



Releasing Lex Machina's latest 2022 Bankruptcy Report

Join Laura Hopkins (Lex Machina's Legal Data Expert in Bankruptcy) and Aria Nejad (Lex Machina's in-house counsel), as they discuss Chapter 11 bankruptcy trends over the last five years and offer insights on judges, parties, law firms, case filings, timing, and more. The webcast includes a look at case filing trends in connection with plan confirmations and involuntary petitions.

Speakers:



Guy Fustine
Shareholder
Knox Law



Laura Hopkins
Legal Data Expert
Lex Machina



Aria Nejad
In-house Counsel
Lex Machina

Aria Nejad ([00:00](#)):

Okay, welcome everybody to today's webcast, where we will be introducing Lex Machina's newly-released 2022 Chapter 11 bankruptcy report. My name is Aria Nejad. I'm in-house counsel here at Lex Machina, and I'm going to be moderating today's webinar.

([00:13](#)):

I'll introduce our guests here shortly, who are going to discuss the Chapter 11 bankruptcy trends over the last five years, and they're going to offer insights on judges, parties, law firms, case filings, timing, and more. The webcast is going to look at case filing trends in connection with plan confirmations and involuntary petitions amongst various other topics.

([00:35](#)):

A couple of quick housekeeping notes before we get started. This is going to be a 25-minute presentation, followed by answers to any questions submitted by attendees for up to about 30 minutes total. Please share your questions at any time, and we're going to review them together at the end. There's a little Q&A box, so feel free to submit your questions there.

([00:53](#)):

At the end of the presentation, we have a short survey that we're going to email to you. We would really appreciate your feedback on it. It only takes about one minute, and it helps us improve our future webcasts and get ideas for future webcast topics. Please take that one minute to share your thoughts with us. We'd really appreciate it, and you also will be entered in to win a gift card by doing so.

([01:14](#)):

A little bit about Lex Machina. So Lex Machina is legal analytics. It's our focus. Lex Machina provides legal analytics to companies and law firms, enabling them to craft successful strategies, win cases, and close business.

([01:28](#)):

I'm joined today by my colleague Laura Hopkins. Laura is a legal data expert in the area of consumer protection, securities, and the Delaware Court of Chancery. Laura came to Lex Machina after serving as a civil litigator and bankruptcy practitioner for over 13 years in the Western District of Pennsylvania and District of Maine. Welcome, Laura.

Laura Hopkins ([01:48](#)):

Thanks.

Aria Nejad ([01:49](#)):

We're also excited to have with us today Guy Fustine. Guy's practice is focused on business reorganization, commercial litigation, and sports law. He's board certified in business bankruptcy law and is a practice group leader for the Bankruptcy & Creditors' Rights Group at Knox Law. Guy also has experience as a contract advisor for the NFL Players Association and is a licensed athlete agent in Pennsylvania, representing current as well as retired professional athletes. Welcome, Guy.

Guy Fustine ([02:16](#)):

Thanks. Hi. Good morning, everyone.

Aria Nejad ([02:17](#)):

Welcome. Yep. At this point, I'm going to turn the presentation over to Laura. Laura, go ahead and begin the presentation.

Laura Hopkins ([02:25](#)):

Thank you Aria, and thank you Guy. Welcome to everyone. Guy, my friend and favorite opposing council back in my Western District of Pennsylvania days.

([02:35](#)):

I'm really excited to walk you all through a preview of Lex Machina's first ever bankruptcy report, relying on our new Chapter 11 bankruptcy court module. If you didn't catch the webcast from when we launched a few weeks ago, our bankruptcy court software contains data from all Chapter 11 bankruptcy court cases, and we have their comprehensive dockets for all Chapter 11 cases filed since 2009. For anyone interested, I also did a bankruptcy court launch webcast, which is more of a demonstration of the software, and you can view that recording on our website.

