Court Connection
Volume No. 5 – Issue No. 4
October 2016

Efficient Case Management and the Need for Speed in Chapter 11 Cases

by

Chief Judge Michael G. Williamson

Our Court prides itself on the efficient way it handles the tens of thousands of cases we process every year. In chapter 11 reorganizations, in particular, we promptly schedule hearings on first-day motions and then move the case toward confirmation generally within the 120-day exclusivity period for filing a plan and the 180-day period for confirming one. But does speed in prosecuting chapter 11 cases really make a difference? Would the reorganization process—and the ultimate return to creditors—be better served by a more leisurely pace with more time to fully explore available options?

Before becoming a judge, I specialized in representing chapter 11 debtors. Speaking from experience, it became clear to me over the years that the longer a case lingered in chapter 11, the greater the administrative expenses—namely, attorney's fees for services rendered by my firm. And given the tight financial circumstances of a chapter 11 debtor, the increased attorney's fees proportionally increased the risk of nonpayment if the case was unsuccessful.

Well, last month I was in Italy at a conference on Italy's latest reforms to its bankruptcy system, particularly with respect to reorganizations. I spoke on how a typical chapter 11 case is processed in our courts here in the Middle District. Typical of the responses that I received following my talk was one from a prominent Italian insolvency practitioner, who described how it takes, on average, six months for "first-day" motions to be heard and four to six years for the case to get to confirmation under the Italian system!

During my years representing chapter 11 debtors, I used to advise them that, just as no one gets better in the hospital, being in chapter 11 is not a good place to conduct business. While chapter 11 is the emergency room for financially stressed viable businesses, the uncertainty of the outcome of the bankruptcy case is like a black cloud hanging over the business.

For starters, suppliers—the same suppliers who now are among the twenty largest unsecured creditors—are not too keen on continuing a business relationship with someone that just stiffed them. At a minimum, they will want to be paid C.O.D. for the purchase of new goods or services. And customers are going to be wary about buying products that may later need warranty service from a company in bankruptcy. Would you contract for the construction of a new house from someone that's operating as a debtor-in-possession? And think of the sales force of competitors going to the debtor's customers and mentioning, "By the way, did you hear that Acme is bankrupt?"

Creditors also feel the pain of the delays caused by the chapter 11 process. Of course, creditors benefit from chapter 11 because they will at least get something, as opposed to nothing in a chapter 7. But all of the administrative expenses that run up in cases that go on and on come out of the pockets of the creditors because that is money that could have gone to pay them.

By contrast, everyone benefits if chapter 11 cases are resolved promptly. As for secured creditors, a chapter 11 case is typically going to have one of several outcomes from their perspective. If the debtor sells its collateral, the creditor will be paid from the sale proceeds. If the debtor successfully reorganizes and the secured creditor's collateral is necessary to the reorganization, the secured creditor will receive a performing loan for the balance owed.

Or if the collateral is not needed by the reorganized debtor or the debtor is unsuccessful in confirming a plan, the secured creditor will receive their collateral back—or at least get stay relief to foreclose their security interest. Whatever the outcome, the sooner that the decision is made and a course decided on, the parties can move on to other business, and the drain in either collateral value (or fees incurred to protect it) ceases.

Unsecured creditors are likewise better off by the speedy resolution of a chapter 11 case. The sooner the case is confirmed or converted, the sooner the creditors can get paid whatever they have coming, close the file, and move on to other cases. And they are less likely to have their dividend eaten up by administrative expenses.

Moving a chapter 11 case along quickly also benefits the debtor's principals. Few of our cases in the Middle District of Florida are so-called "mega" cases. Most of our chapter 11 cases involve local entrepreneurs who have built their business from the ground up. Often, they are the victims of their own success when the business expands beyond their capacity to efficiently operate it. Whether they will be able to reorganize in chapter 11 or whether the best option is a "decent burial" of the business is a decision that has to be made in each of these small cases.

And the sooner they know that "this dog won't hunt" in terms of the feasibility of their business, the sooner they can accept the failure of the business and get on with their lives and move on to other endeavors. From having worked closely with owners in these types of small cases as debtor's counsel, I know that not knowing where the cases are going often takes a heavy psychological toll on them. The sooner a decision can be made the better.

Lastly, courts benefit from moving chapter 11 cases through efficiently. While chapter 11 cases constitute a small percentage of our caseload (less than 3%), they take up a disproportionate amount of the judges, chamber's staff, and case managers' time. Reducing the time chapter 11 cases are pending opens the Court's calendar to handle other cases.

In summary, the "need for speed" in the management of chapter 11 cases is evident from many perspectives. The fact that our Court has achieved a high level of efficiency in resolving chapter 11 cases results from years of development of procedures that we now routinely employ in our case management.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Courtroom Witnesses Random Act of Kindness

By Judge Catherine Peek McEwen

This heart-warming story is about a random act of kindness that is the stuff of a Ripley's Legal System Believe It or Not. Personal injury lawyer Joe Bryant was in my courtroom on a chapter 13 rocket docket day. He had pending a special counsel fee application for representing a chapter 13 debtor in a personal injury case. While waiting for his case to be called, he watched with interest, and compassion, as a regular chapter 13 debtor's lawyer pleaded her client's case in opposition to the chapter 13 trustee's motion to dismiss the case. The basis for the motion was noncompliance with the plan's provision requiring tax refunds to be devoted to the plan.

The chapter 13 debtor was a grandmother who had been taking care of some of her grandchildren, and yet another of her children had recently put more little ones under the grandmother-debtor's care. The debtor was under-median but needed to be in a five-year plan to make it affordable enough to address what she was trying to accomplish. The hearing occurred in the *60th* month of the case, meaning the debtor had slogged through to near completion of the plan, except for sending the chapter 13 trustee her 2015 tax refund of about $660. The lawyer argued that the debtor cashed and spent her refund check because she desperately needed the money and that her Schedule J expenses were lately really more than what the record showed. The Court was unwilling to dismiss the case in the 60th month without giving the debtor a chance to save it. The Court offered a solution: How about giving the debtor time to borrow from friends and family?

Before the chapter 13 lawyer could volunteer to pay, Mr. Bryant's hand shot up. He then stood up and boomed, "I'LL PAY IT!" He then paused for a moment and added, more quietly, "I mean, if that's okay, Your Honor?" "Of course it's okay," I said, "but don't think this will have any bearing on how we deal with your application!" Showing he is "For the People," as his firm's brand suggests, Mr. Bryant gave the chapter 13 lawyer his card and asked her to send him information on how the check should be made out and where to send it. The check went out payable to her trust account the same afternoon. (Incidentally, the Court did approve Mr. Bryant's fee application.)

P.S. to chapter 13 lawyers: You can't expect a Joe Bryant-like gesture in every case, so it's best to make sure your client really, really, clearly understands he or she needs to ask for permission instead of forgiveness!

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Make-Me-Smile Moments and Shout-outs

Submitted by Judge McEwen

- Thanks to Attorney Frank Papa for donating two navy blue blazers to the coat rack in the Tampa 9th floor Attorney Resource Room on behalf of his deceased father. His father loved the court, and Frank felt it would be a great gesture to have a small part of his father in the court through this donation. The coat rack is there to assist poor litigants who can't afford a jacket to wear to court… and also benefits lawyers who sometimes forget to bring a jacket.

