Court Connection
Volume No. 8 – Issue No. 2
April 2019

What's Happening with Our Case Filings?

By: Chief Judge Michael G. Williamson

All the business news these days is that the economy is doing very well. Unemployment is at historically low numbers. The stock market is doing well. Yet, for some reason, for the first time in the last decade, our filings have started going up. Something is going on, and I can't figure it out.

Take a look at this table of yearly filings going back to 2004:

U.S Bankruptcy Court		
Middle District of Florida		
Filings 2004-2018		
Year	Filings	Inc./Dec.%
2018	24,366	2%
2017	23,943	-4%
2016	24,976	-17%
2015	30,070	-17%
2014	36,241	-12%
2013	41,100	-11%
2012	45,970	-14%
2011	53,554	-20%
2010	66,618	8%
2009	61,690	45%
2008	42,557	61%
2007	26,424	73%
2006	15,304	-76%
2005	63,778	23%
2004	51,736	

As you can see, there are significant year-to-year variations. The first is the jump from 51,736 cases in 2004 to the then all-time high of 63,778 in 2005, a 23% increase in filings. But that jump was not caused by the economy. Rather, it was caused by the fear among consumer lawyers that legislation advanced by the credit industry was going to make bankruptcy much more difficult for consumers. The legislation was the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. While BAPCPA may have curtailed some abuse, it was in no way a "consumer protection act." A key feature of BAPCPA was a new "Means Test" that was meant to reduce bankruptcy filings by making debtors who could pay back their debts, ineligible for chapter 7.

Looking back at the table, you will also see that the huge number of filings in 2005 dropped significantly the next year to 15,304. This was the first year after BAPCPA was enacted. I suppose the law may have been effective in reducing filings, although it's more likely everyone who needed bankruptcy during that time period filed the previous year, thus depleting the "inventory" of new cases in 2006.

As you can see from the table, the next major jump in cases occurred in 2010. You will recall that the "Great Recession," which coincided with the downfall of many major financial institutions, occurred from roughly December 2007 to June 2009. The failure of major financial institutions meant consumers were unable to refinance their over-leveraged homes, resulting in record filings in 2009-2010: In 2009 and 2010, there were a total of 128,308 filings.

But then, in 2011, the economy started improving. And it continued improving year after year, with the stock market and unemployment rate achieving record positive numbers through 2017. Not surprisingly, our bankruptcy filings went down on a year-to-year basis for every month from 2011 to about September of 2018.

Then, for the first time, our filings started going up in October, November, and December of last year. And they continued to go up in January, February, and March of this year when you compare new filings in those months in the previous year.

Month	Current Year	Prior Year	Inc./Dec.	Inc./ Dec.%
October 2018	2309	1871	438	23.4%
November 2018	1946	1643	303	18.4%
December 2018	1754	1630	124	7.6%
January 2019	1991	1765	226	12.8%
February 2019	1788	1662	126	7.6%
March 2019	2480	2246	234	10.4%

I don't know if this is an anomaly or if it is an indicator that we are entering the downside of an economic cycle. I've expected that the current good times couldn't continue forever given the history of ups and downs I've lived through going back to the late 70's, when I started my practice as a bankruptcy lawyer.

In the late 70's, you may remember, we saw interest rates at 20%. This was followed by a number of booms and busts—the run up of real estate investments as income-producing properties were flipped from one set of investors to another based on values that were propped up by tax laws that made losing money advantageous for high net worth investors. This changed with the Tax Reform Act of 1986, which eliminated many tax shelters. While disastrous for investors, it was booming times for lawyers who had a chapter 11 practice. We handled these cases in volume for the hotels, shopping centers, and office buildings that had been the subject of these investments.

What followed was the S&L crisis that resulted in the shutdown of many financial institutions. As a result, the real estate market died. During that time, I had the good fortune of working on the biggest case of my career—General Development Corporation, which was the largest land development company in Florida, with over 60,000 creditors owed more than $1.5 billion in debt. Then we had the tech crash in the early 2000's followed the "Big Short" that brought everything down.

So, we don't know where things are going in this cycle. But maybe a "bounce" has occurred, and we are heading into another downturn. Interesting times we live in.