([03:14](#)):

Today, we are looking at Chapter 11 filing trends by district, judges, timing, parties, and law firms. Lex Machina's bankruptcy court data exclusively covers Chapter 11 bankruptcies, like I said, since 2009. When I say bankruptcy cases in the report and throughout the webcast, I'm referring only to Chapter 11 cases. Let's get into the data.

([03:38](#)):

In our first figure, we see Chapter 11 filing trends over the last 10 years. Beginning in 2012, we see a down trend, and then for a few years here, it's pretty steady. Then we have a spike in 2020, followed by the lowest number of Chapter 11 filings in the last 10 years in 2021. Guy, is this consistent? What are you seeing in the last 10 years?

Guy Fustine ([04:01](#)):

Yeah, thanks Laura. First, let me thank you for inviting me to today to get a chance to work with you and to see you again virtually. It's really great to work with you, and it's nice to-

Laura Hopkins ([04:17](#)):

[inaudible 00:04:17].

Guy Fustine ([04:17](#)):

... be here with everyone else that's tuned in.

([04:21](#)):

Yeah, a couple of things about this data. First of all, beginning in 2012, really even probably before that, and somewhat related to the mortgage crisis, which we thought the bottom would drop out completely, but it didn't. We managed to carry on. But there has been a downward trend in Chapter 11 filings over this entire period of time, generally because banks are really less willing to work with Chapter 11 debtors and debtors in possession. I think that's in part caused by the mortgage crisis that ... Your statistics begin in 2012.

([05:04](#)):

In 2019, jump forward, it's pretty steady through the period '14 through '19. But jumping up in 2019 up to 2020, I think is related to the passage of the new Subchapter V, which many of you realize is a new type of Chapter 11 filing. It's for companies with less than \$7.5 million in assets, and it is a welcome relief in many respects. Number one, the owners of the company are more likely to still own the equity security interest following Chapter 11 if the case is a Subchapter V. The reason for that is the absolute priority rule does not apply. So previously, owners would maybe be reluctant to file a Chapter 11 for fear that if there was a sale or even a reorganization, they might lose actually the controlling interest of the company. That is not a concern under Subchapter V, and I think it accounts somewhat for the upward trend in filing after 2019.

[\(06:20\)](#):

A couple of other things. Subchapter V is a faster proceeding. It's on a fast track. You're supposed to file your plan within 90 days, and the trustee which is appointed is a two-edged sword in some respects. But the positive side of having a Subchapter five trustee is that the role of the trustee is as a facilitator. So you can use the trustee as a sounding board to help convincing creditors and perhaps the court that the plan is a reasonable one. Like I said, that's a two-edged sword. We can maybe talk about that later. Just briefly, sometimes those trustees are actually forensic accountants, and so if they come in with their forensic accounting hat on, sometimes that's inconsistent with their role as facilitator. But all of those things, I think, led to that uptick in Chapter 11 cases following 2019.

Laura Hopkins [\(07:16\)](#):

Yeah. Guy, do you think we saw pandemic-related bankruptcies in 2020 as well? Or do you think it's mostly the Subchapter V debtors [inaudible 00:07:26]

Guy Fustine [\(07:26\)](#):

Well, the types of companies that were filing Chapter 11, I think, were related to the pandemic, retail, travel, entertainment. Those types of filings would be related to the pandemic. But I think also, I think the downward trend then following on this chart after 2020, I think is related to the PPP loans and other government assistance that-

Laura Hopkins [\(07:57\)](#):

Let me stop you there because we're going to get to that in a minute.

Guy Fustine [\(08:00\)](#):

Okay, good. Yeah, let's talk [inaudible 00:08:01]. Thanks, Laura.

Laura Hopkins [\(08:02\)](#):

Sure. Yeah. So-

Guy Fustine [\(08:02\)](#):

Okay, good. Yeah, let's talk here. Thanks, Laura.

Laura Hopkins [\(08:02\)](#):

Sure. Yeah. So as part of our software, we are able to categorize cases and take a deeper dive into Chapter 11s based on assets and liabilities. So looking at Chapter 11 cases with assets under 5 million

and liabilities, as we see here, we see a straighter down trend than we saw in the previous slide. Guy, what do you think is different about cases with liabilities under 5 million?