- A pat on the back is due to Tom Curran and his firm, Shumaker Loop, for taking on a pro bono student loan dischargeability case involving multiple student loans. One has already been discharged.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

"Bankruptcy For Beginners" Pro Bono Seminar

By Judge Roberta A. Colton

What a wonderful kick off to National Celebrate Pro Bono Week! A free bankruptcy seminar was held October 20th, complete with a boxed lunch, in return for the commitment to take on a pro bono case. The seminar was sold out within days of being advertised, and the participants and speakers enjoyed and were inspired by this unique experience.

One appreciative attendee, Tahirah Payne, had this to say, "I wanted to . . . let [the organizers] know how much I enjoyed the Bankruptcy Basics CLE! It was hands down the most comprehensive basic CLE I have ever taken. The material was extremely organized. As an attorney who does not practice bankruptcy I found the subject matter easy to understand. Bravo!"

The seminar itself offered participants 8.5 hours of free CLE credit, including 1 hour of Ethics credit. Hosts of the program included Bay Area Legal Services, Tampa Bay Bankruptcy Bar Association, Hillsborough County Bar Association, and the U.S. Bankruptcy Court for the Middle District of Florida. Funding was provided by the Bench Bar Fund of the Middle District of Florida. Materials for the program came from the National Consumer Lawyers Center and were modules and slides developed with funds from the Endowment for Education of the National Conference of Bankruptcy Judges. Thomson Reuters provided free flash drives with the program materials, and Blanchard Law, P.A. sponsored a networking Happy Hour at the conclusion of the seminar. This truly was a team effort.

Each attendee agreed to take a pro bono bankruptcy case from one of the following: Bay Area Volunteer Lawyer's Program, St. Michael's Legal Clinic, a Bankruptcy Judge from the Middle District of Florida, the Community Law Program, or Legal Aid of Manaasota; or, instead, the attendee could choose to provide six hours of pro bono service at the Tampa Bay Bankruptcy Bar Association's Courthouse Pro Boo Bankruptcy Clinic.

Although the NCLC program was brought to the attention of the organizers by a bankruptcy judge, many lawyers readily and enthusiastically joined together to make this event possible. On behalf of all the judges and bar members of the Middle District of Florida, thank you for your efforts. To all the participants: I truly hope that you enjoy and are inspired by the pro bono cases that you handle this year.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Orlando Clinic Provides Foundation for Additional Clinics Nationwide

By Justin M. Luna, Esq.

The success of the Orlando Bankruptcy *Pro Se* Clinic is well known. That initial success is now spreading across the country. The Orlando Clinic's operations has turned the heads of other Bankruptcy Bars in Missouri, Georgia, Delaware and Nevada who have, or are in the process of, implementing their own version of a *pro se* clinic.

Notably, the St. Louis Bankruptcy *Pro Se* Assistance Clinic secured $20,000.00 to help fund the creation and operation of a similar *pro se* clinic. "Bar leaders from other Districts have asked us to provide the roadmap for funding, operating and maintaining a successful *pro se* clinic." says Justin Luna, a founder of the Orlando Clinic. "Orlando is happy to assist and share any and all resources we have to help expand similar clinics across the country."

Additionally, the implementation and continued operations of clinics in Jacksonville, Tampa and (soon) Ft. Myers have taken root. As a result, in July 2015, the Middle District Divisions banded together to form the Middle District of Florida *Pro Se* Bankruptcy Legal Assistance Clinic, Inc. in order to implement uniform procedures District-Wide for all divisional clinics and achieve consistency and efficiency in the administration of all divisional clinics. Over the past year, the Middle District clinics have assisted close to 800 individuals with the help of dozens of attorney volunteers. The current board members of the Middle District Clinic Entity are Justin Luna, Jeff Ainsworth, Jake Blanchard, Anna Haugen, Jill Kelso, Luis Rivera and Andrew Roy.

Additional information concerning the Middle District Clinics can be obtained by contacting Justin M. Luna at jluna@lseblaw.com.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Paying it Forward by Paying Attention to Liquidating Chapter 11 Plans and Trusts Can Do a Truckload of Good

By Judge Catherine Peek McEwen

Perhaps you've stumbled across the paper lodged on my webpage titled, "Gifting, The Real Thing: Overcoming § 347(b) in Chapter 11 Liquidating Cases" (http://www.flmb.uscourts.gov/judges/tampa/mcewen/Gifting_Article_Chp11.pdf). If not, then now is a good time to do so. If so, then now is a good time for a refresher. By paying attention when drafting liquidating plans or creditor trusts, the debtor in possession can do some real good for its community by "paying it forward." What happened recently in the very old consolidated case of United Schools, Inc. et al. hammered home this point.

In the 1989 (yes, you read that right) consolidated chapter 11 cases of three affiliates that operated truck driving schools, the plan's center point was the funding an irrevocable creditor trust with some assets, including, importantly, a life insurance policy on the life of an older gentleman who, sadly, was not expected to live very long. As it turned out, the gentleman defied odds and lived until 2010. The trust agreement included a provision naming the creditors as beneficiaries and prescribing how their distributions would be calculated until their allowed claims were paid. The trust agreement also included provisions permitting the trustee, a bank that ultimately became Bank of America through a series of mergers, to seek guidance from the court on any trust issue.

Fast forward to 2016 when DIP lawyer Tom Little filed a motion seeking guidance on what to do with surplus funds; the creditors had been paid in full and the trustee had apparently done very well in investing the trust assets. The Court saw a hole in the original trust agreement big enough to drive a truck through in that no provision was made for surplus funds, and the transfer of the assets to the trust was irrevocable. The Court suggested that the trustee consider charitable uses, including selecting a legal services corporation in each of the three cities in which the debtor had schools at the time and distributing the surplus funds one-third to each. The trustee selected Bay Area Legal Services, Inc. (BALS) in the Tampa Bay area and two similar legal service providers in cities in two other states. This approach is consistent with the holding of *In re Xepdior, Inc.*, 354 B.R. 218 (Bankr. N.D. Ill. 2006).

BALS recently reported to the Court that it had received almost $75,000 from the trust! But you don't have to have a truckload of surplus funds to warrant attention to the "what-if?" issue in liquidating plans or creditor trusts. Even a small donation is appreciated by charities. 10-4, Good Chapter 11 Drafting Buddies!!

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Take Time (or Ask for It) to Negotiate Reaffs or Explore Redemption Option

By Judge Catherine Peek McEwen
With Case Summaries by Michael Gibson, Judicial Intern
Western Michigan University Cooley Law School 2017 J.D. Candidate

Consumer debtor lawyers and pro se debtors often overlook the tool of negotiation and the option of redemption when it comes to reaffirmation agreements. But it's not too late to explore those alternatives to a straight up reaffirmation agreement even if the time of the hearing to approve the agreement is upon you. At the hearing, just ask for a new setting, and the Court may allow the debtor time to try something else and come back in the future by phone.

Particularly when it looks like the judge may not approve a reaffirmation agreement, both the debtor and creditor have a mutual incentive to look for a fallback position. If the judge hates the interest rate and indicates a reluctance to approve the agreement and says (as Judge Jennemann is reported to have said), "just blame it on the judge" when you go back to the creditor to negotiate a different deal, sometimes the result is favorable for both parties.

A recent reaffirmation agreement docket yielded three successful come-backs in my courtroom after the debtors had learned, at their first hearing, about the effect of a reaffirmation agreement and alternatives to reaffirming on the same terms as the original loan and were given a continuance to explore those alternatives. The come-backs, at least in my courtroom, take place immediately before a new crop of first-timers to reaffirmation hearings, so that the first-timers can learn by listening.

