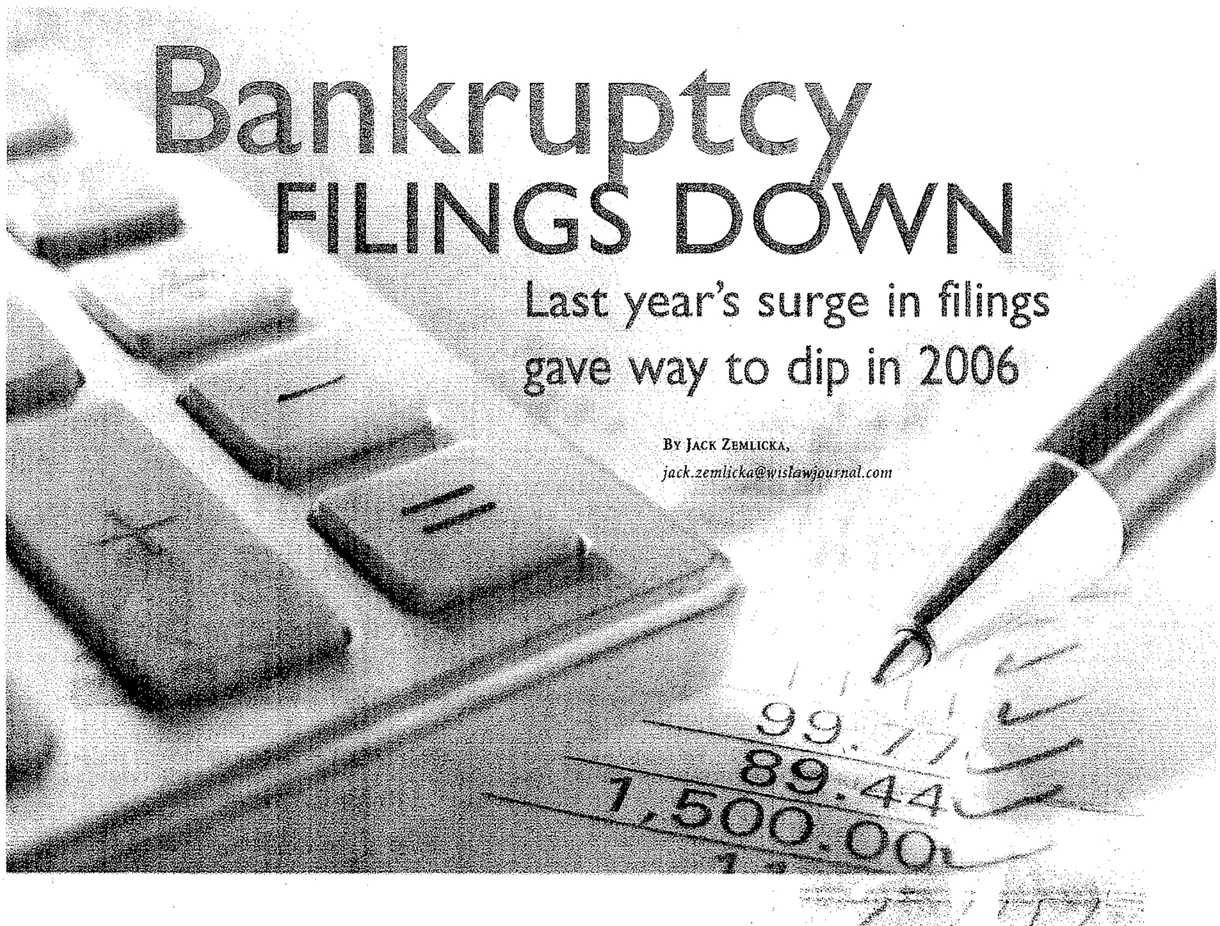
Bankruptcy FILINGS DOWN

Last year's surge in filings gave way to dip in 2006



BY JACK ZEMLICKA, jack.zemlicka@wislawjournal.com

Anniversaries are typically a cause for celebration, but champagne bottles remained corked throughout the local legal community when the nationally-revised bankruptcy laws recently turned one.

