COMPARISON OF ANNUAL CHANGE IN CHAPTER 13 CASE FILINGS DURING THE BEGINNINGS OF THE 2008 AND THE 2020 RECESSIONS

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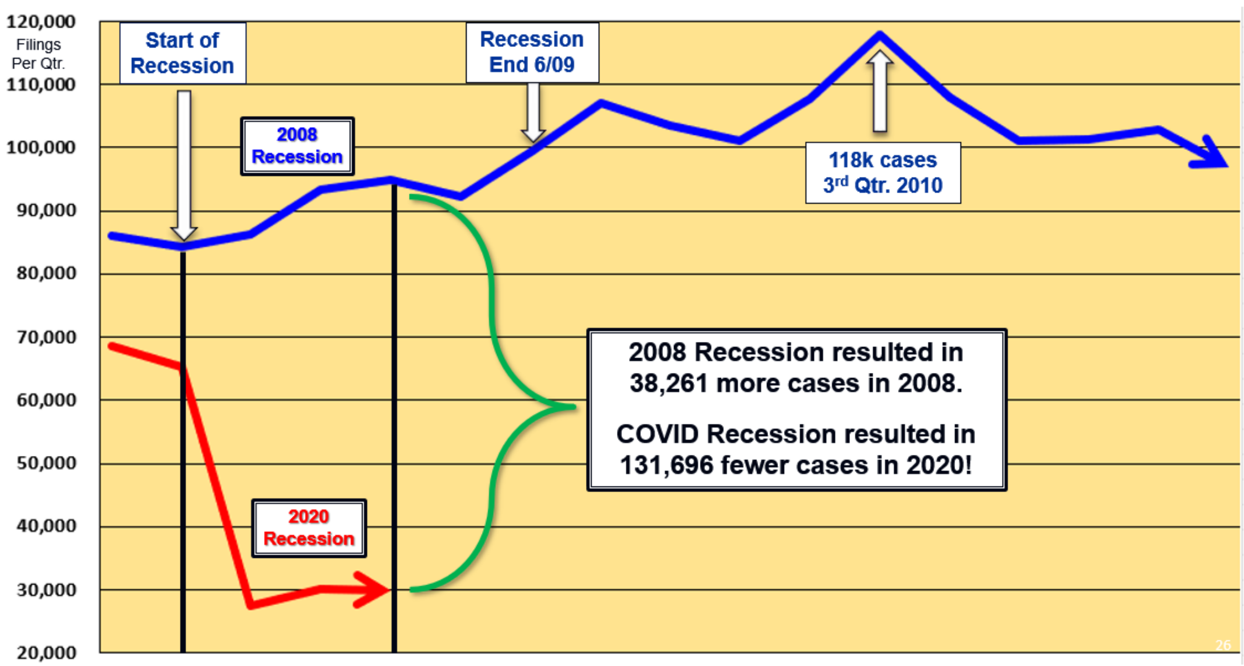
Coming off the longest economic expansion in U.S. history (128 months), Chapter 13 filings were at their lowest levels since 2007 (avg. of 73,000 cases per quarter). With the country entering a sudden and unanticipated recession in February of 2020, we expected to see Chapter 13 filing rates increase as we did with the 2008 Recession. However, the exact opposite occurred with case filings dropping to historic lows that averaged 29,000 cases per quarter during the last 3 quarters of 2020.



The chart above compares Chapter 13 filing rates for both recessions. The 2008 Recession officially started in December 2007 and ended 18 months later in June 2009. In 2008, case filings increased by 38,261 compared to 2007. However, the effects of the 2008 Recession on Chapter 13 filings was not fully realized until more than a year after its official end, when filings peaked in the 3rd Qtr. of 2010 with almost 118,000 cases.[1] This resulted in a total of 434,728 cases being filed in 2010. Thereafter, Chapter 13 filings commenced a continual, 10-year decline to the current state with 152,828 cases being filed in 2020 (see chart below).

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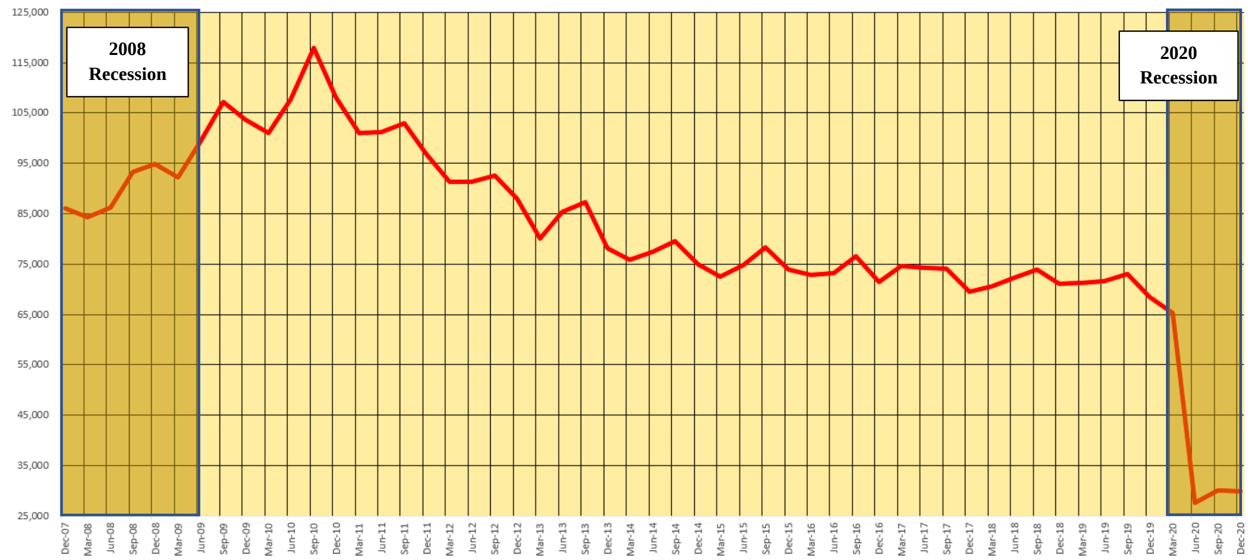
[1] This may be the result of two factors. First, debtors often wait to experience a bankruptcy trigger (e.g., a foreclosure, repossession, or garnishment) before filing for bankruptcy, and these can take some months to occur after loss of employment. Second, debtors may wait to file under Chapter 13 until they have procured new employment to fund a Chapter 13 plan.

