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When Churches Reorganize

by

Pamela Foohey*

INTRODUCTION

Every year approximately ninety religious organizations¹ seek to reorganize under chapter 11 of the Bankruptcy Code.² In the first part of my work studying religious organizations' financial distress,³ I reviewed all of the chapter 11 cases filed by these debtors between 2006 and 2011—approximately 500 cases.⁴ The vast majority of these cases involved small Christian congregations⁵ struggling to hold onto their buildings after falling behind on mortgage payments.⁶ In about three-quarters of the cases, the debtors claimed they held equity cushions in their real property,⁷ indicating that there may be value to be preserved through the reorganization process.⁸ Based on the doc-

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¹I use terms such as "religious organization," "religious institution," and "faith-based organization" interchangeably and to mean any organization whose operations are motivated in a meaningful way by faith-based beliefs and principles.

²Pamela Foohey, *Bankrupting the Faith*, 78 MO. L. REV. 719, 732-33 n.83 (2013) (detailing the number of religious organizations that filed under chapter 11 per year between 2006 and 2011); Ken Walker, *Churches: The New Risky Bet*, CHRISTIANITY TODAY, Nov. 2013, at 24 (stating that approximately 90 religious congregations filed under chapter 11 in 2012); Pamela Foohey, *Are Churches Slowly Recovering?*, CREDIT SLIPS (Jan. 25, 2014, 9:25 a.m.), <http://www.creditslips.org/creditslips/2014/01/are-churches-slowly-recovering.html> (finding that religious organizations filed 107 chapter 11 cases in 2012 and 89 chapter 11 cases in 2013).

³Financial distress occurs when an organization has difficulty paying its financial obligations to its creditors as they become due. See Charles J. Mooney, Jr., *A Normative Theory of Bankruptcy Law: Bankruptcy As (Is) Civil Procedure*, 61 WASH & LEE L. REV. 931, 951 n.91 (2004).

⁴See generally Foohey, *Bankrupting the Faith*, *supra* note 2.

⁵See *id.* at 738 tbl.3; *infra* notes 55-56 and accompanying text. I use the term "congregation" to mean a group of individuals (the congregants) who meet together regularly for religious worship.

⁶Foohey, *Bankrupting the Faith*, *supra* note 2, at 725-26.

⁷*Id.* at 741 n.125. An equity cushion is the difference between the value of the property and the value of all liens recorded against it. See David Gray Carlson, *Postpetition Interest Under the Bankruptcy Code*, 43 U. MIAMI L. REV. 577, 593 n.62 (1989).

⁸At a minimum, the "value" that may be preserved through reorganization is this equity cushion. See Elizabeth Warren and Jay Lawrence Westbrook, *The Success of Chapter 11: A Challenge to Critics*, 107

uments submitted in connection with their cases, I ultimately concluded that chapter 11 has the potential to offer an effective solution to many religious organizations' financial problems.⁹

In analyzing the filing data, I noticed that one leader typically oversaw the organization. This leader's commitment to stabilizing the business aspects of the organization and revitalizing the congregation usually was crucial to the debtor's survival.¹⁰ The presence of this key leader offered an opportunity to supplement the quantitative filing data with more in-depth qualitative data about the organizations and their cases. Thus, I conducted extensive interviews with the leaders of religious organizations that filed under chapter 11 and the bankruptcy attorneys who represented them.

Relying on these interviews, this Article expands upon my prior consideration of faith-based institutions' chapter 11 cases and, in doing so, makes three main contributions. First, I identify a subset of organizations that seemed more likely to turn to bankruptcy: small congregationalist and non-denominational churches, often with predominately African-American membership. I also pinpoint salient questions about these churches' access to credit and use of bankruptcy for future study.

Second, given that religious organizations continue to file under chapter 11 in not insignificant numbers, I highlight practical considerations for the attorneys, judges, and parties who will be involved in future cases filed by faith-based institutions. Finally, I track the post-bankruptcy outcomes of the religious organizations represented by the interviewed attorneys. A sizable majority of these debtors remained operating either in their original building or in a new location months after the closing of their bankruptcy cases. The chapter 11 process thus appeared to have offered a useful way to deal with the organizations' financial distress. These outcomes provide evidence of the effectiveness of chapter 11 that are important to ongoing debates about business bankruptcy policy.

