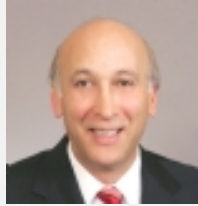


**AMERICAN COLLEGE OF
BANKRUPTCY**

SEVENTH CIRCUIT SEMINAR

SEPTEMBER 25, 2020

PRACTICE UNDER THE SMALL BUSINESS REORGANIZATION ACT



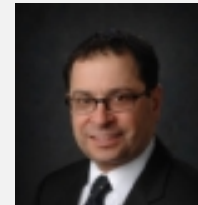
Daniel A. Zazove (Moderator)
Of Counsel
Perkins Coie LLC



Honorable Catherine Furay
Chief Bankruptcy Judge
United States Bankruptcy
Court for the
Western District of
Wisconsin



*Professor Robert M.
Lawless*
Max L. Rowe Professor
of Law
University of Illinois
College of Law



Robert Handler, Esq.
Managing Director
Commercial Recovery
Associates, LLC

Difficulty of Counting Chapter 11s

Le Pain Quotidien filings (e.g.)

	A	B
56	PQ New York, Inc.	debke
57	PQ Meatpacking District, Inc.	debke
58	33rd Street Bakery, Inc.	debke
59	PQ Melrose, Inc.	debke
60	Florence Bakery, Inc.	debke
61	PQ 97th Street, Inc.	debke
62	PQ Merrifield, Inc.	debke
63	LPQ 14th & K Street, Inc.	debke
64	PQ Mineral Springs, Inc.	debke
65	LPQ 205 Bleecker, Inc.	debke
66	PQ Alexandria, Inc.	debke
67	PQ Montague, Inc.	debke
68	LPQ 85 Broad, Inc.	debke
69	PQ Mt. Vernon, Inc.	debke
70	PQ Americana, Inc.	debke
71	LPQ Aventura, Inc.	debke
72	PQ New Canaan, Inc.	debke
73	LPQ Cabin John, Inc.	debke
74	PQ Bakery, LLC	debke
75	LPQ Claremont, Inc.	debke
76	PQ Newport Beach Bakery, Inc.	debke
77	LPQ Coconut Grove, Inc.	debke
78	PQ Operations, Inc.	debke
79	PQ Battery Park, Inc.	debke
80	LPQ Garden City, Inc.	debke
81	PQ Park & 33rd, Inc.	debke
82	PQ Bethesda, Inc.	debke
83	LPQ King & Hudson, Inc.	debke
84	PQ Park Slope, Inc.	debke
85	LPQ N. Wells St, Inc.	debke
86	PQ Beverly Hills, Inc.	debke