The success stories the recent docket yielded are summarized below. The creditor in each case came away with either an approved reaffirmation agreement instead of none or a lump-sum payment of the full value of its collateral. The debtors came away with more affordable terms. That's a win-win result. But you can't get such a result unless you take the time to negotiate or compare redemption pricing with what's on the table.

8:16-bk-01293

In this case, the court provided the debtor with information regarding the ability to refinance her vehicle through 722 Redemption Funding, Inc. Through this program, the debtor was allowed to keep her vehicle by paying fair market value to the creditor for the vehicle's worth, which in many cases, is less than the actual amount owed. This program allows a debtor to lower the monthly payments or potentially reduce the number of payments over time. Prior to this program, the debtor owed approximately $46,500 on her vehicle. Upon completion of the 722 Redemption Program, the debtor now owes $22,000 on her vehicle.

8:16-bk-03540

In this case, the court provided the debtor with the education and opportunity to negotiate for a refinance with the creditor on his vehicle. The debtor was able to successfully negotiate a reduction in interest rate from 14.75 percent to 10.00 percent, realizing a 4.75 percent savings.

8:16-bk-01327

In this case, the court provided the debtors with the education and opportunity to negotiate for a refinance with the creditor on their vehicle. The debtors were able to successfully negotiate a reduction in their interest rate from 25 percent to 15 percent, realizing a 10 percent interest rate savings. In addition, the debtors were also able to reduce the total amount owed from $10,811.00 to $8,500.00, realizing a savings of approximately $2,311.00.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Judge's Corner

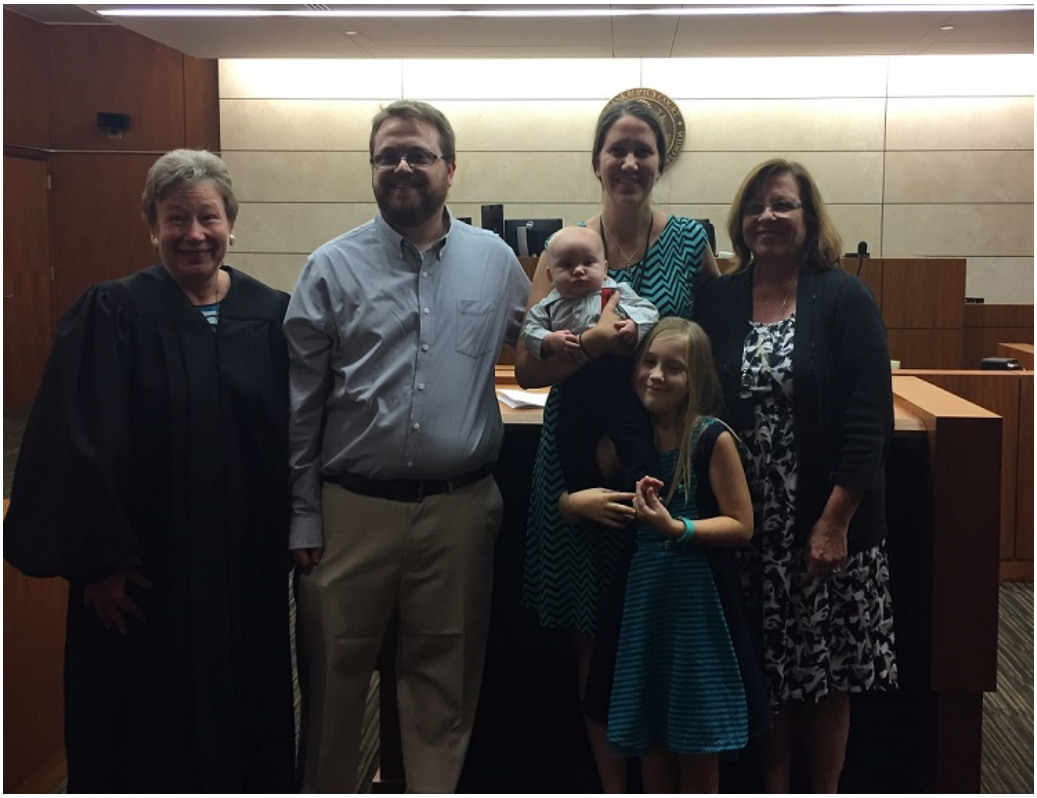
Judge Jennemann and her now fully-staffed Chambers bonded with each other on their most recent outing – Indoor Skydiving.

Pictured left to right: Law Clerk Stephanie Villalobos, Courtroom Deputy Lexie Lewis, Judge Jennemann, Shared Law Clerk Eva Gadzheva and Law Clerk Danielle Merola.

Judge McEwen's Chambers heads to Malio's to celebrate Law Clerk Lisa Scotten's birthday.

Pictured left to right: Courtroom Deputy Denise Garcia, Law Clerk Lisa Scotten, Judicial Assistant Dedra Gann, Judicial Assistant Mary Morrison and Judge McEwen.

Court Connection
Volume No. 5 – Issue No. 4
October 2016



Pictured: Judge Karen S. Jennemann, John K. Lewis, Alexis Lewis (Courtroom Deputy), son Finn and daughter Tempe, and Judge Cynthia C. Jackson after his swearing in ceremony on October 13, 2016. John recently graduated from Barry University School of Law.

Congratulations John!

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Judge McEwen Gives Courthouse Civics and History Exhibit Tours to Teachers

A group of Hillsborough County School District middle school social studies teachers toured our courthouse's civics and history exhibits with Judge McEwen over a lunch hour and received resources for teaching about our judicial system. Included among the resources were the AO's glossy booklet "Understanding the Federal Courts" as well as the URL to the Civics Education Toolkit, a collaborative project between the Federal Judges Association, National Conference of Bankruptcy Judges, and the Federal Magistrate Judges Association.

Contact the judge if you'd like a script for hosting teachers you may know.

Pictured left to right: Allison Layfield (Wilson MS), Ashley Caldwel (Randall MS), Jack Coburn (Martinez MS), Elizabeth Smith (Williams MS), Jessica Brunick (Smith MS) and Judge McEwen.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

IT Security Update

October is National Cyber Security Awareness Month, an annual campaign to raise awareness about cybersecurity. In partnership with DHS, the National Cyber Security Alliance has released information on "Cyber from the Break Room to the Board Room" describing how users can protect their businesses and other organizations from cyber threats. Recommendations include avoiding phishing emails, making passwords more complex, and reporting all suspicious activity.

Users and administrators are encouraged to review the Federal Trade Commission publication Start With Security: A Guide for Business and the US-CERT Tip Avoiding Social Engineering and Phishing Attacks below for additional information.

What is a social engineering attack?

In a social engineering attack, an attacker uses human interaction (social skills) to obtain or compromise information about an organization or its computer systems. An attacker may seem unassuming and respectable, possibly claiming to be a new employee, repair person, or researcher and even offering credentials to support that identity. However, by asking questions, he or she may be able to piece together enough information to infiltrate an organization's network. If an attacker is not able to gather enough information from one source, he or she may contact another source within the same organization and rely on the information from the first source to add to his or her credibility.

What is a phishing attack?

Phishing is a form of social engineering. Phishing attacks use email or malicious websites to solicit personal information by posing as a trustworthy organization. For example, an attacker may send email seemingly from a reputable credit card company or financial institution that requests account information, often suggesting that there is a problem. When users respond with the requested information, attackers can use it to gain access to the accounts.