Taking effect on Oct. 17, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act was widely expected to complicate the process and confuse filers. Detractors' expectations, however negative, appear to have largely been met.

"The change in the law has had no impact on the (number of) people who require help," said attorney Todd Esser who has been handling debtor and creditor law for the last 24 years at Todd Esser & Associates in Milwaukee. "It has simply made it more difficult to help those people."

DAYS WERE NUMBERED

Both locally and nationally, filing numbers have dipped significantly throughout the past year, especially in consumer bankruptcy. The United States Bankruptcy Court for the Eastern District of Wisconsin has handled only one-third the filings through September 2006 as compared to the same span last year, while the U.S. Bankruptcy Court in the Western District has had roughly one-quarter of the filings.

"Obviously numbers are down, that's the reality, but the question is, how much are they down," said bankruptcy attorney Bruce A. Lanser of the Lanser Law Office in Milwaukee. "You almost can't compare the numbers today to the way they were a year ago, because this time a year ago, it was just such an anomaly. There was such a huge flood of claims."

In an effort to beat the buzzer on the new law, Chapter 7 filers appeared acutely aware of the changes. According to Eastern District statistics, there were more than 2,800 Chapter 7 filings in September 2005 compared to just more than 1,000 in 2004 and only 465 filings in September of this year.

The Western District processed nearly 8,000 Chapter 7 filings in all of 2004, compared to more than 11,500 last year and fewer than 3,000 in the first three-quarters of this year.

"You saw an inordinately large number of people filing because of that fear of not being able to get a Chapter 7 discharge after the new law took effect," said attorney Marie L. Nienhuis of Godfrey & Kahn S.C.

Nienhuis is a member of Godfrey & Kahn's Business Finance and Restructuring Practice Group and has practiced in bankruptcy, creditors' rights, and litigation for the last 17 years.

"There is the misperception that they can't get a Chapter 7 discharge any longer, which is not the case," said Nienhuis. "That was the fear."

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MEANS TO AN END

More stringent guidelines on Chapter 7 filings including a "means test" have been the cause of decreased consumer filings. Expected to limit the number of repeat filers and weed out bankruptcy abusers, the tests have dissuaded legitimate filers from pursuing bankruptcy.

"Now that the means test is in place, there has only been about 1 percent of abuse that has been caught," said Nienhuis. "It is now just another hurdle that people have to go through. I was not pleased with the goal or the assumption that there so many abusing debtors

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U.S. Bankruptcy
COURT CASE FILINGS

Overall bankruptcy case filings for the first three quarters of 2005 rose 9.5 percent in the Eastern District of Wisconsin, compared with the first three quarters of 2004. The Western District's increase from 2004 to 2005 was nearly 22 percent. In 2006, those case filings dropped significantly – nearly 69 percent in the Eastern District and nearly 73 percent in the Western District.

EASTERN DISTRICT OF WISCONSIN	WESTERN DISTRICT OF WISCONSIN
All bankruptcy filings in first three quarters.	All bankruptcy filings in first three quarters.
2004 – 16,492	2004 – 7,014
2005 – 18,053	2005 – 8,537
2006 – 5,660	2006 – 2,425

out there. I don't think that the law has to be on the lookout so greatly for this abuse."

Added paperwork, credit counseling and a more intense screening process were believed by supporters of the new law to redirect filers toward Chapter 13, which stipulates a payment plan for among other things, credit card debts, rather than the erasure Chapter 7 provides.

Statistically, that has not been the case as Chapter 13 filings in the Eastern and Western Districts have also sharply declined. While 2005 numbers are exceedingly high, 2004 statistics are still roughly double that of 2006 Chapter 13 filings.