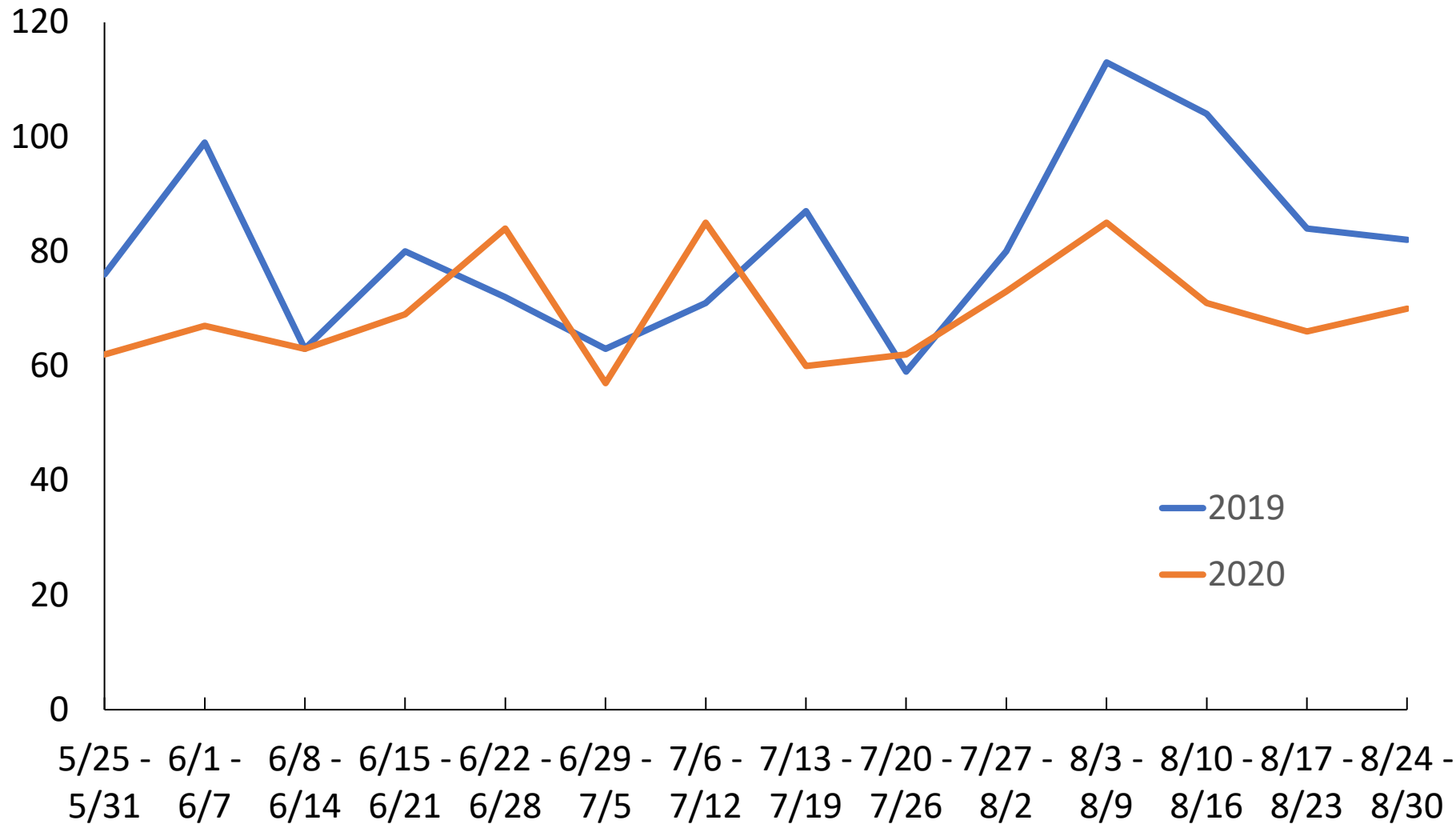
	A	B
87	PQ Robertson, Inc.	debke
88	LPQ Naperville, Inc.	debke
89	LPQ North Michigan, Inc.	debke
90	PQ Rye, Inc.	debke
91	PQ Blaine Mansion, Inc.	debke
92	LPQ Pasadena, Inc.	debke
93	PQ San Vicente, Inc.	debke
94	LPQ Reston, Inc.	debke
95	PQ Bleecker, Inc.	debke
96	LPQ Sailboat Pond, Inc.	debke
97	PQ Brentwood, Inc.	debke
98	LPQ South End Ave, Inc.	debke
99	PQ Santa Monica, Inc.	debke
100	LPQ South Gayley, Inc.	debke
101	PQ Bryant Park, Inc.	debke
102	PQ Soho, LLC	debke
103	PQ Calabasas, Inc.	debke
104	PQ Spring Valley, Inc.	debke
105	LPQ South Lasalle, Inc.	debke
106	LPQ Toluca Lake, Inc.	debke
107	PQ Studio City, Inc.	debke
108	LPQ West 55th & 8th St, Inc.	debke
109	PQ Capitol Hill, Inc.	debke
110	LPQ Woodbury, Inc.	debke
111	PQ 17th Street, Inc.	debke
112	PQ Carnegie Hill, Inc.	debke
113	PQ The Village at Topanga, Inc.	debke
114	PQ 44th & Madison, Inc.	debke
115	PQ Tribeca, Inc.	debke
116	PQ Carroll Square, Inc.	debke
117	PQ 44th Street, Inc.	debke