Guy Fustine ([08:27](#)):

Well, I think it's probably not a secret to anyone that the banks are even less willing to work with the smaller companies, and so it's the old adage, if you owe the bank a million dollars, you're in big trouble. If you owe the bank \$10 million, the bank's in big trouble, so banks are less likely to want to work with the smaller companies. And like we spoke yesterday, I mean, the law was recently extended in sub Chapter 5, so the cutoff is seven and a half million.

Laura Hopkins ([09:06](#)):

Got you. And then the opposite, looking at cases with over 5 million in liabilities, the trend mirrors more of the general trend we saw on the first slide, a down trend followed by, that's a relatively steady line... And then a spike in 2020, and then a drop to about half the cases in 2021. I also want to show you this before I ask you about the next slide, but in addition to classifying Chapter 11 cases based on their liabilities, Lex Machina also offers the ability to categorize them based on debtor type.

([09:42](#)):

So we have categorized business debtor, individual debtor and a subset of business debtor which is small business debtor, and we can refer to these as consumer and commercial cases, of course. But we call these filters, tags, and we have various tags for cases in documents. So here we're looking at the business center trend, and it also mirrors the general case filing that we saw on the first slide, and that steep decline from 2020 to 2021 is almost about half of the cases. So what do you think is going on here?

Guy Fustine ([10:17](#)):

Well, I can speak to this from my own personal experience, is that I have an active Chapter 11 practice, and I found that I had clients, what I call in the shadow of bankruptcy, that we knew that they needed the relief that they could get in a Chapter 11 case. We were doing the preliminary work that you usually do to ensure that you have a successful case. And then when my clients were able to obtain a PPP loan or other types of government assistance, then they could postpone the filing, kick the can down the road, and I think that was happening all across the country.

([10:59](#)):

And unfortunately, I think a lot of the companies were using those loans to pay back debt, so that wasn't as helpful as if the money would be used to fund a solution to their problems going forward. But we'll talk more about that as to what we see in the future, but clearly the downturn following after 2020 is related, I think, substantially to the fact that these government assistance programs were made available to companies that otherwise would've filed during that timeframe, and I really think it was more of a postponement than actually preventing the filing.

Laura Hopkins ([11:44](#)):

That's interesting. So moving forward, we're going to take a look at the most active districts by in the last five years, and we've highlighted our totals here. So the top three districts we see are District of Delaware, Southern District of Texas and the Southern District of New York, obviously the bankruptcy courts. Is there some forum shopping going on here? Can you talk about these venues and what's going on here?

Guy Fustine ([12:12](#)):

Well, we've seen statistics like this for decades, and I think there's really two reasons for it. First of all, the underlying state law in some jurisdictions is better depending on the case type. For example, Texas has well developed oil and gas law which I think is logical, and so when there's a run on oil and gas cases and a lot of other states, a lot of those cases were being filed in Texas if there was any connection there at all, in part, to take advantage of the well-developed law that exists under the applicable state law in Texas. But probably even more of an effect is how hospitable the bankruptcy courts in certain jurisdictions are to Chapter 11 filings, and one for sure that a lot of Chapter 11 cases are filed in Delaware. It's probably been the leading state for a long time.

([13:26](#)):

And I think that they're prepared in Delaware for the larger bankruptcy cases, and also their rules and procedures are more hospitable to some of the bigger bankruptcy cases. And I can give you a couple of just quick examples, don't want to get too hung up on this, but for example, the treatment of critical vendors. Critical vendors are those creditors with pre-petition claims that sometimes the courts will allow a debtor in possession to pay, while the critical vendor cases which come out of these districts which have more filings, they're more lenient, more flexible on what creditors would be found to be critical vendors. Also, early on in Chapter 11 cases, unless there's an agreement with the primary lender, it's incumbent upon the debtor in possession to file a motion to use cash collateral, and the terms and conditions for the debtor's use of cash collateral are often an important negotiating point between the bank and the debtor.

