

12.7% Drop Reported in Bankruptcy Filings Here Amid Downward Trend

By Jonathan Epstein

After a year of mostly large declines in filings every month, the number of new bankruptcy cases in Western New York dropped by 12.7 percent in 2012, falling to the lowest annual level in at least a decade in a trend that shows no sign of abating.

For the full year, debtors submitted 6,192 petitions for court protection from creditors in a 17-county area that spans the Buffalo and Rochester markets. That's down from 7,091 filings in 2011. It is also a decline of 36 percent from 9,729 in 2009 and is well below the levels before federal reforms in 2005, when total cases exceeded 10,000 per year.

"The statistics speak for themselves. We're down again, very substantially," said Judge Carl L. Bucki, chief judge of U.S. Bankruptcy Court for the Western District of New York.

The tally includes 4,076 in the Buffalo court, which handles the eight-county local region, and 2,116 in the Rochester court, which oversees the other nine counties. Those figures are down by 11.7 percent and 14.6 percent, respectively, from 4,614 and 2,477 in 2011.

For December alone, filings fell by 20.9 percent in the Western District of New York, dropping to 400, from 506 a year ago. That included 260 in Buffalo, down by 21.2 percent, and 140 in Rochester, down by 20.5 percent.

Declines also are starting to occur more in other parts of the country, where they weren't before, indicating that the trend may be turning national. "It's as if Western New York is leading the pack in the trend," Bucki said. "Filings seem to be down, and we're somewhat at the leading edge of that."

Federal reforms that took effect in October 2005 made it much more difficult and costly for many consumers to escape their debts by filing for Chapter 7. The law imposed new requirements and thresholds on debtors, raising the burden on them, instituting a financial "means" test and mandating financial counseling before filing. Legal costs have also risen. As a result, the number of filings plummeted after the law took effect.

"Some of the statutory changes that were made in 2005 appear to be having an impact," Bucki said. "Filings have become more expensive, and that has affected the willingness of many people to file. I think some of the educational requirements are having their impact, in terms of assisting people to deal with their financial needs."

The nature of the cases he and other judges are seeing locally has also shifted, he said. While they're still dealing with about the same number of large and complex cases, the basic petitions where filers want to erase their credit card debts and start over have diminished sharply.

"The cases that really demand intense attention appear to be about the same. But what

appears to be substantially down are the routine cases, where there are no difficult issues,” Bucki said. “The raw numbers are down, but the cases where the people have complex matters that cannot be handled anywhere else but bankruptcy appear to be present.”

Local bankruptcy attorneys have also surmised that the drop in the number of filings reflects how bad the economy is, and the poor financial shape many debtors are in. People don’t seek bankruptcy protection, the attorneys say, because they can’t afford the filing and legal fees, or because they have so little income and such meager assets that creditors can’t collect anything from them under federal and state protections, anyway. That makes them “judgmentproof.”

Bucki agreed: “Bankruptcy does not give them any benefit at all.”

The one exception to the trend: Chapter 11 filings by businesses. Last year, there were 52 made under Chapter 11 – 37 in Buffalo and 15 in Rochester.

But the Buffalo tally for the year was the highest annual figure since 2004, and no other bankruptcy district in upstate New York recorded as large an increase as Buffalo, said Robert J. Rock, a bankruptcy attorney at Tully Rinckey PLLC, an Albany-based firm that just opened an office in Buffalo. Part of the increase is due to multiple filings by related entities, such as when a business owner or principal has personally guaranteed a company’s debt. If the company goes bankrupt, so does the individual.

The other reason is timing, as economic conditions are no longer as hopeless as before.

“There tends to be an increase in filings a couple of years after the depths of a recession,” said Rock, who has handled bankruptcies for 32 years.

“As we emerge from these things, people see the light at the end of the tunnel, and they do reach out for the Chapter 11 to try to bridge that gap to what’s perceived as the good days ahead.”