	A	B
118	PQ Tysons Corner, Inc.	debke
119	PQ Central Park, Inc.	debke
120	PQ UN, Inc.	debke
121	PQ 53rd Street, Inc.	debke
122	PQ Chelsea, Inc.	debke
123	PQ 550 Hudson, Inc.	debke
124	PQ Union Square, Inc.	debke
125	PQ Chevy Chase, Inc.	debke
126	PQ 55th & 1st, Inc.	debke
127	PQ Union Station, Inc.	debke
128	PQ 6th & Olive, Inc.	debke
129	PQ Clarendon, Inc.	debke
130	PQ Upper West, Inc.	debke
131	PQ Culver Plaza, Inc.	debke
132	PQ 6th Ave., Inc.	debke
133	PQ Villa Marina, Inc.	debke
134	PQ East 65th St, Inc.	debke
135	PQ Walnut Street, Inc.	debke
136	PQ 8th & Walnut, Inc.	debke
137	PQ East 77th, Inc.	debke
138	PQ Wayne, Inc.	debke
139	PQ 8th Street, Inc.	debke
140	PQ East 83rd St, Inc.	debke
141	PQ West 72nd, Inc.	debke
142	PQ 933 Broadway, Inc.	debke
143	PQ West 84th, Inc.	debke
144	PQ Encino Bakery, Inc.	debke
145	PQ Westlake, Inc.	debke
146	PQ First Inc.	debke
147	PQ Wildwood, Inc.	debke
148	PQ French Market, Inc.	debke

	A	B
149	PQ Georgetown Inc.	debke
150	Tuxedo Bakery, Inc.	debke
151	PQ Gold Coast, Inc.	debke
152	Walnut St. Bakery, Inc.	debke
153	PQ Granary, Inc.	debke
154	PQ Greenwich, Inc.	debke
155	PQ Harbor Point, Inc.	debke
156	PQ Larchmont, Inc.	debke
157	PQ Lexington, Inc.	debke
158	PQ Lincoln Park, Inc.	debke
159	PQ Lincoln Square, Inc.	debke
160	PQ Manhattan Beach, Inc.	debke

An Aside . . .

Affiliate-Adjusted Chapter 11 Filings



*Chapter 11 Filings Not
Counting Affiliates:
5/25 – 8/30*

*2019: 1,133
2020: 974*

*Data from Ed Flynn,
American Bankruptcy
Institute*

SBRA-Eligible Chapter 11s Historically

	# of Eligible Cases	Percent
2014	2,959	57.6%
2015	2,660	57.2%
2016	2,510	55.9%
2017	2,332	56.3%
2018	2,174	55.2%
2014-2018	12,635	56.5%

Notes

- 1. From FJC Integrated Petition Database of all filings*
- 2. Counts only lead cases and not affiliate filings*
- 3. Excludes 6,610 chapter 11s where total liabilities were reported as zero*