([14:36](#)):

And in Delaware, for example, you'll see longer cash collateral orders coming out of those cases and it would be ordinary, and they have a lot of protections for the banks that maybe in districts like Western Pennsylvania, it might be a harder time for the banks to have a lot of those special terms and provisions incorporated into what would be say, our form order in Western Pennsylvania. So I think those are a couple of the reasons why you have these cases, and then if it's in the wrong district though, you can move to transfer a case to the right district. That doesn't happen very much because once these elevens are filed, they get traction and it becomes a cost benefit analysis as to whether it makes sense to try to move them.

Laura Hopkins ([15:23](#)):

Right. Thank you. I also did want to point out that in looking at these filings, we can see that the spike that we saw in 2020 mostly happened in the district of Delaware, Southern District of Texas and Southern District of New York. The other total columns in 2020 just don't have the same volume and even some of them saw a decline, so that very much is keeping those three courts in the top most active districts. Another filter we have is for a confirmed plan case tag, filtering most active districts to just Chapter 11 cases with confirmed plans. We see Central District of California has the highest number of-

Laura Hopkins ([16:03](#)):

... District of California has the highest number of confirmed plans in the last five years. Guy, turning it to you again, tell me about these percentages. How do you get a plan through?

Guy Fustine ([16:13](#)):

Well, that's a pretty sad percentage. An 8.3% of cases have a confirmed plan. That's terrible. I thought that it was higher than that, or certainly should be. My personal experience is the inverse. A high

majority of my Chapter 11 filings, I do end up with confirmed plans, and I think really primarily that's because of pre-planning. A lot of chapter elevens are filed on an emergency basis. Clients don't want to file chapter 11. They wait till the last minute and then they go to talk to a lawyer and then they go ahead and immediately file the Chapter 11. Really doesn't work that way. There's a lot of preliminary work that has to be done. You need to completely analyze all the assets and liabilities and who are the important creditors and where you scan with those creditors and how you're going to eventually work with the creditors.

[\(17:17\)](#):

I know we don't want to take too much time of the pre-bankruptcy planning, but it's always good to review all of the advantages and disadvantages of chapter 11 with your client and work through those areas that will be problematic and try to have a plan of attack because things move pretty quickly and if you're not ready to go, you're likely to fall into that 92% of cases which don't end up with confirmed plans. My percentage is somewhere around 75 or 80% are confirmed. And again, I think that is just basic solid pre bankruptcy planning, sticking to my guns, not rushing in and filing prematurely. And it takes money to do the pre bankruptcy planning too, so you have to do two stages. You have to build a client for that pre bankruptcy work and then you need to quote them on how much it's going to cost once you get into chapter 11 and then to go ahead and implement the plan. But I think that's a key really to having the plans confirmed.

Laura Hopkins [\(18:20\)](#):

And now with Lex Machina you can evaluate based on attorneys and counsel and law firms and parties and judges. Moving forward to most active judges, Lex Machina is the only software that has comprehensive data on bankruptcy court judges overseeing chapter 11 cases, of course. Here we're looking at most active judges in chapter 11 cases. It's no surprise really that these judges come from the top districts that we saw on the previous slide. Lex Machina also offers timing to certain milestones and events. We use box plots to show this timing data. The center large box is the 50% and then we have the median here in red, number of days that is, and these whiskers also show the 25th and 75th percentiles.

[\(19:20\)](#):

Here in time to plan confirmation, we see that plans are getting confirmed in a little over a year. And then we also have this zero whisker out here that shows there are some prepackaged plans coming through in getting confirmation right off the bat. That's great. Then also on time determination. Down here we have the median time determination being, sorry, 560 days, so over a year and a half. And then we see a really wide range of termination dates. And I want to add that these termination dates are whether a case is successful or not. It's not based on plan and confirmation. This could be just some sort of dismissal or even a conversion. Guy, what insights can you give us on time to plan confirmation?