Phishing attacks may also appear to come from other types of organizations, such as charities. Attackers often take advantage of current events and certain times of the year, such as

- natural disasters (e.g., Hurricane Katrina, Indonesian tsunami)
- epidemics and health scares (e.g., H1N1)
- economic concerns (e.g., IRS scams)
- major political elections
- holidays

How do you avoid being a victim?

- Be suspicious of unsolicited phone calls, visits, or email messages from individuals asking about employees or other internal information. If an unknown individual claims to be from a legitimate organization, try to verify his or her identity directly with the company.

- Do not provide personal information or information about your organization, including its structure or networks, unless you are certain of a person's authority to have the information.
- Do not reveal personal or financial information in email, and do not respond to email solicitations for this information. This includes following links sent in email.
- Don't send sensitive information over the Internet before checking a website's security (see Protecting Your Privacy for more information).
- Pay attention to the URL of a website. Malicious websites may look identical to a legitimate site, but the URL may use a variation in spelling or a different domain (e.g., .com vs. .net).
- If you are unsure whether an email request is legitimate, try to verify it by contacting the company directly. Do not use contact information provided on a website connected to the request; instead, check previous statements for contact information. Information about known phishing attacks is also available online from groups such as the Anti-Phishing Working Group (http://www.antiphishing.org).
- Install and maintain anti-virus software, firewalls, and email filters to reduce some of this traffic (see Understanding Firewalls, Understanding Anti-Virus Software, and Reducing Spam for more information).
- Take advantage of any anti-phishing features offered by your email client and web browser.

What do you do if you think you are a victim?

- If you believe you might have revealed sensitive information about your organization, report it to the appropriate people within the organization, including network administrators. They can be alert for any suspicious or unusual activity.
- If you believe your financial accounts may be compromised, contact your financial institution immediately and close any accounts that may have been compromised. Watch for any unexplainable charges to your account.
- Immediately change any passwords you might have revealed. If you used the same password for multiple resources, make sure to change it for each account, and do not use that password in the future.
- Watch for other signs of identity theft (see Preventing and Responding to Identity Theft for more information).
- Consider reporting the attack to the police, and file a report with the Federal Trade Commission (https://www.ftc.gov/).

Credit: Mindi McDowell, reprinted from the Dept. of Homeland Security website:
https://www.us-cert.gov/ncas/tips/ST04-014

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Dear Point and Click,

Q: I recently submitted a proposed order through CM/ECF. It has been several days and I have received no notifications from the Court nor seen a signed order on the case Docket. Is there a way to track the status of the order?

A: Yes. You can track the status of proposed orders through the *Proposed Order Query Report*. Note: You can only track the status of orders that you submitted.

To track the status of a proposed order:

- Login to CM/ECF, using the login of the attorney who submitted the proposed order.
- Select Reports from the Main Menu Bar.
- Select Proposed Order Query Report [located under Case Information Reports].
- Enter the case number and make any filter selections. (You can leave the case number field blank and a list of orders submitted during the specified date range will display.)
- Click [Next].
- The results display. Depending on the search criteria entered on the previous screen, the results could contain one order, or multiple orders. If no orders are found, based on the criteria entered, **No order found with the selection criteria** displays.

Statuses:

Being Processed – This status indicates that the order has been reviewed and is currently in process. This could mean that it is with the Courtroom Deputy (if a hearing is being scheduled), being reviewed by the Judge, or with the Case Manager to be entered on the docket.
Docketed – This status indicates the order was entered on the docket. The date the order was entered is also indicated.
Rejected – This status indicates the order was rejected and a new order requested. The rejection process generates an email to each address associated with the attorney's CM/ECF account, with details about the issue with the order. The contents of the email can be retrieved by clicking the [click here for information] link.
Not Used – This status indicates that the order submitted will not be used; but no new order was requested. This could be because the Court has a standard form order to enter, a competing order was entered or a corrected order was submitted that will be processed.

Reminders:

Do not reply to the proposed order rejection emails. Questions should be directed to the Case Management Staff. Submit questions through the Court's online HelpDesk portal, available through the following link: https://ecf.flmb.uscourts.gov/training/support.htm#.

Alternatively, a Staff Directory is available on the Court's website, www.flmb.uscourts.gov, under the Court Information - Locations /Phone Lists link.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Order Related Court Resources:

Proposed Order Information: http://www.flmb.uscourts.gov/proposed_orders/
External Procedures Manual [Proposed Orders]: http://www.flmb.uscourts.gov/proguide/documents/Procedure/Proposed%20Orders.pdf
http://www.flmb.uscourts.gov/proguide/documents/Samples/Sample%20-%20Proposed%20Order%20Template.pdf
Style Guide: http://www.flmb.uscourts.gov/procedures/district/style_guide-POST.pdf

eLearning [Proposed Orders]:
https://ecf-train.flmb.uscourts.gov/training/training.htm?CMECFeOrdersProcessforExternalUsers.swf
http://pacer.flmb.uscourts.gov/cmecf/training/service_of_orders_by_attorneys_and_trustees.swf

Court Connection
Volume No. 5 – Issue No. 4
October 2016

CASE LAW UPDATE FOR Q4 2016

By Bradley M. Saxton & C. Andrew Roy, Winderweedle, Haines, Ward & Woodman, P.A.

Eleventh Circuit Cases

Failla v. Citibank, N.A. (In re Failla)
2016 WL 5750666 (11th Cir. Oct. 4, 2016)

The Eleventh Circuit held that "surrender" under §521(a)(2) prevents a debtor from opposing a foreclosure action in state court and that the bankruptcy court had authority to order a debtor to stop opposing the foreclosure action. In this Chapter 7 case, the debtors acknowledged the mortgage on their home was valid, that the balance of the mortgage exceeded the value of the house, and they filed a statement of intention under § 521(a)(2) indicating they would surrender the house. When the debtors contested the lender's foreclosure in state court, the lender filed a motion in the bankruptcy court to compel surrender. The bankruptcy court granted the creditor's motion and ordered the debtors to stop opposing the foreclosure action, which ruling was affirmed by the district court. The Eleventh Circuit affirmed, holding the "text and the context of the statute" requires that surrender must be both to the trustee and the lender. Next, the Court analyzed the meaning of "surrender" and concluded that surrender means giving up a right or a claim, although it does not mean to deliver possession. Finally, the Court rejected the debtors' argument that the lender's only remedy was to obtain relief from the stay, finding that bankruptcy courts have broad powers under § 105(a) to enforce a debtor's duties under § 521(a).

Gowdy v. Mitchell (In re Ocean Warrior, Inc.)
2016 WL 4490489 (11th Cir. Aug. 26, 2016)

The Eleventh Circuit upheld the Bankruptcy Court's authority under §105 to impose sanctions for civil contempt. In a case which spanned over 25 years, the Court upheld the Bankruptcy Court's civil contempt sanction against the president of the Debtor for failing to turn over a vessel that was property of the estate. The civil contempt sanctions must be either compensatory or designed to coerce compliance.

