

Time and Money: Chapter 7 Case Administration in Idaho

**By
The Honorable Jim D. Pappas
Chief United States Bankruptcy Judge
District of Idaho**

As Chief Bankruptcy Judge for the District of Idaho, I am inundated with statistics concerning bankruptcy cases. Interpreting the meaning of the numbers is a challenge.

Take Chapter 7 cases, for example. From a debtor's perspective, achieving a discharge of indebtedness, the so-called financial "fresh start," is the ultimate goal. As a rule, viewing Idaho's experience, Chapter 7 cases proceed expeditiously from filing, to the Section 341(a) creditor's meeting, to the issuance of the discharge. In most instances, about ninety days after the case is filed, the bulk of Idaho Chapter 7 debtors are discharged and on their way to their financial future. In other words, for debtors, the system seems to be working fine.

For the Chapter 7 creditor, a different look at Chapter 7 is required. Creditors are interested in getting paid as much, and as quickly, as possible in a liquidation case. Are we meeting creditor expectations in Idaho? That's where the statistics may (or may not) be helpful.

I receive numbers from both the Administrative Office of the U.S. Courts and from the Office of the U.S. Trustee about Chapter 7 and other bankruptcy cases. Some of these statistics are revealing about Idaho, as compared to the rest of the country, concerning Chapter 7 case administration.

Most Chapter 7 panel trustees in Idaho are not lawyers, nor do they have other businesses or employment. They devote all their time to working their cases, which in turn provides their livelihood. This may explain why the numbers show Idaho has so many more "asset" Chapter 7 cases than most districts, and why the amount of money resulting from administration of each case is, by comparison to other districts, so small. Here's what I mean.

According to the U.S. Trustee's statistics, 138,211 asset Chapter 7 cases were closed during the period of 1995-1999, with 33,900 of those closed in 1999. \$7,378,678,956 was distributed in those cases over five years; \$1,581,509,435 last year. Yes, Chapter 7 is a multi-billion dollar enterprise!

There were 2662 asset cases closed during the last five years in Idaho, including 780 cases in 1999. A total of \$21,491,134 was disbursed in those 1995-1999 cases, with \$5,072,125 disbursed in 1999. If your pencil is sharp, you've already figured that to be an average disbursement of \$8,073.30 per case in Idaho for the five year period, and \$6,502.72 per case in 1999. This compares to a national average disbursement per asset case of \$53,387.06 over five years, and \$46,6652.20 in 1999. Looking just at Region 18 of the U.S. Trustee system (Alaska, Idaho, Montana, Oregon and Eastern and Western Washington) the averages were \$43,815.12 for five years, and \$26,055.74 for 1999.

If you can still focus after this barrage of numbers, you have noticed that the average asset case in Idaho results in substantially fewer dollars being disbursed than elsewhere, either regionally or nationally. On the other hand, the stats show Idaho has more far more asset cases than average. Idaho leads Region 18 in the number of asset cases. For example, during 1999 there were only 2,461 asset case in all of Region 18. In fact, the Administrative Office reports only 3.8% of all Chapter 7 cases filed in America generated assets for distribution. By contrast, in Idaho, 17.5% of Chapter 7 's were asset cases.

While each case is different, I think it's safe to say that, over the years, Idaho's trustees have been more willing to pursue and administer cases involving much smaller amounts of money than in most districts in America. Recall, in Idaho, unlike most other districts, trustees do not have other jobs, businesses or distractions motivating them to work only larger cases. That may be good news for the trustees involved, but do creditors in Idaho make out better than elsewhere? Any answer to this question must consider both time and money. That is, creditors cannot simply ask whether these small asset cases are administered in such a way as to return more dividends on creditors' claims. They must also evaluate the time required to close a case and distribute the dividends. Again, the numbers are instructive, if not totally conclusive.

Looking at Chapter 7 cases closed in 1999 as an example, it appears that of each dollar disbursed in an asset case, about \$.67 ended up in the pockets of creditors. The rest of that dollar was consumed in paying the costs of administering the bankruptcy case for such items as trustee and professional fees and expenses. This number compares favorably to other districts. In Region 18, in 1999 an average of \$.65 was distributed to creditors, and only about \$.60 was distributed on average nationally. Moreover, if you held an unsecured claim in a bankruptcy case, the lowest rung on the creditor distribution ladder, you should be impressed to learn that in Idaho in 1999, \$.30 of each dollar distributed went to unsecured creditors, compared to about \$.27 in Region 18 and \$.24 nationally. However, at the same time, total average distributions to trustees for fees and expenses from Chapter 7 cases in 1999 in Idaho was more than either the regional or national average.

