

NCBJ Board of Governors – Annual Second Circuit Report
Submitted by
Hon. Elizabeth S. Stong
U.S. Bankruptcy Court – Eastern District of New York
As of July 15, 2024

Overview – Case Filings

The Second Circuit and its constituent districts continue to be very active venues for both business and consumer bankruptcy cases. Overall, in the twelve-month period ended December 31, 2023, a total of 22,416 bankruptcy cases were filed, including 876 Chapter 11 cases, 14,435 Chapter 7 cases, 7,056 Chapter 13 cases, and 49 cases filed in other Chapters.

Business debt was the predominant nature of the debt in 1,790 bankruptcy cases, including 815 Chapter 11 cases and 869 Chapter 7 cases. And notably, two of the five largest Chapter 11 caseloads, by district, are in the Second Circuit – the Eastern District of New York, with 434 Chapter 11 cases, and the Southern District of New York, with 370 Chapter 11 cases. Viewed another way, the Second Circuit’s Chapter 11 caseload, comprised of 876 filings in 2023, amounts to nearly 12 percent of the national total.

Data collected by the American Bankruptcy Institute show that filings in the Second Circuit are, in general, ahead of the national trends. For example, in comparing 2023 figures to 2022, the national average shows an increase of 16.8 percent in filings. In Connecticut, bankruptcy case filings increased by 15.4 percent; in Vermont, bankruptcy case filings increased by 19.7 percent, and in New York, bankruptcy case filings increased by nearly a quarter, or 24.2 percent.

At the same time, ABI data shows that interestingly, in each state within the Second Circuit, total filings relative to population over an extended period, from 2000 to 2023, are significantly lower than the national average. For example, in Vermont, the total filings relative to population are 51 percent below the national average; in Connecticut, the total filings are 35 percent below the national average, and in New York, the total filings relative to population are 31 percent below the national average.

Overview – Bankruptcy Judgeships

Judge Robert Grossman of the Eastern District of New York has announced his intention to retire effective as of June 1, 2025.

Former Chief Judge Cecelia G. Morris, a revered member of the Southern District of New York's bankruptcy bench for many years, has retired from the bench, but graciously consented to serve as a recalled bankruptcy judge and was appointed by Order of Recall entered by the Judicial Council of the Second Circuit through December 31, 2024. Michael Paek, who presently serves as the Chief Deputy Clerk in the District, has been designated by the Second Circuit as Judge Morris's successor, and it is hoped that he will be sworn in very soon. Judge Sean Lane has been reappointed for a fourteen-year term commencing on September 7, 2024.

Former Chief Judge Robert E. Littlefield, Jr. continues to serve as a recalled bankruptcy judge in the Northern District of New York. His current recall term ends on September 30, 2025.

No other new bankruptcy judges have been appointed in the Second Circuit since October 1, 2023.

Overview – Case Management

Loss Mitigation – At least three of the Districts in the Second Circuit continue to offer the opportunity for homeowners and lenders to participate in non-binding, consensual loss mitigation procedures, to see if an agreement on a mortgage modification or other consensual outcome in response to a defaulted mortgage can be reached. Loss mitigation was initially launched many years ago in an initiative led by Judge Morris in the Southern District of New York, and then adopted by the Eastern District of New York (on an opt-in basis), and now, it is also available in the Northern District of New York. Notably, these three Districts have the greatest number of cases filed where the predominant nature of the debt is nonbusiness debt – 15,724 of the 20,626 such cases in 2023, or more than three-quarters of the nonbusiness debt caseload. Descriptions of these programs may be found at: <https://www.nyeb.uscourts.gov/loss-mitigation> (EDNY), <https://www.nysb.uscourts.gov/loss-mitigation> (SDNY), and <https://www.nywd.uscourts.gov/search/node/loss%20mitigation> (NDNY)

In addition, the District of Vermont offers a substantially similar non-binding, consensual program entitled “Mortgage Mediation and Loss Mitigation Program.” In Vermont, more than 92 percent of the bankruptcy cases filed in 2023 concerned nonbusiness debt. A description of this program may be found at :

<https://www.vtb.uscourts.gov/sites/vtb/files/Vt%20LBR%204001-7%20-%20%20Clean%20Version%20-%20with%20proposed%20changes%20as%20of%2012.1.14.pdf>

Remote and In-Person Proceedings – Each District in the Second Circuit continues to offer, in the appropriate circumstances, the opportunity for parties to participate remotely in proceedings, whether telephonically or by video. At the same time, courts also welcome the opportunity to resume in-person proceedings, safely and soundly, as appropriate.