SBRA Filing Facts

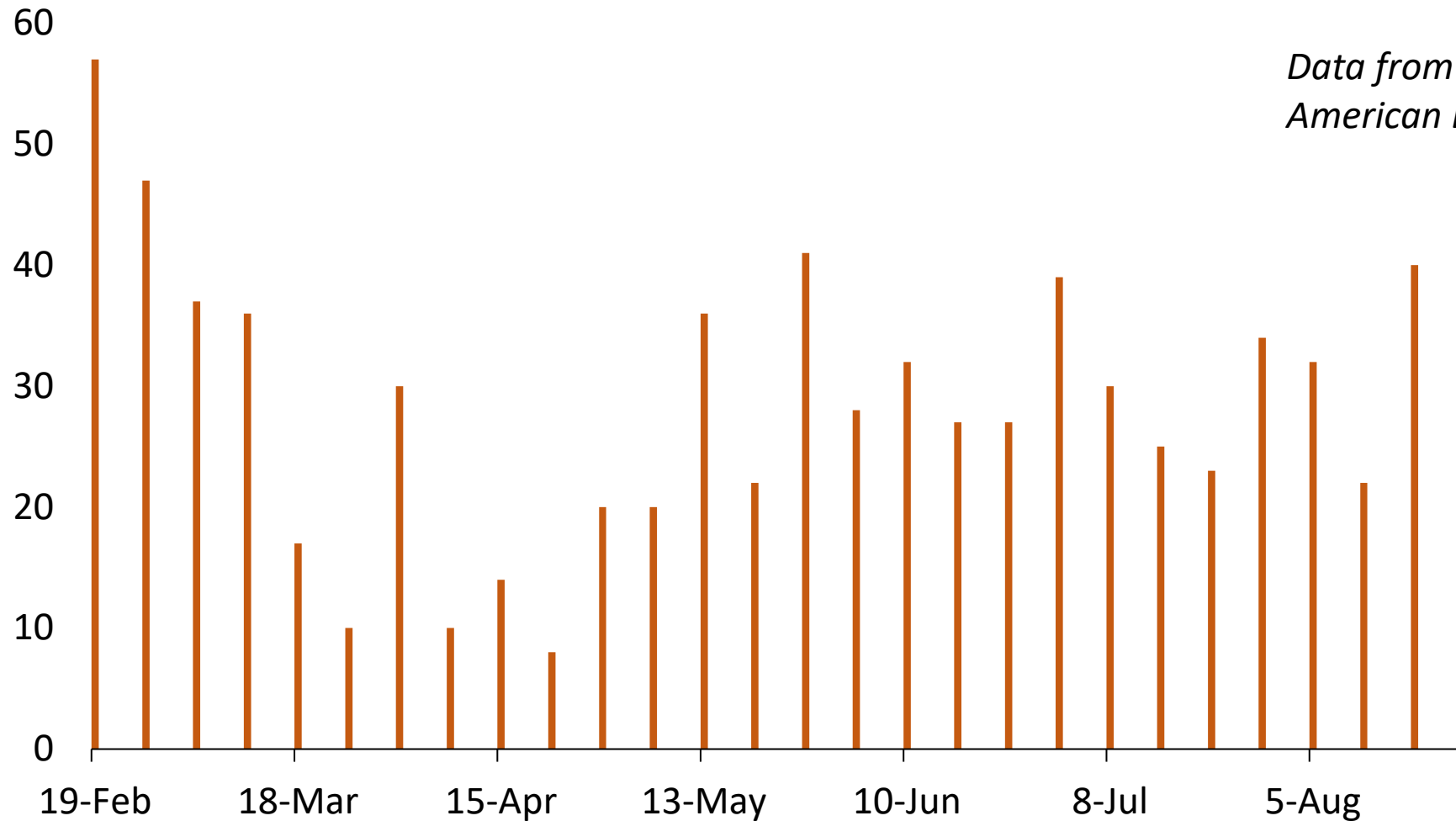
814 total SBRA filings as of September 3

From July 6 – August 30, 44.2% of solo or lead chapter 11s are SBRA cases

Data from Ed Flynn, American Bankruptcy Institute

When the Filings Were

SBRA Filings by week, 2/19/2020 – 9/1/2020



*Data from Ed Flynn,
American Bankruptcy Institute*

Where the SBRA Filings Were, Top 20 Districts

<hr/> M.D. Fla.	70	S.D.N.Y.	21
C.D. Cal.	47	E.D.N.Y.	18
S.D. Fla.	37	D. Colo.	18
N.D. Tex.	37	D.N.J.	18
N.D. Ill.	32	E.D. Tex.	16
D. Ariz.	28	N.D. Cal.	14
W.D. Tex.	27	W.D.N.C.	14
N.D. Ga.	27	E.D. Cal.	14
M.D., Tenn.	25	D. Nev.	12
S.D. Tex.	23	W.D. Wash.	12
<hr/>		<hr/>	

*Data from Ed Flynn, American Bankruptcy Institute
through September 3, 2020*

RECENT CASES OF NOTE

- Eligibility:
 - THE DEBTOR MUST BE ENGAGED IN A COMMERCIAL BUSINESS ACTIVITY FROM WHICH AT LEAST 50% OF ITS LIABILITIES ARISE.
- Do Personal guaranties of business debt qualify an individual debtor for relief under Chapter V:
 - In re Blanchard, 19-12440 (Bankr. E.D. LA July 16, 2020)
yes
 - In re Wright, 20-1035 (Bankr. D.S.C. April 27, 2020)
yes
- May a debtor qualify for Chapter V relief if it was engaged in business but is no longer?
 - In re Bonert No 2, 19-20836, 2020 WL363869 (Bankr. C.D. Cal. 6/3/2020) no
- THE DEBTOR MUST NOT BE A SINGLE ASSET REAL ESTATE BUSINESS:
 - In re Moore Properties of Person County, LLC 20-80081 (Bankr. M.D.N.C. (2/28/2020)

close!