DiMaria Properties, LLC v. 3400 Atlantic LLC (In re DiMaria Properties, LLC)
2016 WL 3688946 (11th Cir. July 12, 2016)

The Eleventh Circuit affirmed the decisions below holding that the bankruptcy court did not commit error in denying a motion for reconsideration. The only basis for such a motion is newly discovered evidence or manifest errors of law or fact. Here, the arguments asserted by the debtor in the motion for reconsideration were arguments that the debtor had every opportunity to make earlier.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

In re Bayou Shores SNF, LLC
828 F.3d 1297 (11th Cir. July 11, 2016)

In a Chapter 11 case involving a skilled nursing facility, the bankruptcy court enjoined the Secretary of Department of Health and Human Services from terminating the debtor's Medicare and Medicaid provider agreements, which accounted for over ninety percent of the debtor's revenue. HHS argued that the bankruptcy court lacked jurisdiction to enjoin the termination. After the district court reversed the bankruptcy court, the Eleventh Circuit affirmed the district court, concluding that as a result of a codification error, the operative statute, 42 U.S.C. §405(h), does not refer to §1334, and that the proper construction of the statute requires the exhaustion of administrative remedies before a Medicare claim is properly before a district court. Therefore, the bankruptcy court lacked jurisdiction over the termination of the provider agreements. The Court also rejected the debtor's arguments that constitutional mootness and equitable mootness compel the reversal of the district court's order.

Soderstrom v. J. Thompson Investments, LLC (In re Soderstrom)
2016 WL 3611542 (11th Cir. July 6, 2016)

Debtor challenged the bankruptcy court's factual findings that resulted in a judgment of nondischargeability under §523(a)(2)(A). The Eleventh Circuit affirmed, finding that in a "he said – she said" factual dispute, deference must be given to the bankruptcy court's assessments of credibility in reaching its conclusion that a misrepresentation was made and that the creditor justifiably relied on the misrepresentation**.**

Bankruptcy Court Cases

In re Cole
2016 WL 5173215 (Bankr. M.D. Fla. Sept. 20, 2016) (Williamson, C.J.)

Relying on the adage "a tie goes to the runner," Judge Williamson concluded that the homestead exemption prevails over the Trustee's status as a hypothetical lien creditor under §544 where the debtor's homestead exemption attached to the property two weeks after the petition was filed, which is the same time that the Trustee's hypothetical judgment lien attached to the property.

In re Roth
2016 WL 4991500 (Bankr. M.D. Fla. Sept. 16, 2016) (Delano, J.)

Debtor's motion for sanctions for violation of the discharge injunction is denied where the Court found the "Informational Statement" sent to the debtor from the mortgage lender after the debtor

completed her chapter 13 plan and received a discharge contained conspicuous language that the statement was sent for informational purposes only and was not intended as a demand for payment.

In re Bradley
2016 WL 4159264 (Bankr. M.D. Fla. Aug. 3, 2016) (Jennemann, J.)

The Court overruled Trustee's objection to exemption and allowed the debtor/wife to claim the wildcard exemption where the debtors live together in a home owned only by the debtor/husband and the debtor/husband claimed the homestead exemption. The Court found it "crucial" that the deed was titled in the debtor/husband's name only, and therefore the debtor/wife had no present ownership interest in the home.

In re Uche
555 B.R. 57 (Bankr. M.D. Fla. July 28, 2016) (Jackson, J.)

The Court denied creditor's motion to dismiss case under §707(a), finding the facts of the case did not meet the *Piazza* standard for bad faith.

In re Allen
553 B.R. 916 (Bankr. M.D. Fla. 2016) (Funk, J.)

The bankruptcy court denied the debtor's discharge under §727(a)(3) for failing to keep books and records and not adequately explaining the failure. The Court stated, "the price of a Chapter 7 discharge is complete and utter transparency. The Court and creditors should not be required to guess or speculate as to a debtor's income and expenditures."

Court Connection
Volume No. 5 – Issue No. 4
October 2016

TBBBA Presents Credit Abuse Resistance Education To Local High School Students

By Brad deBeaubien, Esq.

Credit Abuse Resistance Education, or CARE, is a financial literacy program for students and young adults administered by the American Bankruptcy Institute and run locally by the Tampa Bay Bankruptcy Bar Association with help from Tampa Bay area judges and attorneys. CARE presenters speak at high schools, colleges and other young adult gatherings about the responsible use of credit and the impact that poor financial choices can have on a person's overall well-being.

On September 23, 2016, Middle District of Florida Bankruptcy Judge Catherine Peek McEwen and TBBBA members Katie Brinson Hinton, John Lamoureux and Brad deBeaubien presented the CARE message to over 250 students at Brooks DeBartolo Collegiate High School, a public charter high school in Hillsborough County, Florida. The presenters spoke about the consequences of credit card debt, the benefits of establishing a good credit score, and the importance of budgeting. The students enthusiastically participated in an interactive true/false quiz on personal finance topics. At the conclusion of the presentation, the speakers fielded questions from the students about financial matters and about their careers in law.

If you or someone you know may be interested in arranging a CARE presentation by TBBBA members to a local school, religious center, Boy Scout/Girl Scout troop, or other group, please contact Brad deBeaubien at bdebeaubien@slk-law.com or 813-221-7425. Audience size may range from as few as 10 people to 100+.

Katie Brinson Hinton, Brad deBeaubien, and Judge Catherine Peek McEwen are pictured with some of the approximately 250 students they addressed on September 23rd at Brooks DeBartolo Collegiate High School in Tampa.

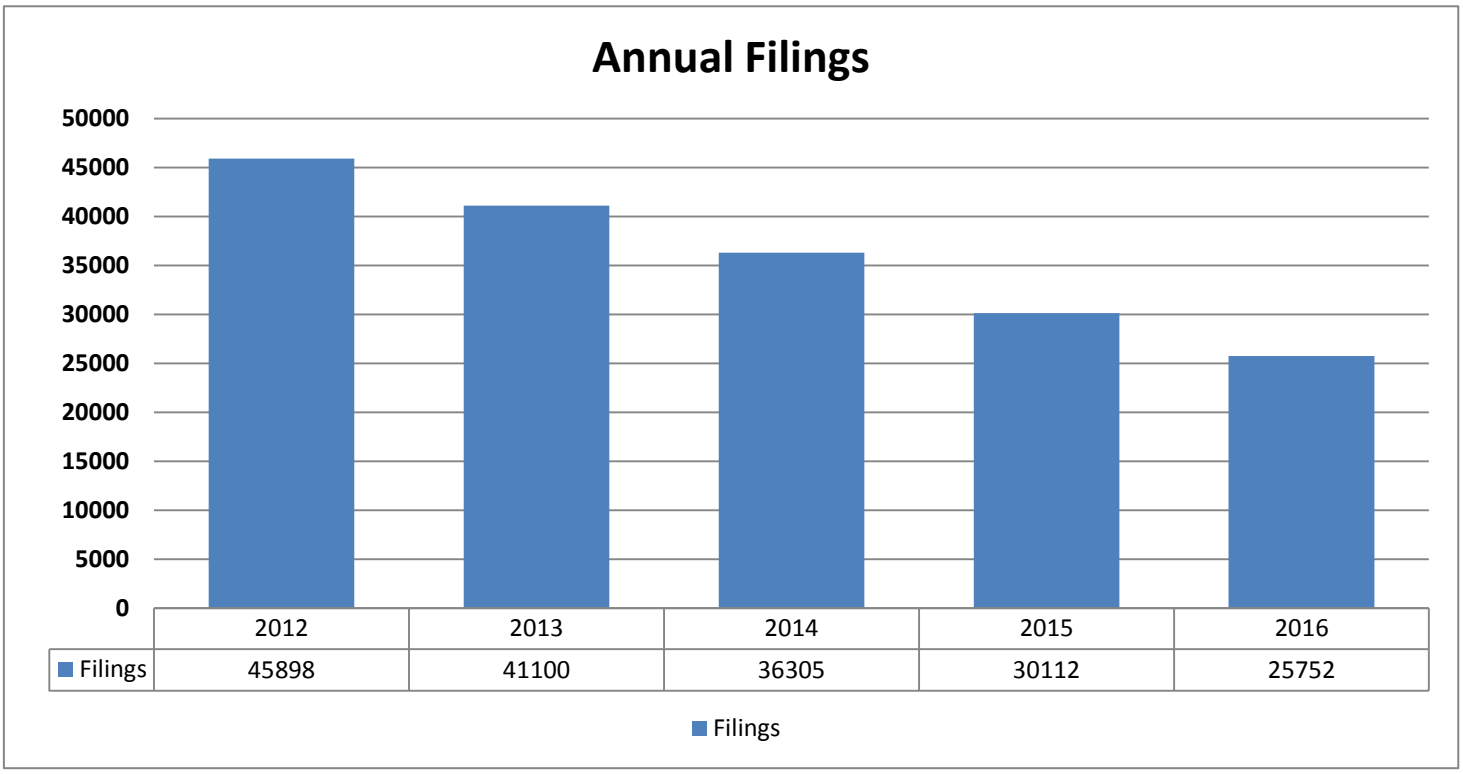
Court Connection
Volume No. 5 – Issue No. 4
October 2016