District of Connecticut

Update submitted by Chief Judge Ann Nevins (Summer 2024)

Total case filings year to date through May 31, 2024 were up approximately 18% compared to January 1, 2023 through May 31, 2023. While still below the 2019 case filing level, the volume and pace of cases is noticeably increasing.

The District of Connecticut bankruptcy court and local bar association are engaged in preparations for the annual Connecticut Bankruptcy Conference, scheduled for October 24, 2024. This day-long conference has hosted presentations from bankruptcy experts and from our region’s jurists, including Chief Judge Heather Cooper of Vermont, Chief Judge Elizabeth Katz of Massachusetts, and Judges Christopher Panos and Janet Bostwick of Massachusetts. This year’s program planning includes presentations by some of these judges as well as Chief Judge Bruce Harwood of the District of New Hampshire, Judge Robert Gerber (ret.) from the Southern District of New York, and Chief Judge Diane Feinstein of the District of Rhode Island.

This year the judges are working with the Connecticut Bar Association’s Commercial Law and Bankruptcy Section and its Local Rules Subcommittee to revise and update the Local Bankruptcy Rules, last

revised in 2021. Updates will include technical changes to correspond to the updated Federal Rules of Bankruptcy Procedure expected to go into effect on December 1, 2024, as well as new rules to address Sub-Chapter V cases, changes to the CBA-administered pro bono panel program, and adjustments to the District's Local Form Chapter 13 Plan. After much collaboration and discussion with the bar, the District's "no look" fee for Chapter 13 cases will increase.

The judges continue to be active in civics outreach and educational programs. Judge Julie A. Manning continued to make annual civics education presentations to middle school and high school students in Bridgeport and surrounding Fairfield County towns. Recent presentations include a presentation to 400 high school students on the Bill of Rights and student free speech cases, presentation to 50 high school students about the First Amendment, and a presentation to 60 high school students about Constitution Day. Judge Manning also serve as a Volunteer Presenter for the Connecticut District Court Public Outreach programs. Judge James Tancredi held a mock trial in his courtroom for a high school class taking part in the ReadyCT program and made multiple financial literacy presentations at nursing homes and assisted living facility. Judge Ann Nevins hosted a courtroom visit and presentation for high school students using materials from the M. Ellen Carpenter Financial Literacy Program.

A new courthouse is planned for Hartford, Connecticut, and GSA hosted a kick-off meeting on June 26, 2024, for the design phase of the project. The planning committee will be visiting other federal courthouses for inspiration, and will visit Springfield, MA, Houston, TX, Austin, TX, Los Angeles, CA and Seattle, WA in the coming months. A building site is yet to be identified (2 are in the running) and acquired. The hope is to complete the courthouse in 2029-2030. The 450,000 square foot building will include one chambers and courtroom for a bankruptcy judge, a bankruptcy Clerk's Office, chambers for 17 other judges and 10 additional courtrooms.

Eastern District of New York

Recent Developments of Interest

The Eastern District of New York has established a broad range of ways to engage with and serve the lawyers who practice in our district. These

include the establishment of a Chapter 11 Lawyers' Advisory Committee and Consumer Lawyers' Advisory Committee, which meet periodically in in-person and remote formats.

These efforts also include our outreach programs such as the District's in-person and remote Courtroom Skills Workshops, where lawyers, including newer lawyers, have the opportunity to "appear" in real and virtual courtrooms before the District's judges and "argue" motions. The motions are drawn from cases that have been filed in the District and are now closed, and include everything from first-day motions in large Chapter 11 cases to uncontested motions in consumer bankruptcy cases. Volunteer support is provided by the lawyer members of the Chapter 11 Lawyers Advisory Committee. This program has served as a model for similar programs around the country.

Our judges are active in the organized bar, locally and nationally. They serve in both liaison and leadership positions in the New York City Bar, the American Bar Association, the Federal Bar Association, and the American Law Institute, among many other organizations.

Our judges are also active in public and international service. Chief Judge Alan Trust has recently been designated to serve as the bankruptcy judge observer to the Judicial Conference of the United States. Judge Elizabeth Stong served as a non-governmental organization delegate to the United Nations' Working Group II on Dispute Resolution and Working Group V on Insolvency, as well as to the full UNCITRAL Commission, and also participated in the World Bank-INSOL Latin America regional roundtable on insolvency and business rescue and the World Bank-INSOL international judicial colloquium, where she chaired the plenary on case management. , including a plenary with judges from Singapore, Malaysia, and Uganda.