What's the "bottom line?" It's this: during the last five years in Idaho, creditors got a larger share of the Chapter 7 asset pool than in most other places. For creditors, that's good, right? Well, it is *unless* the time it took to receive the distributions significantly diminished the value of the payments to creditors. It is in this area that Idaho falls behind.

We have no numbers focusing solely on disposition times of asset cases. However, our Court's internal records show that 85% or more of our asset cases are "small" cases (i.e. less than \$2,500), and the judges are convinced that the bulk of these result solely from income tax refunds.

The Nation's bankruptcy courts do keep figures on Chapter 7 cases in general. For the period ending June 30, 1999 (the Government never seems to use a calendar year for its figures), the national median disposition time for a Chapter 7 case (i.e., the time from filing to closing) was 4.0 months. Unfortunately, the average time in Idaho was 4.4 months. Since "median" means "middle", half of Idaho's asset cases closed during the year took longer than 4.4 months to administer, and half longer, or .4 longer than the national median.

Four-tenths of a month, or 12 days, isn't a big deal, is it? Well, it probably is. By comparison, Idaho ranked 68th out of the 90 Federal judicial districts in median disposition time. Significantly, nearly 35% of Idaho's Chapter 7 cases were still open after 6 months, and 23% were open after 12 months. Nationally, the mean was 12.4% and 5.3%. This ranks Idaho 87th and 89th out of the 90 districts respectively! Our local reports indicate that as to asset cases, it is rare indeed for a trustee to close such a case in the same year it was filed, and extremely common for even very small dollar cases to take in excess of a year to close. Why should it take so long to close Chapter 7 asset cases in Idaho?

There are at least three entities involved in administration of the liquidation cases: the panel trustees; the U.S. Trustee; and the Bankruptcy Court. As the responsible officers for the Court, Court Executive Cameron Burke and I have endeavored to ensure that our clerks and case administrators take all possible steps to expedite the handling of these cases. With increased reliance on automated systems and an exceptionally well-trained, experienced group of case administrators, I am confident the Court is doing a good job in processing the Chapter 7's. On the other hand, if the Court is in some fashion delaying the administration of these cases, I would like to hear about it.

The U.S. Trustee's office, which is responsible for scheduling the Section 341(a) creditor's meetings, points out that in rural districts, like Idaho, it takes longer to schedule those meetings. Because we have fewer cases, and therefore fewer meetings, than in metropolitan districts, more time must be allowed before the meeting is scheduled. This would add to the time it takes panel trustees to administer cases. I have the assurances of Assistant U.S. Trustee Jeff Howe that his office staff is minimizing the time required for approval of cases for submission of the trustee's final accounting and closing. It does not appear that the U.S. Trustee is slowing down case administration, but if this is a problem area, Mr. Howe should be informed.

That leaves the panel trustees. While Idaho's bankruptcy judges and representatives of the U.S. Trustee are interested in all views, I am convinced that the reason Idaho has more asset Chapter 7's which yield more for creditors is also the reason it takes longer to process those cases here than elsewhere. In Idaho, our trustees are willing to pursue more small-dollar cases to conclusion. In most districts, where panel trustees may also have other businesses or be practicing lawyers, trustees are less willing to work a small case. As a result, in Idaho, it takes more time to process small cases, which in turn results in higher than average case processing numbers.

Moreover, whether a case involves \$1,000 or \$100,000, a certain amount of time is required for the trustee to obtain possession of the assets, review and object to claims, and close the case. Is this explanation adequate, or are changes needed? The answer depends in one sense on the response to a simple question: as a matter of policy, is it worth it for all concerned for trustees to pursue a small Chapter 7 case that will yield, for example, only \$1,000? We know that of that sum, administrative costs will consume \$240 of the funds, and after payments to secured and priority creditors, only \$300 will go to unsecured creditors. We also know that it will take a year or more before any distributions are made. Of course, if the case is not pursued and is closed without assets, nothing will be distributed to creditors, but the time required to close that and all other Chapter 7 cases goes down markedly.

Time or money, what's more important? When interest rates and the cost of money is low, the policy should probably favor maximizing total creditor dividends, even if some delay is involved. As interest rates rise, the pendulum shifts. A return of pennies on the dollar to a creditor over a year later may not be worth the cost of the Court's or creditors' resources.

For the time being, no fundamental changes in policy are contemplated by the Court. However, we are studying the situation, and opinions from the bankruptcy bar are welcome and important. If you care, please express your views to the judges, U.S. Trustee, and to the panel trustees.