Guy Fustine [\(20:15\)](#):

And if I could just pop back to the judges for a minute. Because bankruptcy judges really function as the judge and jury, they're the triers of fact almost always. Jury trials in bankruptcy court are very rare. They're usually bench trials. And the bankruptcy judges are finder of fact. These statistics are helpful because if you find yourself in one of these districts, it's always good. Know thy judge is one of the very important maxims of a successful bankruptcy practitioner and you want to comply, be ready to comply with that particular judge's processes and procedures. And this helps to identify what judge you might be in front of. But then moving forward-

Laura Hopkins ([21:10](#)):

I think I might need to move us forward a little bit more, unless you have something you want to say about-

Guy Fustine ([21:14](#)):

Well, I think the important thing here about the time to confirmation is that it used to be that we took time to cure operational deficiencies in chapter 11. And it wasn't unusual to have it take a little more time up front and then have the plan confirmed. Now, the trend is to get to confirmation sooner and then the termination would depend upon time necessary to implement the plan. Some districts require you to do that within a shorter period of time than others. In our district, if you're proposing a sale under a confirmed plan, you usually have to do that within a year unless it's special circumstances. If you're ready Laura, you can go to the next.

Laura Hopkins ([21:57](#)):

Oh yeah, that's helpful. No, thank you for that. Okay, so moving forward to party data. Here we see in the last five years the top most active creditors in bankruptcy cases, it isn't surprising that the IRS is the top creditor. Death in taxes, am I right, Guy? Can't avoid them.

Guy Fustine ([22:16](#)):

Absolutely. You have to deal with them in every case. You got to know your IRS representatives in your district.

Laura Hopkins ([22:25](#)):

Here we see how many districts these creditors are appearing in. And then we also have law firm data. Looking at top debtors' law firms, we have Jackson Walker as appearing as debtor's council in the highest number of cases in the last five years. But interestingly, and that I did take a peak, and that's Southern District of Texas, most of those are in the southern district of Texas. But also standing out is Kirkland Ellis was debtor's council in across the most districts. We also have the ability to track that.

Guy Fustine ([23:04](#)):

Any of these big firms that have a case in one of these active districts that is hospitable to chapter 11, buckle up because they're going to move quickly. And if you want to represent your client's interests, you got to jump in right away and sometimes get local counsel. In Delaware for example, is one of the few districts you end up still having to associate with local counsel unless you're admitted there. If you get one of these firms involved, like I say, you better get ready.

Laura Hopkins ([23:37](#)):

And that's one of the use cases really for our software and how a lot of customers use it to evaluate and choose local counsel or outside counsel. But moving forward to most active creditor firms. Sorry about that. Most active creditors, oh, I went backwards. My apologies. Here we go. There we go. Most active creditors' law firms by bankruptcy cases.

Laura Hopkins ([24:03](#)):

There we go. Most active creditors' law firms by bankruptcy cases filed in the last five years. It's no surprise that the Department of Justice is likely representing the IRS and across the most number of

districts. So, there could also be some other federal entities in there that they're representing. And then we have a series of large law firms and state entities likely representing taxing bureaus and other state related agencies. And lastly, we do also track creditor committees and credit committee law firms. So, Pachulski is the top creditor committee law firm. 80 Cases in the last five years, over 27 districts. And Guy, I know you love this data. Can you tell me about creditor committee work and how you might use this data to get more of it?

Guy Fustine ([24:54](#)):

Yeah, I like representing creditors' committees. It's competitive. It's a little bit like a beauty contest. If you can get yourself invited to the organizational meeting of the creditors' committee and have an opportunity to pitch the committee, it's a good idea to know about the particular debtor, of course. But also these statistics are helpful and I like to use the statistics to beef up my credentials by, for example, like we talked before about your percentage of confirmed plans and what you know about operating companies and what you know about creditors' committees in particular. So, I think the statistics are useful in this and it's a good little niche subgroup of chapter 11 practice.