Update submitted by Chief Judge Alan Trust (Summer 2024)

Our court continues to operate in an efficient and cost-effective manner, given the current budget environment, as well as with the health and safety of our employees and the public in mind. Most plexiglass has now been removed from our courtrooms and we have increased the number and frequency of in person hearings; however, not all matters are heard in person by all judges. We continue our use of virtual platforms when appropriate.

Our overall filings have moved up since the end of June 2023 and we are continuing to see large increases in the percentage of pro se filers, particularly in chapter 13 cases. We continue to be the Number 1 court in the country for overall Pro Se filings and chapter 13 filings as a percentage of total filings.

For the period ending December 31, 2023, our Weighted Case Filings per the EDNY Authorized Judgeship is now 968, which is a ranking of 5th among districts. The Weighted Case Filings jump to 1,130 and propels the EDNY to 4th when calculated based only on our six on-board judges. Additionally, we rank 10th in Total Case Filings, 4th in total Chapter 11 filings and 18th in Adversary Proceedings.

We continue to enhance our use of technology. We went live with the eSR (electronic remote self-filing program) for Chapter 7 cases in May 2022 and expanded it to Chapter 13 cases in November 2022. We also have kiosks/display screens outside of all judges' courtrooms to allow parties to remain outside of the courtroom and see when their matter(s) may be reached. We are internally testing the AO sponsored National Video Teleconferencing Service (NVTCS).

We have continued our bench-bar interactions, conducting virtual brown bags and hosting both virtual and in person meetings with both our Chapter 11 Lawyers' Advisory Committee ("LAC") and our Consumer Lawyers' Advisory Committee ("CLAC"). We have also continued our Courtroom Skills Workshops, f/k/a Junior Lawyer Workshops, which give junior and less experienced lawyers the opportunity to gain experience and training in courtroom skills by arguing motions that were filed in chapter 7, 11 and 13 cases. The motions may be argued with or without opposition. We also permit more experienced attorneys who just want to brush up on their advocacy to participate.

In March 2024, we again hosted the Conrad B. Duberstein Moot Court competition in conjunction with the ABI and St John's Law School.

In May 2024, Judge Elizabeth S. Stong received the 2024 Mayre Rasmussen Award for the Advancement of Women in International Law from the American Bar Association. The award is presented to "distinguished lawyers who have demonstrated significant contributions to

advancing the opportunities for women’s inclusion and active participation in the field of international law.”

Judge Robert Grossman has recently announced his intention to retire effective as of June 1, 2025.

Finally, the Justice Resource Center has continued its civic education programming for the school year 2023-24 and our court continues to make one of its courtrooms available for its Constitution Works Program.

Northern District of New York

Recent Developments of Interest

The Northern District of New York has adopted Courtroom Etiquette guidelines, and these are posted on the Court’s website at <https://www.nynb.uscourts.gov/sites/nynb/files/BarNtc/Courtroom%20Etiquette%2010-18-2023.pdf>

These guidelines provide as follows:

Court Security Officers will enforce these Rules. Violators may be removed from the courtroom.

⌘ Weapons of any sort are prohibited.

⌘ Court proceedings are recorded and silence in the courtroom is a necessity. Disruptive behavior such as talking, laughing, or shouting will not be tolerated. Unless addressing the court, ALL other conversations should be carried on outside the courtroom. All statements on the record shall be addressed to the court and not to other litigants.

⌘ Use of a cell phone or other electronic device in the courtroom or chambers is a privilege that may be revoked at any time. All phones MUST be turned off or placed in a silent/vibrate mode, or they are subject to confiscation by the Court Security Officers. The use of these devices (if left in an active silent mode) must not present a distraction to the user, other attorneys or parties, court personnel or the judge. The device should never be used in a manner that detracts from the solemnity of the proceedings.

Use of a device in a manner that impacts a judge's ability to maintain the decorum of the hearing or conference shall result in the loss of the privilege.

⌘ Reading materials unrelated to the business of the court may be used in the courtroom only in the discretion of the presiding judge. The use of such materials must not present a distraction to the user, other attorneys or parties, court personnel or the judge or detract from the decorum of the proceeding.

⌘ All use of cameras is prohibited in the courtroom.

Update submitted by Chief Judge Wendy Kinsella (Summer 2024)

Former Chief Judge Robert E. Littlefield, Jr. has been approved to continue his service as a recalled bankruptcy judge in the Northern District of New York through September 30, 2025. We are very grateful for his dedication and will be working on his transition plan. Given the current case filings, it is likely that his position will not be filled and the Northern District will be served by Judges Wendy Kinsella and Patrick Radel.

