

Proposal
Consumer Fee Study
Sponsored by the American Bankruptcy Institute

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Hypothesis: “BAPCPA has substantially increased the costs of accessing the bankruptcy system for consumer debtors and their creditors.”

This hypothesis will be tested by analyzing data from consumer bankruptcy case files and by examining data collected through a survey instrument. Data will be gathered with respect to (i) distributions to creditor classes (all creditors, secured creditors and unsecured creditors), (ii) trustee fees, (iii) debtor’s counsel fees, and (iv) other costs and expenses (credit counseling, filing fee, post-filing financial management).

I. The Pilot Study

The project will begin with a Pilot Study, with the objective of distilling the data that is available and accessible, as well as refining the study’s substance and process (the “Pilot Study”). In connection with the Pilot Study, small samples of fee-related data from a limited number of districts (to be determined) in cases filed, both pre- and post-October 17, 2005, will be gathered. The local rules and orders with respect to fees allowed in consumer cases in each of these select districts will be researched and this data will be analyzed to determine the principal determinants of fees and expenses.

The Pilot Study will commence in June with the formulation of Analysis Plan. This Analysis Plan will set forth the study’s (i) specific hypotheses, (ii) the sample jurisdictions and sample size for both the Pilot Study and the National Study, and (iii) the analysis to be conducted. Such analysis may include the identification of specific relations among the variables to be investigated, statistical methods to be used, variables to be used for adjusting results, as well as any recoding, rescaling, or collapsing of variables that may be necessary.

The necessary case files will be acquired from AACER, and research assistants will be enlisted to perform coding functions, as well as conduct research. A preliminary report of the Pilot Study’s findings will be presented at the ABI Winter Leadership Conference in December 2009.

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II. Full-Scale National Consumer Fee Study

The full-scale Study will commence in early 2010, and be completed by Fall 2011. As part of the full-scale Study, data from pre- and post-BAPCPA cases, selected at random from various districts around the country will be gathered and analyzed. In addition, the full-scale Study will include the administration of a survey instrument, which will be developed in consultation with a statistical consultant, and with the help of a team of research assistants. This survey instrument will enable the gathering and compilation of information about the cost of BAPCPA that is not available from public records.

III. Staffing of the Project

Lois R. Lupica, Maine Law Foundation Professor of Law, University of Maine Law School (hereinafter, the “Researcher”) will serve as Lead Researcher and Principal Investigator.

To ensure the independence and integrity of the Study, the Researcher will have final authority with respect to the questions and issues investigated, the study methodology, and content of the Final Report.

Numerous students – primarily, but not exclusively, from the University of Maine School of Law – will perform research, data entry and clerical support for the Study. In addition, a statistical consultant will be engaged to assist in the Study’s statistical analysis

IV. Advisory Panel

A Study Advisory Panel (the “Panel”) will be appointed. This Panel will be comprised of academics, judges, practicing consumer bankruptcy attorneys and Trustees. Such information about the progress of the Study as the Panel will be

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Consumer Bankruptcy Pilot “Fee Study”
The Costs of Bankruptcy Reform

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Questions for Study and Analysis

1. How have the various significant provisions of BAPCPA impacted legal fees charged in consumer bankruptcies?
 - A. Standard economic indicators.
 - (i) Cost of living (2003-2004 v. 2007-2008);
 - (ii) Inflation (2003 - 2004 v. 2007-2008)
 - B. Compare cost of living increases/inflation to increases in legal fees
 - (i) Chapter 7 cases
 - (ii) Chapter 13 cases
 - C. Controlling for inflation and cost of living increases, compare legal fees charged in 2003-2004 to fees charged in 2007-2008 (pre-BAPCPA v. post-BAPCPA).

What else would we control for? What are some of the other factors that could affect fees between the two periods of time?

2. Are there “market rates” for bankruptcy fees in the post-BAPCPA world?
 - A. Chapter 7 “market rates”
 - B. Chapter 13 “market rates”

What are the markets? Judicial Districts? Courts? (descriptive question)

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- C. With respect to Chapter 13 cases, what are the “no-look” fees in each district?
- D. What is the divergence in rates charges and the “no-look” fee in each district?
- E. What is the frequency of the “no-look” fee being charged in a Chapter 13, versus a fee application for a larger fee?
 - (i) 2003-2004 (pre-BAPCPA v. post-BAPCPA)
 - (ii) 2007-2008 (pre-BAPCPA v. post-BAPCPA)

- 3. What is the relationship between the market-rate for fees charged (*Average? Median? Per Judicial District?*) and pro se bankruptcy filings?

Thesis: The higher the market rate for legal fees, the more pro se bankruptcy filings.

- 4. What fees are paid to professionals in consumer bankruptcies?
 - (i) Chapter 7 fees paid to attorneys;
 - a. 2003-2004
 - b. 2007-2008
 - (ii) Chapter 7 fees paid to “other professionals”;
 - a. 2003- 2004
 - b. 2007-2008
 - (iii) Chapter 13 fees paid to attorneys;
 - a. 2003-2004
 - b. 2007-2008
 - (iv) Chapter 13 fees paid to “other professionals”
 - a. 2003-2004
 - b. 2007-2008

(Descriptive- Average? Median? By Judicial District? By Judicial Circuit? By Region?)

5. Is there a difference between the fees charged by attorneys to above- and below-median income debtors?
 - A. Post-BAPCPA attorney fees charged to debtor's with income above the median income in their district;
 - B. *Compared to* Post-BAPCPA attorney fees charged to debtors with income below the median income in their district.

6. How often are petition preparers used?
 - A. Chapter 7 cases
 - (i) 2003-2004;
 - (ii) 2007-2008;

 - B. Chapter 13 cases
 - (i) 2003-2004;
 - (ii) 2007-2008;

 - C. When used, what do they charge?

7. What is the relationship between attorney's fees and the amount of unsecured debt discharged?
 - A. Chapter 7 cases
 - (iii) 2003-2004;
 - (iv) 2007-2008;

 - B. Chapter 13 cases
 - (iii) 2003-2004;
 - (iv) 2007-2008;

8. What is the relationship between attorney's fees and the amount of secured debt discharged (all secured debt, including real estate)?

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A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

9. What is the relationship between attorney's fees and the amount of real estate related secured debt discharged?

A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

10. What is the relationship between attorney's fees and the amount of bankruptcy-related administrative costs (carving out attorney fees)?

A. Chapter 7 cases

- (i) 2003-2004;
- (ii) 2007-2008;

B. Chapter 13 cases

- (i) 2003-2004;
- (ii) 2007-2008;

11. What is the relationship between attorney's fees and the amount of trustee fees and expenses?

A. Chapter 7 cases