Quarterly Chapter 13 Filings: Dec. 2007 – Dec. 2020



In contrast, the 2020 Recession resulted in a decline of 131,696 fewer cases compared to 2019. Why would filings drop during a recession? The explanation is the many differences between the 2008 and the 2020 Recessions, with the most obvious being the cause. The 2008 Recession resulted from a real estate bubble coupled with other economic infirmities, while the 2020 Recession was solely the result of a "black swan" pandemic – meaning that but for COVID-19, the country's economic fundamentals were very strong and would have remained strong for the foreseeable future. Further, the government responded more swiftly to the 2020 Recession by enacting forbearance and stimulus programs and even amendments to the Bankruptcy Code to mitigate the impact on consumers and businesses. Consumers likewise responded quickly by cutting spending, reducing credit card debt, and saving money.[2] Also, home values remained stable (and even increased), which provided consumers with ready access to home equity and an incentive to maintain mortgage payments (factors that were absent in the 2008 Recession). Finally, Pres. Biden extended the foreclosure moratorium until the end of June, and it is not yet fully known what impact the recent stimulus will have on a consumer's ability to catch up on mortgage payments and other debts. In other words, consumers in 2020 have not yet fully experienced the financial pressures and consequences that resulted in so many filings from the 2008 Recession.

For these reasons, the 2008 Recession does not provide a useful model for predicting Chapter 13 filings resulting from the 2020 Recession. Nonetheless, even without the 2020 Recession, we should have seen approximately 131,000 more Chapter 13 cases filed in 2020. It thus seems that

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[2] Since the start of the 2020 Recession, personal savings increased by \$2.73 trillion from an average of \$1.2 trillion to \$3.93 trillion as of January 2021 (see *https://fred.stlouisfed.org/series/PMSAVE*).

the decline in filings during the pandemic is not due to a decreased need for bankruptcy relief but more due to the need for such relief being delayed because of forbearance and stimulus programs.

Therefore, the following are my best estimates of how Chapter 13 filings will unfold in the coming months.

1. Chapter 13 filings will not materially increase until the termination of the foreclosure moratorium (presently June 30, 2021).

2. However, there is an estimated $600 billion in outstanding mortgage payments resulting from forbearance programs (forbearance is not forgiveness). These amounts must be paid sooner or later, and many consumers will likely find a Chapter 13 repayment plan as the best means of doing so.

3. Unemployment has dropped from a high of 14.8% in April 2020 to 6.2% in February 2021. This is considered to be on the higher end of average, but it is nowhere near the 9-10% unemployment rate the country experienced for 29 months during the 2008 Recession.[3] As the unemployment rate (hopefully) continues to decline, expect more folks to have regular income with which to fund a Chapter 13 plan to reorganize debt incurred during their time of unemployment.

4. Nonetheless, it is suggested that for the reasons listed above (increased savings, reduced spending, and access to home equity), many consumers are exiting their mortgage forbearance with the ability to quickly cure the missed payments. It is therefore estimated that the 2020 Recession will result in approximately 575,000 homes going into foreclosure, which is just above the historic average of 1.15% of mortgages in foreclosure.[4]

5. Given the forbearance and stimulus programs, an increase in Chapter 13 filings may not materialize until the summer or fall of 2021. Then, if the trend follows past recessions, we may see a continual increase in filings through the middle to end of 2022.

In short, the past is not prologue in predicting how the 2020 Recession will impact bankruptcy filings going forward. It seems safe to assume that we will make up the 130,000 in delayed filings from 2020, and that we will see another 200,000 to 500,000 cases over the next 24 months resulting from foreclosures or other pandemic-caused difficulties. But as 2020 has driven home, the future is uncertain, and all one can do is plan for the worst and hope for the best.

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[3] The unemployment rate remained above 9% from April 2009 through September 2011, with a peak of 10% in October 2009 (*see* https://fred.stlouisfed.org/series/UNRATE).

[4] See https://dsnews.com/daily-dose/02-08-2021/foreclosures-2021-what-to-expect-in-the-months-ahead