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Business bankruptcies climb by 38% over 2006

BY CHAD ERIC WATT | STAFF WRITER

Business bankruptcy filings through the first half of 2007 are up significantly from the prior year, but it's not time to load the lifeboats.

Bankruptcy filings in the second quarter of 2007 totaled 6,705, up 38% from the same time in 2006. But that figure is still well below the 10-year average of about 9,000 business bankruptcy filings per quarter.

"I don't see any big thud coming, but we're going to look up and we're going to have all the bankruptcy work we can handle," says John Penn, a Fort Worth attorney and chairman of the American Bankruptcy Institute. "It's the classic conflict of interest between my retirement account and my checking account."

Bankruptcy filings climbed in late 2005 as a law changes driven by the credit card industry went into force.

Business filings, to a lesser degree than personal bankruptcy filings, spiked in the fourth quarter of 2005 and fell off as the new rules came into play.

At the time, companies and individuals that were near bankruptcy were actually encouraged to file under the old regime rather than test the waters of a new set of statutes. It was a matter of the devil you know versus the devil you don't know.

"Change is always a scary thing," said bankruptcy attorney Stephanie Curtis.

Economy trumps law change

The impact of the new laws on business bankruptcies remain hard to discern. The new laws took force in October 2005 as a robust economy powered by easy credit terms for businesses (and home buyers) roared ahead.

"That's because of the glut in liquidity that existed before now," said Penn, a partner at Haynes and Boone LLP law firm. "Companies were able to find different financing sources, so they did not seek reorganization."

Troubled companies have long been able to refinance their way out of the weeds, but they may soon be "running out of rope," Penn said.

Its too soon to draw conclusions on what impact Congress' law changes have had on business bankruptcies, said Stephen Youngman, a partner specializing in bankruptcy at Weil Gotshal & Manges LLP law firm. A few large cases are moving through the courts, but they haven't reached any critical points, he said.

> 'It has been a very, very **liquid market** out there.'
>
> **Stephanie Curtis**
> Bankruptcy attorney

Curtis says judges have been willing to set aside tougher deadlines called for under the new laws if bankruptcy parties are working together. And overall, the system functions the same for business bankruptcies.

Further, high-net-worth individuals are fairly clear of the law changes because the tougher restrictions center on consumer debt, she notes.

So a wealthy business owner's personal guarantee on a business loan wouldn't be subject to the tougher bankruptcy requirements.

Fewer life preservers

More important, investors now are less eager to toss financial life preservers to foundering firms. That puts the emphasis more squarely on the company's bottom line, if it wants to successfully exit bankruptcy, Curtis says.

"The truth of the matter will be based on how well is the debtor company's operations are going," she says.

A company with good prospects is more likely to get a bank loan restructured or work out other agreements than a business with a bleak outlook.

When debt and equity were both more abundant and investors were on the prowl for businesses, that wasn't as essential.

"It has been a very, very liquid market out there," Curtis said.

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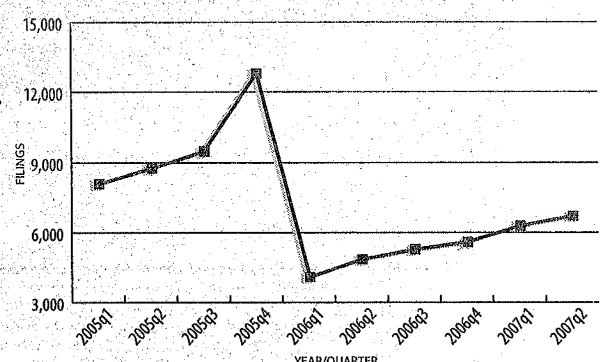
BIZ BANKRUPTCIES BOUNCE BACK

The volume of business bankruptcy filings nationally has bounced back after a spike at the end of 2005. That's when a set of law changes passed by Congress took force. Abundant financing options kept filings down in 2006, bankruptcy attorneys say. That's changing now.



Source: American Bankruptcy Institute