Total case filings in the Northern District of New York for the period January 1, 2024 – June 27, 2024, were up over 10% when compared with filings during the first six months of 2023. This continues the upward trend in filings we saw in 2023. Chapter 11 case filings in 2024 so far are up approximately 14% compared to 2023. Of the 16 Chapter 11 cases filed so far in 2024, half were filed under Subchapter V of Chapter 11. We are also seeing an uptick in adversary proceedings filed in the first six months of 2024 of about 22% when compared with the same period in 2023.

The Judges of the Northern District continue to be active in civics outreach and educational programs. In May, Judges Kinsella and Radel attended the Western District of New York bankruptcy conference. Judge Littlefield presented at the CLE entitled *Bankruptcy: A Primer for Civil Litigators in Various Types of Civil Cases*, sponsored by the Albany County Bar Association. In early June, Judge Radel presented the Annual Supreme Court and Second Circuit case law update for the Central New York Bankruptcy Bar Association. Judge Radel also welcomed over 200 students from the Perry Jr. High School and presided over the trial of the Big Bad Wolf for the alleged arson of the 3 Little Pigs' houses. Before the

spring semester ended, Judge Kinsella hosted a chambers visit for the students from Syracuse University College of Law's Bankruptcy Clinic and their professor. Judge Kinsella presided over a Naturalization Ceremony for 40 new citizens and Judge Radel participated in a Naturalization Ceremony at the Utica courthouse. The judges also participated with District Court and Magistrate Judges in the "Voices of Democracy" program for Law Day, welcoming local high schools to our courthouses and visiting high schools throughout the Northern District.

Judges Littlefield and Radel will participate in the Capital Region and Central New York Bankruptcy Bar Associations' 28th Annual Conference at the Otesaga Resort in Cooperstown. Attorneys from throughout the Circuit, along with nationally recognized speakers will provide 9 credit hours of CLE programming. Our colleague, Bankruptcy Judge Heather Cooper of Vermont, will be among the speakers. At the Conference dinner, the Judges will recognize the many attorneys and students from Syracuse University College of Law's Bankruptcy Clinic for their pro bono work. In connection with the Conference, the Clerk's Office will publish its annual newsletter for the benefit of attorneys practicing in our court.

Southern District of New York

Update submitted by Chief Judge Martin Glenn (Spring 2023)

The last few years have been a period of major changes for the Southern District Bankruptcy Court, with the recent retirements of Judges Robert Drain and Shelley Chapman. Since February 2021, four new judges have joined our nine-judge court – Judge David Jones on February 19, 2021; Judge Lisa Beckerman on February 26, 2021; Judge John Mastando on August 9, 2022; and Judge Phil Bentley on September 7, 2022. The increase we have experienced in business bankruptcy filings, including several important mega cases, has all our judges very busy. During 2022, we also reactivated the Local Rules Committee with new membership, and we formed two important new lawyer advisory committees – the Business Bankruptcy Advisory Committee and the Consumer Bankruptcy Advisory Committee. All three committees are busy examining and updating our existing rules and practices, incorporating many lessons we learned during the COVID pandemic.

Western District of New York

Update submitted by Chief Judge Carl Bucki (Summer 2024)

The Western District of New York has witnessed a modest increase in bankruptcy filings during the first five months of 2024. For the district, filings rose from the same period last year by 16.5 %. This total reflects an increase of 16.7 % in our Buffalo Division and 16.1 % in our Rochester Division.

The Bankruptcy Court continues to welcome opportunities for civic engagement. In April, Chief Judge Bucki was honored to accept an invitation to preside in the championship round for the mock trial tournament for high school students of Erie County. In prior years, Judge Bucki has judged the County Finals on numerous occasions, as well as the regional finals and semi-final rounds of the state tournament in Albany.

In May, Judges Bucki and Warren participated in the 20th Annual Western New York Bankruptcy Conference. We were particularly pleased that Judges Kinsella and Radel from the Northern District were also able to join in this program.

District of Vermont

Update submitted by Chief Judge Heather Cooper (Summer 2024)

In the District of Vermont, we are fully back to in-person hearings, except in extraordinary circumstances. While case numbers have not yet returned to pre-pandemic levels, we have seen a steady increase in case filings, contested matters and adversary proceedings.

Judge Cooper continues to be active in civics outreach programs. In addition to working on the Second Circuit Conference Planning Committee, she has joined the Second Circuit Civic Education Committee as the Vermont representative. In April 2024, she worked with District Court Chief Judge Geoffrey Crawford in the planning and served as a judge for the Vermont High School Mock Trial Competition and will take over primary responsibility for the competition in 2025.