I. RESEARCHING CHAPTER 11 RELIGIOUS ORGANIZATION CASES

My empirical inquiry into financially distressed religious organizations began with a study of the universe of chapter 11 cases filed nationwide by faith-

MICH. L. REV. 603, 625 (2009) (noting that "[a] reorganization is also thought to produce substantial positive externalities").

⁹Foohy, *Bankrupting the Faith*, *supra* note 2, at 767-71.

¹⁰*Id.* at 771-72. The religious organizations' cases thereby have hallmarks of two purposes of reorganization as applied to small businesses: preserving going-concern value by keeping businesses intact or allowing owner-operators to remain with their current business entities. *See id.* at 771 (summarizing these two models of reorganization). For further analysis of what this straddling of the two purposes means for assessing religious organizations' cases and for bankruptcy policy, *see id.* at 772-74.

based institutions during the six-year period from January 1, 2006, to December 31, 2011. I chose this timeframe for two reasons. First, I wanted to analyze cases filed after the substantial overhaul of the Bankruptcy Code brought about by the Bankruptcy Abuse and Consumer Protection Act of 2005 (BAPCA), which took effect on October 17, 2005.¹¹ Second, I chose the ending date of December 31, 2011, in order to assess the success rate of the cases studied based on the hypothesis that only a small minority of these cases would remain pending at the time I analyzed the dataset in December 2012.¹²

Using filings available via the Public Access to Court Electronic Records (PACER) service, I identified 497 chapter 11 cases filed by 454 unique religious organizations.¹³ In creating the dataset, I searched filings from bankruptcy courts located in the fifty United States and the District of Columbia.¹⁴ I removed from the study cases involving debtors that duplicate services provided in the private market, such as senior living communities, YMCAs, and hospitals.¹⁵ I also eliminated cases filed by the Catholic dioceses and related entities because these cases more closely resemble mass tort cases, where the focus is on handling widespread litigation.¹⁶

To confirm and augment the quantitative data from court filings, I later interviewed leaders of these religious organizations and their attorneys, focusing on a subset of debtors that also would allow me to explore how social networks may influence religious organizations' bankruptcy filings.¹⁷ Specifi-

¹¹Pub. L. No. 109-8, 199 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

¹²See Foohey, *Bankrupting the Faith*, *supra* note 2, at 745 (noting that 26 cases (5.2%) in the dataset remained pending as of the end of November 2012).

¹³For a detailed description of the methodology used to assemble the dataset, see *id.* at 730-32.

¹⁴*Id.* at 730.

¹⁵*Id.* at 731-32.

¹⁶See Jonathan C. Lipson, *When Churches Fail: The Diocesan Debtor Dilemmas*, 79 S. CAL. L. REV. 363, 363-65 (2005) (analogizing the diocese cases to mass tort bankruptcy cases).

¹⁷Scholars have relied on theories of social networking and context to explain patterns of consumer bankruptcy filing over time. Several empirical studies suggest that consumer bankruptcy filing rates increase in a given year if filing rates in the same geographic location rose in the prior year, which sometimes is referred to as social spillover. See, e.g., Astrid Dick, Andreas Lehnert, & Giorgio Topa, *Social Spillovers in Personal Bankruptcies* 1 (New York Federal Reserve, Working Paper, June 2008), available at http://ny.fedeconomists.org/topa/DLT_062808.pdf (studying the extent of social spillover following changes in state law making it easier to file and finding some evidence of local spillover); David B. Gross & Nicholas S. Souleles, *An Empirical Analysis of Personal Bankruptcy and Delinquency*, 15 REV. OF FIN. STUDIES 319, 339-40 (2002) (finding that the "probability that someone files for bankruptcy increases with the number of people in her state who filed in the recent past"); Scott Fay, Erik Hurst, & Michelle J. White, *The Household Bankruptcy Decision*, 92 AM. ECON. REV. 706, 716 (2002) (predicting that if a district experiences an increase in filings in one year, it will experience a greater increase in filings the next year). These studies posit that direct information sharing among neighbors and indirect observation of others in a neighborhood using bankruptcy may explain the increase in filings over time. See Dick, Lehnert, & Topa, *supra* at 1. I hypothesized that the same social mechanisms may be at work in religious organizations' filing.