Attorney John Lamoureux addressing some students

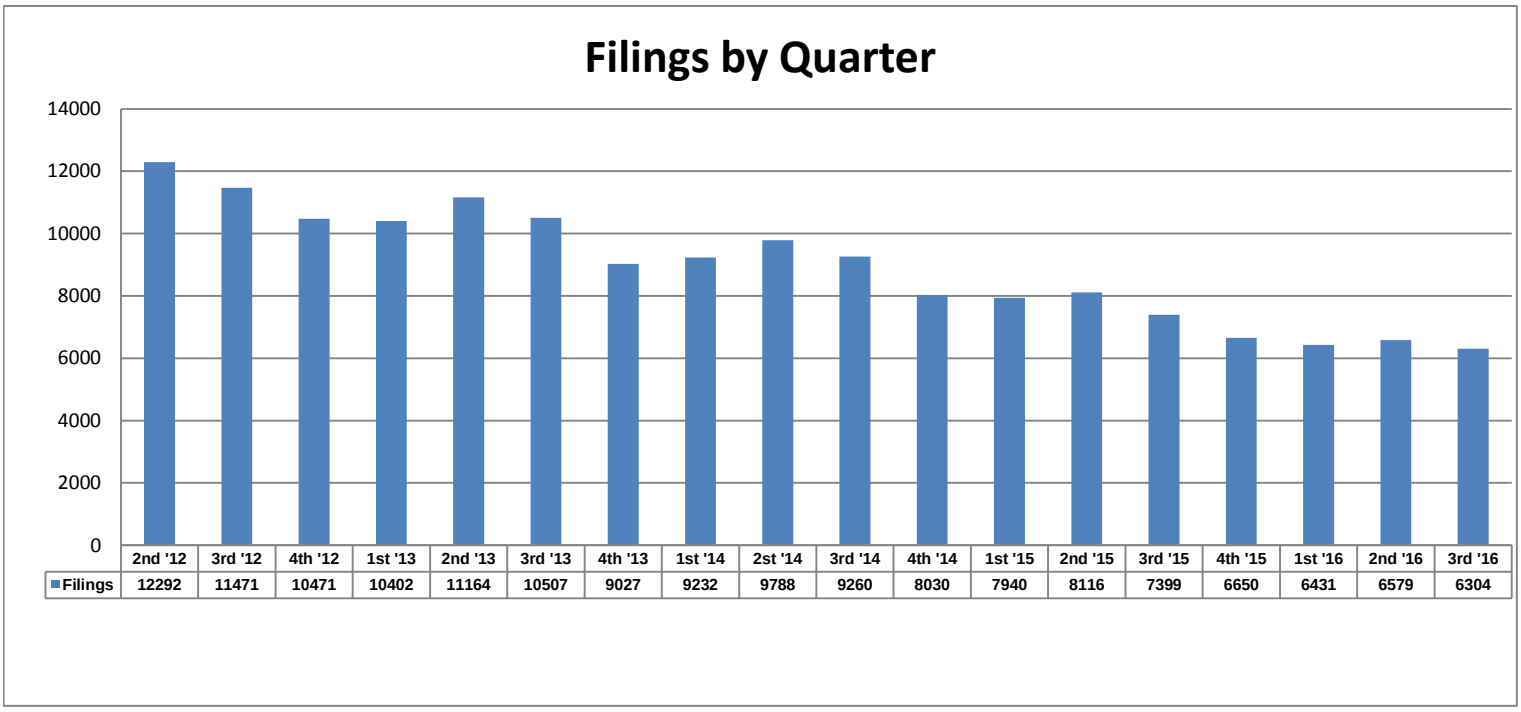
Pictured: John J. Lamoureux and Brooks DeBartolo Principal, Kris Bennett

Pictured: Katie Brinson Hinton and Brad deBeaubien

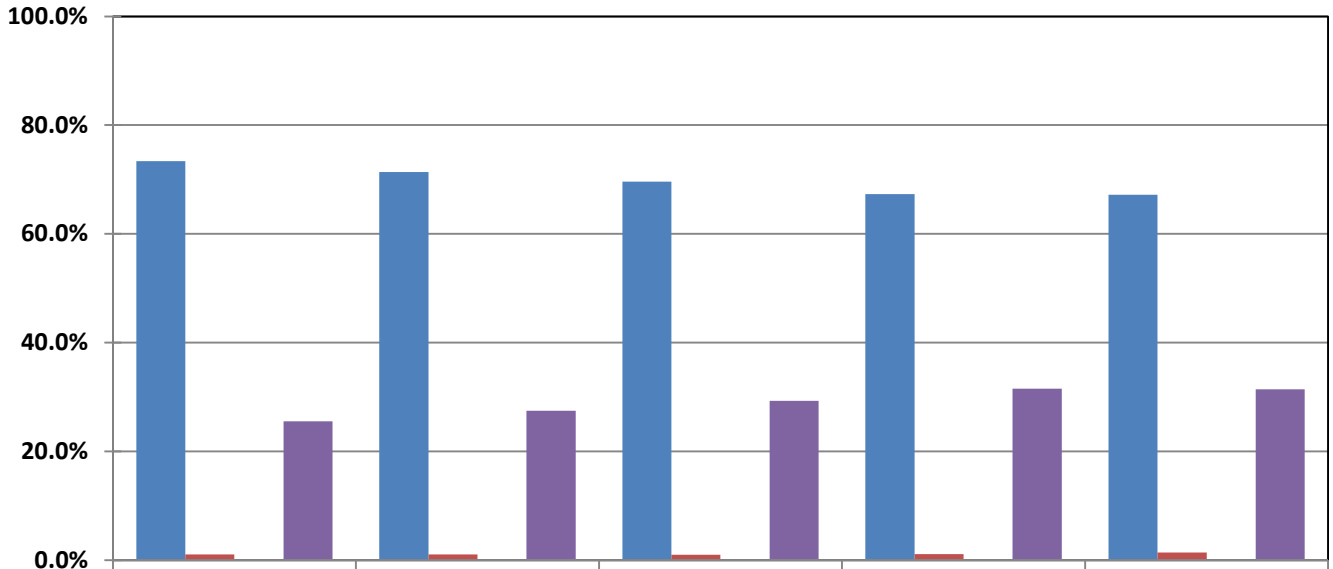
United States Bankruptcy Court - Middle District of Florida
Updated October 10, 2016 Meeting Data and Information
Statistics as of September 30, 2016