"I think what you are seeing is a broad net being thrown to catch abusers and what's being realized is that there weren't many there in the first place," said Esser. "I don't think it worked for credit card companies the way they thought it would."

Esser cited the competing interests of the Internal Revenue Service, finance committees and other special interest groups in drafting the revisions which resulted in changes being adopted "wholesale, and with no effort to interface the changes."

"I haven't seen any change in the volume of contacts and calendaring, but the number of cases I actually file with the court has decreased," said Esser.

Lanser summed it up as a "supply versus demand" situation and suggested that some bankruptcy attorneys are either downsizing their offices or expanding into other practices.

General practitioners who may have "dabbled" in bankruptcy appear to be shrinking in number as well because of the new law's complexity.

"I think some of the fall out is that the dabblers are not there anymore," said Lanser. "There are still a handful, but for those who might have been looking to get out, they likely did with the new law."

Nienhuis agreed that the pool of occasional bankruptcy practitioners is drying up.

"It's too complicated to dabble in with potentially severe penalties if you don't follow all the rules," said Nienhuis.

SLOW RECOVERY

According to a recent survey of 700 members of the National Association of Consumer Bankruptcy Attorneys (NACBA), more than two-thirds (68.5 percent) said their filings have increased in the third-quarter, compared to the first half of 2006.

More than half (57.5 percent) anticipate the numbers will closely resemble those prior to the bankruptcy law revisions by the second anniversary.

"It's beginning to level out," said Nienhuis. "There had been a scarcity of filings simply because there had been so many filings before Oct. 17. Now we're getting to a normalcy where filings are beginning to increase."

Familiarity with the new laws by judges, attorneys and consumers has been one explanation for the gradual increase.

"It was a complete scrap and overhaul, but attorneys are working hard to understand the law," said Lanser. "I think they have familiarity with run-of-the-mill cases, but in unusual circumstances, they need to check the provisions and may still not quite understand."

With the holiday season on the horizon, climbing credit card rates and a lagging real estate market, bankruptcy filings seem destined to increase in the next year.

"We've had sort of a lull in the storm, so to speak, and people have been learning to deal with the new rules," said Nienhuis. "Even though it is a little more time consuming and complicated, we'll eventually figure out how it works. It's not going to be the end of consumer bankruptcies. I think people will figure out how to make the system work."

Tony Anderson contributed to this article.

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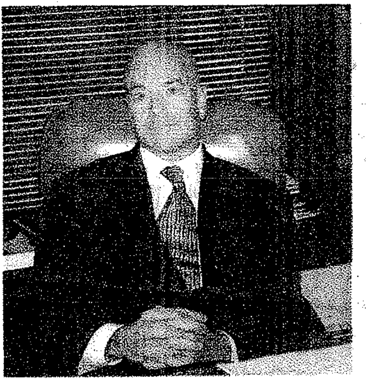
BRUCE A. LANSER, Lanser Law Office on general practitioners moving away from bankruptcy cases.



TIME IS MONEY

Perhaps the cruelest irony in the bankruptcy law changes has been the substantial increase in cost to both client and attorney.

"Fees have had to go up because of time administrated to cases has increased," noted Esser who estimated that in some cases filing costs have risen by 70 percent.

Certification and accuracy are two provisions within the new laws which have caused perpetual headaches for attorneys. Lengthy and time-consuming documentation of client assets and financial history, combined with the potential of penalties for inaccurate information, have had an adverse effect on business for some firms.

"Compared to old laws, filing now is fairly complex, and there is an awful lot that I need to be thinking about, that I didn't have to under old law, or perhaps not to this same degree," said Lanser. "Basic information has not changed significantly, though clearly the law has directed that lawyers do a better job of preparing those bankruptcy schedules, to document the information that appears in those schedules and to provide more substantial consequences if you don't do that."

While none of the attorneys contacted for this article admitted to a decrease in clientele, several did believe the overall number of people seeking out bankruptcy attorneys has decreased since the new law's inception.