

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

by
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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.