

Practical Advice for Dealing With Customers Who are in Bankruptcy or Headed There

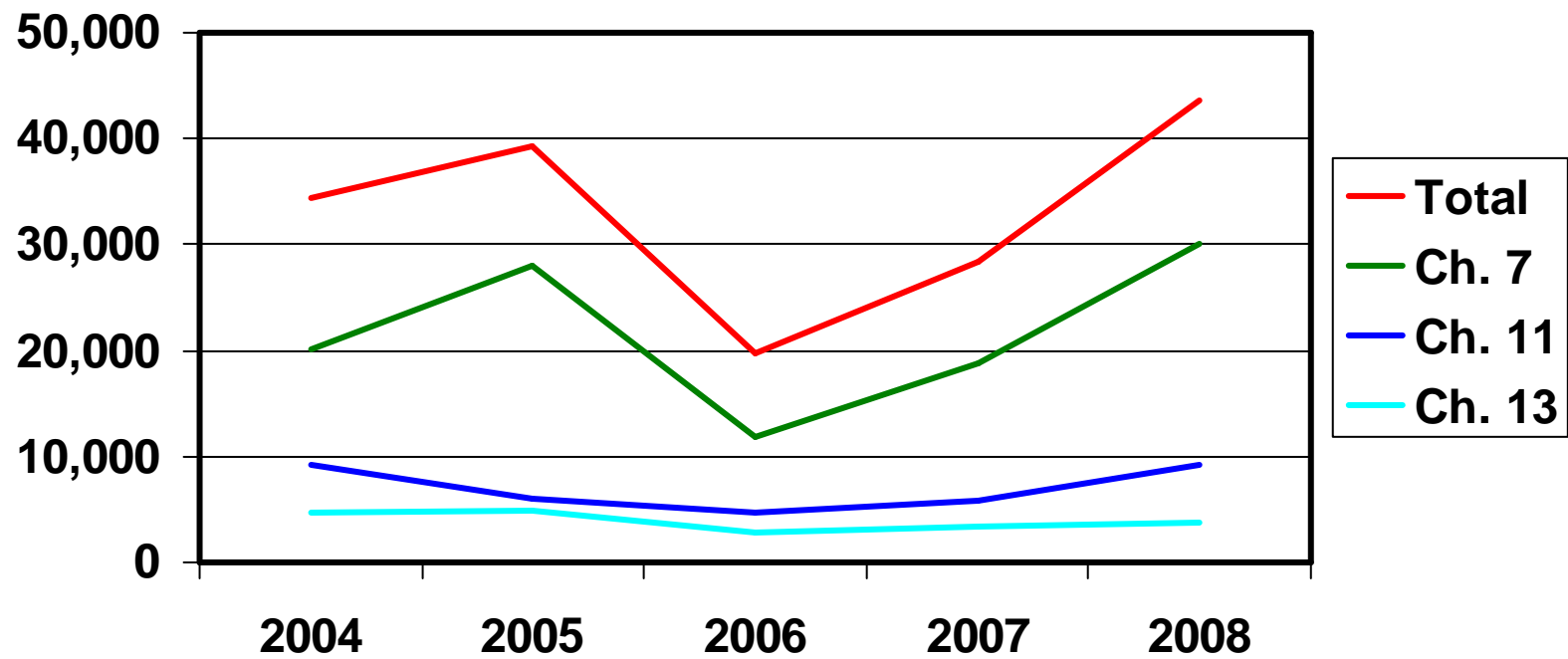
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Where are we and where are we going?



Business Cases - 2004-08



US BankruptCourt website

Bankruptcy Filings - 2009

- Through June 2009¹
 - 699,104 total filings (vs. 1.1 million in 2008)
 - 44,090 business filings (vs. 43,000 in 2008)
 - 7,994 Chapter 11 filings (vs. 9,300 in 2008)

(1) Source: BankruptcyStatistics.com

Customers In Bankruptcy

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“Sorry, I went bankrupt. If you want payment you’ll have to get in line like everybody else.”

The Promise

- Customer:
 - Growth through leveraged acquisitions
 - Increased competition = lower margins
 - Files Chapter 11 to “restructure”
- Supplier:
 - Long term supply contract
 - Sales on credit; Customer is slow pay
 - Significant deliveries and payments before filing
 - Deliveries after filing

Reality

- Automatic stay = breathing room (§ 362)
- Continue operations (§ 363)
- DIP financing (§ 364)
- Close unprofitable locations (§§ 363, 365)
- Sell the business (§§ 363, 365)
- File a Liquidating Plan or convert to Chapter 7
 - Distribute \$ to secured creditors
 - Prosecute claims (management, preferences, fraudulent transfers)

Supplier's Position

- Supply contract
 - Pre-petition
 - Post-petition
- Claims
 - Administrative Claims
 - Post-petition deliveries
 - § 503(b)(9) - goods delivered w/in 20 days of filing
 - Unsecured Claims
 - Trade credit
 - Contract rejection (Supply Agreement)
- Potential preference claims

Adding Insult to Injury - Preferences