([25:44](#)):

Some of these firms just specialize in creditors' committees, but many of them have active debtor and possession practices too. But I find the statistics helpful when you're trying to solicit a credit representation of a creditors' committee. And the other thing, we hadn't talked about this before, Laura, but I'm always looking for statistics like yours whenever I have to give speech or make some comments about bankruptcy law on some event. So, these things obviously very helpful for those purposes.

Laura Hopkins ([26:16](#)):

Yep. So, that was my last slide. I've managed to come in on time. We have. So, thank you, Guy, and thank you to our listeners as the [inaudible 00:26:27] Bankruptcy Court. I have been working on this project for a long time and I'm so pleased to share with you all the newly available data and catch up with my good buddy from the Western District of Pennsylvania. Aria, I can turn it over to you for some questions.

Aria Nejad ([26:43](#)):

Yeah, thank you. That was a great presentation. Appreciate all the insight you guys were able to provide. We have a couple questions here in the last three, four minutes.

([26:50](#)):

Guy, looks like this question's for you. So, just a general question about what are you predicting for the future of bankruptcy filings and will these trends continue?

Guy Fustine ([27:00](#)):

Yeah, good, thanks. I appreciate the question. I think that there's going to be an uptick in chapter 11 filings. I think the effect of the PPP loans and other type of government assistance loans, that's running out and companies that have been in the shadow of a chapter 11 filing for some time are going to end up filing.

([27:18](#)):

For me personally, I've got four new chapter 11 cases that I've been working with these companies literally for a year, two years. And people don't want to file chapter 11, really, until they have to. And it's

natural if they can avoid it or postpone it, they do. And so I think there's going to be an uptick in chapter 11 filings, sub chapter five filings for companies less than 7.5 million.

Aria Nejad ([27:47](#)):

Interesting. Okay. Yeah, thank you for that insight. Looks like we have a question here for Laura. There's a general question about what are some ways that people are using these analytics we've talked about today?

Laura Hopkins ([27:59](#)):

Sure, that's a great question. I've been working on that for a while. So yeah, I may have mentioned timing. A lot of customers use our timing data for budget discussions. How long am I going to be in this and how much is it going to cost? We have comprehensive judge data. We're the only ones to have comprehensive judge data. And if you're researching a judge, it's really helpful to have all of the dockets and all of the documents and all of the opinions and all of the motions and objections that have been before that judge to see if you're looking for a motion that you're going to bring in front of that judge, how the judge is ruled on that in the past.

([28:40](#)):

Also, our dockets are pretty easily siftable with our document tags and our keyword search. And also investigating parties and counsel and whether counsel has been before a certain judge and like I said, if you're looking for outside counsel. But I could go on for a very long time on this. Instead, I will point you to the previous webcast that I did, which had demonstrated how you can use the software and that would be the Bankruptcy Court Launch Webcast. So.

Aria Nejad ([29:16](#)):

Terrific. Yeah, thank you for that. I know there's a couple other questions that came in, but we're at time. So, we will respond to those offline. So, thank you for providing the questions, everyone that attended today. I really just want to thank everyone for joining us today. So really quickly, if you're already a Lex Machina Customer, a common question that we receive is how do you get a copy of the bankruptcy report? So, if you are already a Lex Machina customer, it's very simple. You can just log into the product and you find the report in the help center. So, you can do that right now. So, go up to your name on the upper right hand corner and the help center is in that menu. And then if you're not a customer, you'll receive an email with some follow up information as well. So, if you're not a customer, we do ask that you spend a few minutes with one of our legal experts before receiving the report, but you will receive the report very shortly after.

([30:04](#)):

Really want to thank Laura and Guy for all your expertise today. Thank you so much and thank you all at home for joining us today. So, if you have any questions, reach out to us directly via the Lex Machina website and enjoy the rest of your day, everyone. Thank you.

Guy Fustine ([30:17](#)):

Thanks. Happy holidays, everyone.

Laura Hopkins ([30:19](#)):

Thanks.