cally, in analyzing the dataset, I found that the religious organization cases clustered in certain geographic areas. As shown in Table 1 below, a slight majority (51%) of the cases were filed in only ten of the ninety federal districts.¹⁸

Table 1: Ten Districts With Greatest Percentage of Religious Organization Filings During Study Timeframe

District	Religious Organization Cases		All Chapter 11 Cases		Congregations	
	N	%	N	%	N	%
N.D. Georgia	53	10.7	1,791	2.9	5,830	1.7
M.D. Florida	38	7.7	2,879	4.7	9,093	2.6
W.D. Tennessee	27	5.4	323	0.5	2,861	0.8
C.D. California	24	4.8	4,791	7.8	10,750	3.1
N.D. Texas	22	4.4	1,868	3.1	8,796	2.6
S.D. Texas	21	4.2	1,684	2.8	7,438	2.2
D. Maryland	18	3.6	1,210	2.0	5,336	1.6
N.D. Illinois	18	3.6	1,504	2.5	6,215	1.8
E.D. North Carolina	17	3.4	1,689	2.8	6,065	1.8
S.D. Florida	16	3.2	697	1.1	3,977	1.2
Total	254	51.1	18,436	30.1	66,361	19.3

The concentration of religious organization filings in these districts is not simply a reflection of where the majority of all chapter 11 cases are filed.¹⁹ Nor do these areas of the country have a higher concentration of religious organizations than other regions across the United States.²⁰ Given the lack

¹⁸Where applicable, I report “Ns,” the number of cases or debtors in the analysis. In Table 1, N for Religious Organization Cases Filed is 497, and N for All Chapter 11 Cases is 61,260, and N for Congregations is 344,894. See *supra* note 5 for the definition of congregations.

¹⁹Foohy, *Bankrupting the Faith*, *supra* note 2, at 734-35. In particular, 48% of all chapter 11 cases filed during the study’s timeframe came from 10 districts. Four of these districts are among the districts from which the majority of religious organizations’ cases originated. *Id.* at 734 n.90. The distribution of filings also is not the same as where chapter 7 or chapter 13 cases are filed across the country. See *Bankruptcy Statistics*, UNITED STATES COURTS, <http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx> (last visited Feb. 5, 2014).

²⁰Because many have few members and lack permanent locations, it is difficult to determine the precise number and regional distribution of religious organizations. The Association of Statisticians of American Religious Bodies’ 2010 U.S. Religious Census: Religious Congregations & Membership Study provides the most comprehensive data, including reporting the number of congregations per state county. See *Listings and Rankings (All Years)*, 2010 U.S. RELIGION CENSUS: RELIGIOUS CONGREGATIONS & MEMBERSHIP STUDY, <http://www.rcms2010.org/compare.php> (last visited Feb. 5, 2014). I use this data to compare the distributions of congregations across the United States and religious organization chapter 11 filings. Over-

of an easy explanation for the clumping, I theorized that religious organizations' leaders may speak with other pastors, friends, and relatives (that is, their social networks) in deciding to address their churches' financial distress with bankruptcy. Focusing on religious organizations that filed in these ten districts offered the benefit of gathering data to answer the question of the effect of social networks in future work.²¹

To solicit interviews, I mailed letters to both the attorneys and the leaders of these religious organization debtors, detailing my study and requesting an interview.²² I asked to interview them about the chapter 11 cases specifically and the religious organizations generally. One week later, I followed up on my letters with a telephone call.²³ I conducted telephonic interviews during spring 2013 based on scripted, open-ended questions.²⁴ Participants were not offered any compensation.²⁵

A. ATTORNEYS

Out of the 254 chapter 11 cases filed in these ten districts, the debtors were represented by 168 different debtor's attorneys. From these attorneys, I randomly selected ninety (54%) to send letters.²⁶ However, I was not able

all, congregations tend to be spread more evenly across the United States, with no more than 3% of total nationwide congregations located in any one federal district. *See id.*

²¹The effect of leaders calling upon their social networks on the geographic concentration of religious organizations' chapter 11 filings is one of the subjects of my next article. For now, I posit this explanation for the concentration. *See also infra* Part II.A.

