

THE LAW BOOK

BANKRUPTCY

Chapter 11 cases fade out, Chapter 7 liquidations rising

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Colorado bankruptcy courts aren't as busy these days with Chapter 11 filings for businesses, but there are plenty of other bankruptcy issues to keep attorneys occupied.

Business bankruptcies in the state, as in the rest of the country, soared after the start of the global recession in 2008, but have dropped as the U.S. economy has showed signs of recovery. Commercial Chapter 11 reorganization cases have virtually disappeared locally, in favor of Chapter 7 liquidations, partly because most Colorado companies that seek bankruptcy protection are relatively small and don't have the wherewithal to reorganize.

"Fewer business bankruptcy cases are true reorganizations, where a company goes into bankruptcy with a business that has momentum, cash flow and success, but has been faced with some adversity," said Jim Burghardt, managing partner and bankruptcy attorney at Denver-based Moye White LLP, as well as a former investment banker and small-business owner. "But if the company



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David Brennan is a bankruptcy attorney and shareholder at Denver-based Otten Johnson Robinson Neff + Ragonetti PC.

could restructure, it would come out OK. That's increasingly rare."

"There's no Chapter 11 practice in commercial bankruptcies here now. ... Most companies are not reorganizing," said Holly Shilliday, commercial litigation and bankruptcy attorney at Snell & Wilmer LLP in Denver. "They file bankruptcy to buy time. The most common scenario is a company thinks it

almost has a buyer on the line and that it has time to get a sale done. But nine times out of 10, that's not going to happen."

Through August, Colorado had 2,092 commercial bankruptcy filings, and only 84 were Chapter 11s, according to American Bankruptcy Institute data. Total bankruptcy filings, including those by individuals, were down roughly 12 percent, year

over year, to 18,411 in the first eight months. Of total bankruptcies, 83 percent were Chapter 7s and fewer than 1 percent were Chapter 11s.

One of Colorado's most significant recent Chapter 11s involved Brundage-Bone Concrete Pumping Inc. of Denver, which filed for reorganization in 2010 with \$325.7 million in assets, \$230.3 million in liabilities and 4,000 creditors nationwide. The company emerged from bankruptcy in November 2011.

"The years 2009 and 2010 were pretty bad for bankruptcies," said David Brennan, bankruptcy attorney and shareholder at Denver-based Otten Johnson Robinson Neff + Ragonetti PC. "For the last couple of years, the overall caseload has been pretty steady at about 30,000 filings a year — that's everybody, consumers and businesses."

Colorado has relatively few commercial bankruptcy filings by large companies, especially, because those businesses often file bankruptcy in Delaware or New York State, where they're also incorporated. Those two states' bankruptcy court systems have the infrastructure to handle big cases quickly, according to Brennan. "Bankruptcy venue provisions are very lenient," Brennan said. "They basically condone venue shopping."

Other commercial bankruptcy types, such as prepackaged bankruptcies and involuntary filings, continue to occur in Colorado, but are relatively rare. Involuntary bankruptcies, where creditors force a company into bankruptcy, for example, can be risky.

"If the court decides a company shouldn't have been put in

bankruptcy, the creditors who forced it into bankruptcy may be liable for attorney's fees," Shilliday said.

Bankruptcy attorneys sometimes help businesses avoid bankruptcy by helping them negotiate with creditors to accept less than the total debt they're owed, or bring in a buyer in what amounts to a short sale of a company.

Some commercial bankruptcy attorneys get involved in mediation for personal bankruptcies, via groups such as the Faculty of Federal Advocates of Denver, as well as complex business bankruptcies where the court recommends mediation. "We provide pro bono assistance in personal bankruptcy cases, usually helping the debtor side of the case understand what's happening with them, if they're not represented by counsel," Burghardt said.