Year	Annual Filings	vs. 2012	vs. Prior Yr.
2012	45898		
2013	41100	-10%	-10%
2014	36305	-21%	-12%
2015	30112	-34%	-17%
2016	25752	-44%	-14%

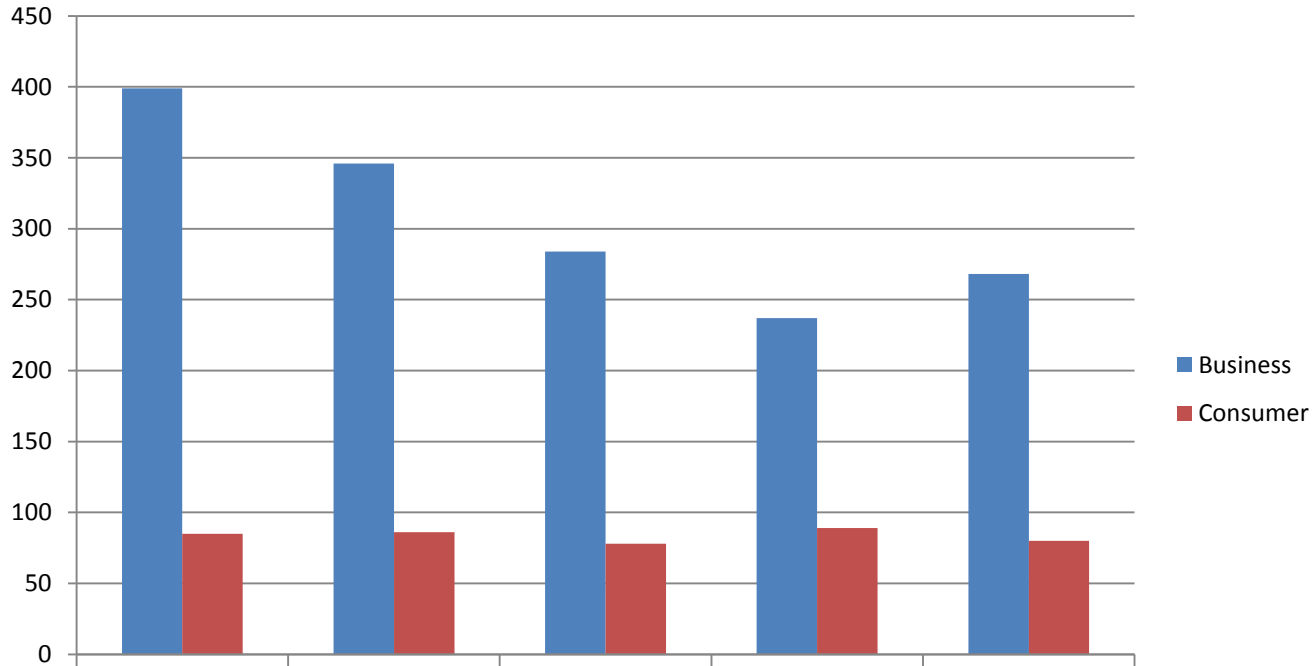


Filings by % of Chapter Type



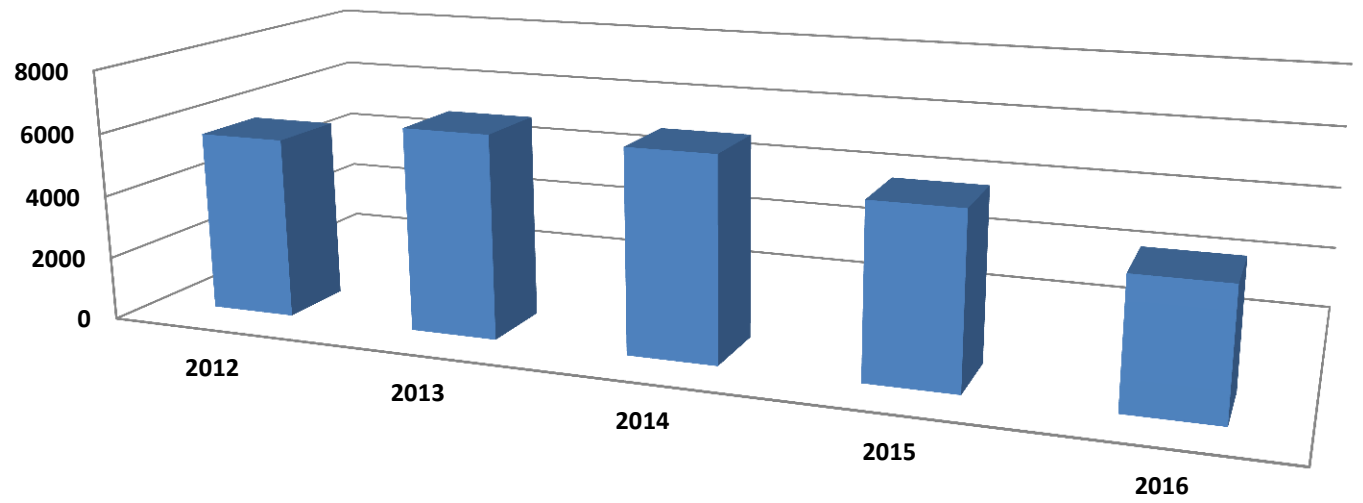
	2012	2013	2014	2015	2016
Chapter 7	73.4%	71.4%	69.6%	67.3%	67.2%
Chapter 11	1.1%	1.1%	1.0%	1.1%	1.4%
Chapter 12	0.0%	0.0%	0.0%	0.1%	0.0%
Chapter 13	25.5%	27.5%	29.3%	31.5%	31.4%

Chapter 11 Filings



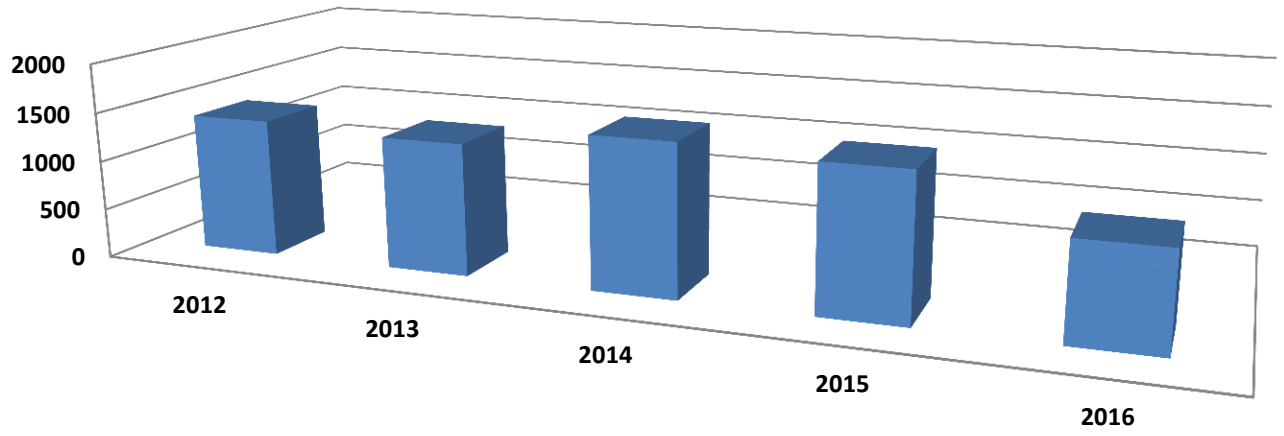
	2012	2013	2014	2015	2016
Business	399	346	284	237	268
Consumer	85	86	78	89	80