²²The mailing addresses came from the debtors' bankruptcy court filings. I verified and updated the addresses via internet searches of the debtors' operating names and the names of the debtors' leaders and attorneys as disclosed on their chapter 11 petitions.

²³The phone numbers of the debtors and attorneys generally came from the debtors' bankruptcy court filings. I verified and updated the phone numbers via internet searches.

²⁴As with other studies based on semi-structured interviews, I occasionally asked questions out of order and asked follow-up questions. *See, e.g.,* Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 NYU L. REV. 515, 526-27 (2013) (describing methodology for a study assessing the earned income tax credit program based on interviews of program recipients); Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L. J. 501, 512-13 (1993) (interviewing bankruptcy attorneys and trustees "using non-directive, open-ended questions, not always phrased the same way or asked in the same order"). One interview with a leader was conducted in March 2014. All other interviews took place between April and July of 2013. Each of the respondents consented to my audio recording of the interview. I transcribed and coded all of the interviews myself. To preserve interviewees' anonymity, I omit identifying details. Instead, I identify each interview subject with a descriptive title such as "Central California Attorney One" or "Central California Leader One." Interview scripts and transcriptions are on file with the author.

²⁵In addition, prior to soliciting interviews, I obtained approval of the interview and data retention procedures from the University of Illinois's Institutional Review Board.

²⁶Because of the disparity in the number of attorneys who represented debtors in each district during the study timeframe, I did not sample equally from the districts. Rather, I randomly selected an average of 9 attorneys from each district. This random selection technique ultimately yielded a regionally diverse pool of interviewees.

to locate seven of these attorneys.²⁷ Of those remaining, I interviewed thirty-five attorneys, representing a response rate of 42%. By district, six of the attorneys practiced in the Central District of California, six practiced in the Middle District of Florida, two practiced in the Southern District of Texas, and three practiced in each of the other districts. In the aggregate, these attorneys handled a total of fifty-eight religious organization cases filed during the six-year study timeframe and an additional twelve religious organization cases filed outside the study's timeframe.

The attorneys concentrated their practices in the area of bankruptcy law, and mainly represented debtors rather than creditors. Some predominately represented individuals with consumer debts, while others primarily represented small businesses and individuals with business debts. The diversity of the attorneys and of their religious organization clients suggests that I interviewed a representative sample of attorneys both from the ten districts in which they practiced and from the overall population of attorneys who have represented religious organizations in chapter 11. Nonetheless, in considering the results of the interviews, it is important to remain cognizant of the possibility that I reached a non-representative sample of attorneys.

B. LEADERS

The leaders of these religious organizations proved much more difficult to reach. Of the 229 separate organizations that filed in the ten districts with the highest concentrations of cases during the study timeframe, three debtors were led by the same individual, leaving 226 individual leaders as potential interview candidates.²⁸ I successfully contacted ninety-three (41%) of the leaders.²⁹ Ten agreed to speak with me, for a response rate of 11%.³⁰

Of the ten leaders interviewed, three were affiliated with religious organi-

²⁷These attorneys seemingly either had left law practice or moved to government or in-house positions. Regardless, the letters I sent them were returned as undeliverable and I could not find telephone numbers for them, rendering them unreachable.

²⁸All three of these leaders opened another church with a different incorporation and operating name after the chapter 11 case of their previous religious organization ended. Though these three leaders are the same people (and thus could speak about both churches), the religious organizations themselves are unique debtor entities.

²⁹I was unable to contact the other 133 leaders because their organizations' phones were disconnected and, to the extent that the letters were not returned as undeliverable, they did not respond to the mailed letter on their own initiative.