RECENT CASES OF NOTE - CONTINUED

- MAY A DEBTOR ELECT TO CONVERT ITS PREVIOUSLY FILED CASE TO A CASE UNDER CHAPTER V AFTER FEBRUARY 19, 2020:
 - In re Blanchard, 2020 WL4032411 (Bankr. E.D. La. 7/16/2020) yes
 - In re Body Transit, Inc. 613 B.R. 400 (Bankr. E.D. PA 2020) yes
 - In re Trepetin 20-11718, 2020 wl 3833015 (Bankr. MD 7/7/2020) Chapter 7 yes
 - In re Slidebelts 2020 WL 3816290 (Bankr. E. D. Cal. 7/6/2020) yes*
 - In re Twin Pines LLC, 19-10295 (Bankr. N.M. 4/3/2020)
yes
 - In re Double H. transportation LLC (Bankr. WD TX 3/5/2020) no
 - In re Progressive Solutions, Inc. (Bankr. C. D. CA 2/21/2020)
yes
 - In re Ventura No. 8, 18-77193 2020WL 1867898 (Bankr. E.D. N.Y. 4/10/2020)
yes
 - In re Seven Stars on the Hudson Corp., 19-17544 (Bankr. S.D. Fla. 8/7/2020)
no
 - In re Bonert, 2020 WL 3635869 (Bankr. C.D. Cal. 6/3/2020) yes

RECENT CASES OF NOTE - CONTINUED

- MUST NOT EXCEED THE AGGREGATE NON-CONTINGENT LIQUIDATED DEBT LIMIT OF \$2,725,625 or \$7.5 Million (from March 27, 2020 to March 26, 2021)
 - In re Parking Management, Inc. 20-15026 (Bankr. Md. 8/28/2020)
 - (Excluded post-petition lease rejection damages and forgivable PPP loan)

HYPOTHETICAL FOR DISCUSSION

- Penny Pincher owns and operates Pied Piper Pies, LLC a very successful diner which has a counter with fixed stools but no tables. Unable to open since March, the business obtained a \$1,500,000 Payroll Protection Plan loan and used all the proceeds to make payroll, pay health insurance Premiums and make loan payments.

The business has the following obligations:

- A \$6 Million purchase money loan from Porcine Pay UP Bank secured by all assets of the business which consist mainly of restaurant equipment and furnishings worth no more than \$2.5 Million at auction. This loan is personally guaranteed by Penny and her guarantee is secured by a junior mortgage on her personal residence. Porcine has given notice of a UCC foreclosure sale of its collateral and initiated a mortgage foreclosure case on Penny's home.
- Unsecured Trade debt of \$500,000.
- The balance due on a five year real estate lease where the diner formerly operated which called for monthly rental of \$5,000. The lease term expires on September 30,2024. (\$240,000 if no new tenant is found).
- The balance due on the PPP loan of \$1,500,000.

HYPOTHETICAL FOR DISCUSSION

- Porcine has given notice of a UCC sale of its personal property collateral and initiated a mortgage foreclosure action against Penny's home.
- Penny consults you about filing a Subchapter V Case. Her plan is the following:
 - No payment to Porcine until the earlier of 90 days after the diner reopens or 2/1/2022.
 - Once the payments to Porcine are due, the debtor will make the regular non-default monthly note payments, and cure the arrearage over the next 3 to 5 years out of disposable income.
 - No distribution on the Payroll Protection Plan Loan.
 - All other claimants will be enrolled in the pie of the month club entitling them to receive the special pie of the month for one year after the diner reopens.
 - Crusty Creme, the diner's largest unsecured claimant's owner says it will never vote to accept a plan that pays nothing. "I'll make mincemeat of you".
 - Penny says she is unconcerned because she thinks her plan is confirmable.
- Is she right?