual case.

NBS provides nationwide bankruptcy management services to the following types of organizations:

- Residential Mortgage Lenders
- Automobile Finance Companies
- Banks and Financial Institutions
- Consumer Lending Organizations
- Portfolio Servicers, Owners, and Investors

NBS is a leader in bankruptcy servicing for the consumer finance industry. NBS is a subsidiary of Advent International.

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**NBS WELCOMES MIKE AIKEN AND DAVID BAYT**

**MIKE AIKEN**

Vice President of Client Management

Mike Aiken recently joined NBS as Vice President of Client Management in the firm’s Dallas office. Mike is a licensed attorney in Texas and Louisiana and spent the last two years managing the day-to-day operations of a bankruptcy services center in Arlington, TX. In that role, Mike managed a staff of nearly 150 employees including attorneys and paralegals, including all facets of consumer bankruptcy processing, litigation, and Proofs of Claim for a variety of banking and captive clients.

Prior to working as an operations manager, Mike served as in-house counsel for Sally Beauty Supply headquartered in Denton, Texas where he managed a diverse litigation portfolio as well as the contract procurement process and staff. Mike was also an Associate Attorney with the law firms of Baldwin Haspel, L.L.C. in New Orleans and later with Patton Boggs LLP in Dallas where he practiced bankruptcy law and participated in the structured finance and mergers and acquisitions practice groups.

Mike is a graduate of San Diego State University, Loyola University New Orleans College of Law and Southern Methodist University Cox School of Business where he earned an M.B.A in Corporate Finance. Prior to becoming a lawyer, Mike spent more than a decade working as a television news reporter for various television stations across the country.

**DAVID BAYT**

Assistant General Counsel

David Bayt recently joined NBS as Assistant General Counsel in the firm’s Dallas office. David is a licensed attorney in Indiana and spent the last year as Senior Counsel to a national bankruptcy servicer in Arlington, Texas (ACG). In that role, David managed other attorneys and paralegals, developed procedures for the servicing of consumer loans affected by bankruptcy, and resolved issues affecting the company’s business model as well as file-level issues. David was also the attorney liaison to the company’s various clients, oversaw the company’s nation-wide network of outside counsel, and provided legal support for the company’s litigation division.

Prior to working as Senior Counsel, David was in-house counsel to an international floor-planning and auction company in the used car industry (ADESA/Automotive Finance Corporation), located in Indianapolis, Indiana. In that role, David was the company’s in-house bankruptcy counsel, designed the company’s procedures for handling loans affected by bankruptcy, managed outside counsel, created company metrics and dashboards, and provided counsel to operations personnel on the issues of creditors’ rights, loss mitigation, secured transactions, bankruptcy and collections.

David is a graduate of Indiana University-Bloomington (B.A. 1997), and the Indiana University-Bloomington Maurer School of Law (J.D. 2001).

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**WWW.NBSDEFAULTSERVICES.COM**

To learn more about NBS and our free portfolio help assessment offer, please visit our website and watch our brief introduction video.