³⁰Several factors may contribute to this very low response rate, including difficulties in reaching organizations that employ leaders on a part-time basis, a specific reluctance of leaders to discuss bankruptcy given that most religious writings condemn bankruptcy, and a more general reluctance of leaders to discuss their organizations' financial situations with an outsider. See Todd J. Zwiyicki, *Bankruptcy Law as Social Legislation*, 5 TEX. REV. LAW & POL. 393, 398-99, n.25 (2001) (noting that repaying debt is a tenant of most religions), Robert Cornwall, *Part-Time Pastor, Full-Time Church*, by Robert LaRochelle, THE CHRISTIAN CENTURY (March 28, 2011), <http://www.christiancentury.org/reviews/2011-03/part-time-pastor-full-time-church-robert-larochelle> (last visited Feb. 5, 2014) (noting that a majority of congregations in the

zations located in the Central District of California, three were from organizations located in the Middle District of Florida, and another two leaders were from organizations in the Western District of Tennessee. The remaining two leaders were affiliated with organizations in the Northern District of Georgia and the Northern District of Illinois.

Reflecting the general breakdown of religious organization debtors' affiliations overall, all ten leaders came from Christian congregations, most of which were non-denominational or congregationalist.³¹ The membership of nine of the ten congregations was predominately African American.³² As detailed in the next section, the attorneys I interviewed noted that a disproportionate percentage of religious organizations that contacted them regarding bankruptcy were Black non-denominational or congregationalist Christian churches.³³ Thus, the background of the ten leaders I interviewed seems consistent with the general makeup of religious institutions that file under chapter 11. Given this, I have relied on these interviews to augment the attorneys' observations about representing religious organizations, though in light of the response rate, I remain cognizant that the leaders interviewed may not be representative of religious organization debtors and leaders generally.

II. THE CHURCHES BEHIND THE FILINGS

The driving force behind the chapter 11 filings of the religious organizations studied was to protect the organization's real property from foreclosure, thereby saving money that congregants had invested in buildings and the congregations themselves.³⁴ The underlying financial problems that caused the organizations to become delinquent on their mortgages generally related to the effects of the Great Recession or management missteps.³⁵ In addition to confirming these two main causes of financial distress, my interviews with

United States have fewer than 100 members and cannot afford to employ full-time pastors or similar leaders).

³¹See Foohey, *Bankrupting the Faith*, *supra* note 2, at 737 tbl.2.

³²One leader did not discuss the racial makeup of the congregation, though an internet search reveals that the congregation is predominately African American based on recent pictures of church services. Assuming this congregation is predominately African American, all of the interviewed leaders came from Black Churches. "Black Church" refers to predominately African American congregations and includes historically African American congregations and churches with predominately African American membership from denominations generally associated with predominately white membership. See C. ERIC LINCOLN & LAWRENCE H. MAMIYA, *THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE* 1 (1990).

³³See *infra* Part II.A.

³⁴More than 75% of debtors identified concerns about real property as motivating their filings. Foohey, *Bankrupting the Faith*, *supra* note 2, at 756; see also *id.* at 767-70 (discussing how reorganization preserved economic value and established communities).

³⁵*Id.* at 758-67.

religious organizations' leaders and their bankruptcy attorneys highlighted three related characteristics of these organizations that may have contributed to their susceptibility to financial distress of a magnitude that led them to file under chapter 11.

A. LACK OF AFFILIATION WITH PARTICULAR LARGER DENOMINATIONS

A specific religious organization's tendency to consider filing for bankruptcy may relate to its denomination or lack of affiliation. Nondenominational churches and certain Christian denominations were overrepresented among the approximately 500 religious organizations that filed during the study timeframe. A large majority of the debtors with affiliations were associated with congregationalist denominations,³⁶ such as Pentecostal churches and those of several Baptist sects.³⁷ Similar to nondenominational churches, congregationalist churches typically are not subject to an overarching denominational governing structure, particularly one to which they can turn for financial assistance.³⁸ For nondenominational and congregationalist churches left to address their financial problems alone, bankruptcy may have represented their last remaining option.