Pro Se Filings

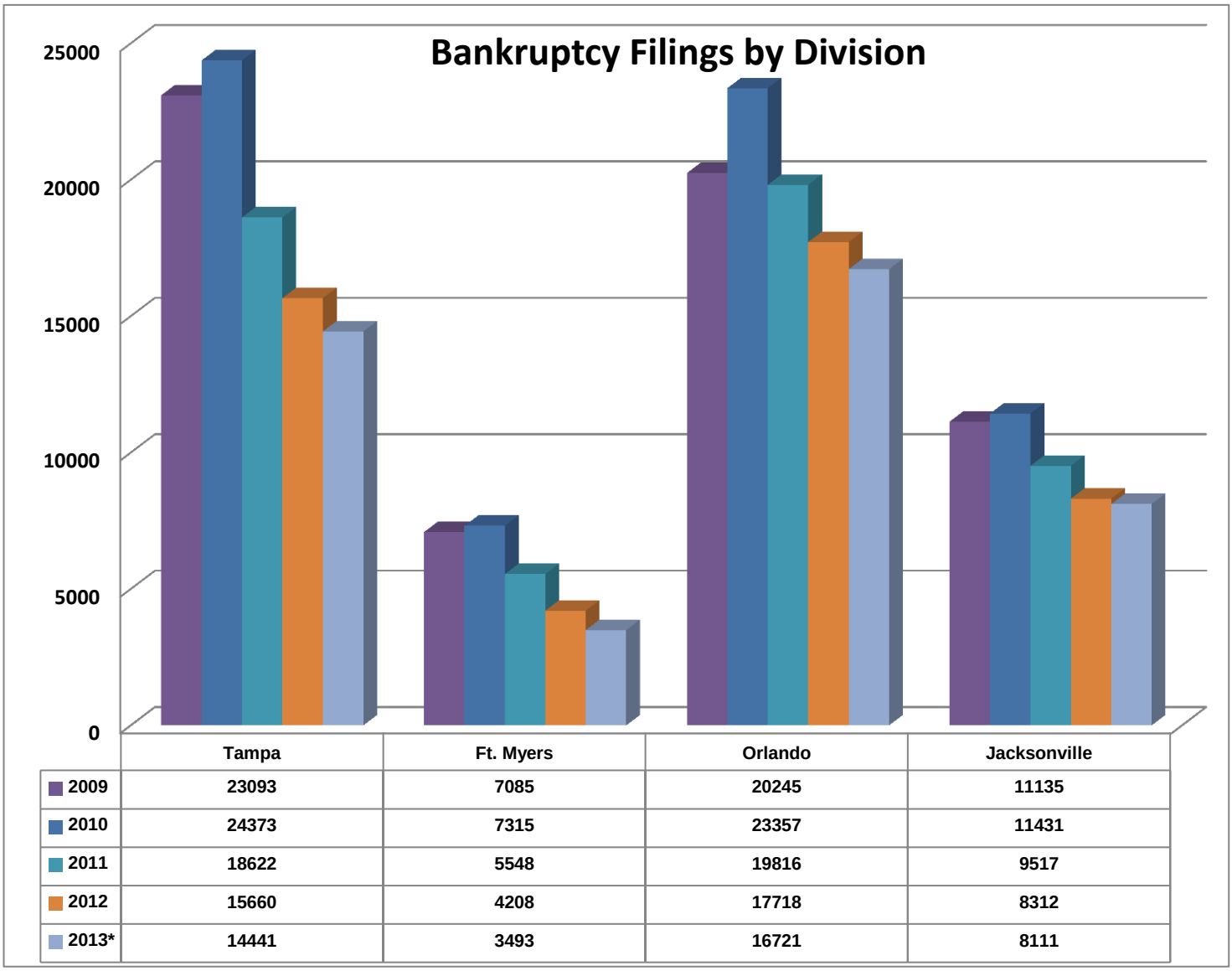


	2012	2013	2014	2015	2016
Pro Se	5737	6435	6387	5416	4000
% of All Filings	12%	16%	18%	18%	16%

In Forma Pauperis Filings



	2012	2013	2014	2015	2016
IFP Granted	1396	1334	1529	1456	972
% of All Filings	3%	3%	4%	5%	4%



	Tampa	Ft. Myers	Orlando	Jacksonville
2009	23093	7085	20245	11135
2010	24373	7315	23357	11431
2011	18622	5548	19816	9517
2012	15660	4208	17718	8312
2013*	14441	3493	16721	8111

Note: Previous quarterly reports incorrectly reflected total cases filed by including adversary proceedings. Chapter 11 and Pro se filings chart counts have been corrected due to a programming error.

Court Connection
Volume No. 5 – Issue No. 4
October 2016

Upcoming Bar Events

Orlando

October 28 @ 12:00 pm	OCBA Bankruptcy Law Committee Meeting Location: OCBA Center
November 17 @ 12:00 pm	CFBLA Monthly Luncheon Location: Gray Robinson
December 8	SAVE THE DATE – CFBLA Holiday Party
December 15 @ 12:00 pm	CFBLA Monthly Luncheon – Elections Location: Gray Robinson
January 27 @ 12:00 pm	OCBA Bankruptcy Law Committee Meeting Location: OCBA Center
February 18 @ 2:00 pm	American College of Bankruptcy Panel: "Insights into Bankruptcy Practice" Speakers include Judge Williamson and Judge Jennemann Location: Florida A&M University College of Law

Tampa

November 2 @ 1:30 pm	Middle District Bench-Bar Conference Location: 3rd Floor Jury Assembly Room, Sam M. Gibbons U.S. Courthouse
November 2 @ 5:30 pm	View from the Bench Reception hosted by TBBBA Location: The Vault
November 3 @ 8:00 am	Bankruptcy Law and Practice: View from the Bench 2016 Location: Stetson University College of Law, Tampa Campus
December 1	TBBBA Annual Holiday Party
February 14 @ 12:00 pm	TBBBA luncheon featuring the "State of the District" with Judge Williamson Location: University Club

TBBBA Consumer Lunches:	December 6 @ 12:00 - Speaker: Judge Colton January 17 @ 12:00 - Speaker: Judge Williamson

	Location: 5th Floor Training Room, Sam M. Gibbons U.S. Courthouse
TBBBA CLE Luncheons:	December 13 and January 10 @ 12:00 pm Location: University Club
TBBBA Happy Hours:	November 17, January 26, and February 23 @ 5:30 pm

Court Connection
Volume No. 5 – Issue No. 4
October 2016

<u>The Court Connection</u> is published quarterly in January, April, July, and October.

We are seeking suggestions, ideas, articles, photos, news – and anything you'd like to share.

Please submit all items to be considered for the January edition by December 31, 2016 to: newsletter@flmb.uscourts.gov