The bankruptcy attorneys I interviewed thought that their religious organization clients' effective lack of affiliation was a significant factor in leading these clients to turn to chapter 11. Table 2 summarizes the affiliations of the interviewed attorneys' clients that filed during the study timeframe.³⁹

³⁶*Id.* at 737.

³⁷The Pentecostal movement emphasizes lay control through the authority of the founding pastor. See Joel Robbins, *The Globalization of Pentecostal and Charismatic Christianity*, 33 ANN. REV. OF ANTHROPOLOGY 117, 134 (2004). Though an individual Baptist church may belong to a convention, Baptist sects are "loosely knit," effectively rendering each church autonomous. LINCON & MAMIYA, *supra* note 32, at 43-44.

³⁸Foohy, *Bankrupting the Faith*, *supra* note 2, at 737.

³⁹Interviewed attorneys represented a total of 58 of the 254 debtors that filed in the ten districts with the greatest percentages of religious organization filings during the study timeframe. See *supra* Part I.A. Table 2 combines certain Christian denominations to protect the identity of the interviewed attorneys because only one or two churches affiliated with various denominations filed during the study timeframe. The "other religions" category includes all non-Christian debtors, again combined to protect attorneys' identities.

Table 2: Religious Affiliation of Attorneys' Clients That Filed During Study Timeframe

	N	%
Nondenominational Christian	26	44.8
Baptist	16	27.6
Church of God in Christ	5	8.6
Christian - Other Denominations	4	6.9
Other Religions	3	5.2
Apostolic	2	3.4
Christian - School	2	3.4
Total	58	100.0

Adding together nondenominational Christian churches, churches from various Baptist branches, and Apostolic and Church of God in Christ churches, both of which are part of the Pentecostal movement,⁴⁰ 85% of the attorneys' clients were not part of a larger overarching organization that typically is equipped (or expected) to provide financial support as needed. Likewise, some of the attorneys who represented other subsets of religious institution debtors, such as Jewish Chabads, described a comparable governance structure in which the debtor, though part of a specific movement, could not look to other affiliated organizations for financial assistance.⁴¹

Attorneys viewed the lack of or lax affiliation as significant not only from the standpoint of financial assistance, but also because the autonomy given to nondenominational and congregational churches often resulted in ineffective internal governance. As one attorney noted, "churches that are more closely tied to a larger denominational structure are more likely to be subjected to greater oversight."⁴² A Lutheran church debtor "seemed to be much more of a corporate operation with a functioning board."⁴³ Similarly, one attorney viewed the decision making in Presbyterian churches as different from the "loosely functioning" boards of more autonomous churches.⁴⁴ Indeed, the greatest risk of succumbing to financial distress appeared to exist in nonde-

⁴⁰See 3 DAVID E. BERNARD, *A HISTORY OF CHRISTIAN DOCTRINE: THE TWENTIETH CENTURY A.D. 1900-2000*, at 358-59 (1999) (listing Apostolic and Church of God in Christ as Pentecostal churches).

⁴¹See Interview with S. Fla. Attorney Three (April 26, 2013) (stating that "Chabads work different[ly] than normal synagogues" and noting that a chabad "basically need[s] a couple [of] big donors to support [it]"); Interview with S. Fla. Attorney One, at 2-4 (April 25, 2013) (discussing chabads). The Chabad-Lubavitch movement is worldwide, but each house is organized around one rabbi. See *About Chabad-Lubavitch*, http://www.chabad.org/library/article_cdo/aid/36226/jewish/About-Chabad-Lubavitch.htm (last visited Feb. 5, 2014).

⁴²Interview with N. Ill. Attorney One, at 2 (April 24, 2013).

⁴³Interview with C. Cal. Attorney One, at 4 (April 26, 2013).

⁴⁴Interview with S. Tex. Attorney Two, at 3-4 (June 17, 2013).

nominal and congregationalist churches that also vested all authority in one leader, usually the pastor (and sometimes his or her family). These churches, attorneys observed, were “most likely to run into trouble.”⁴⁵

Moreover, approximately one third of the attorneys who represented Christian churches mentioned another demographic skew to their religious organization clients. The churches they represented were mainly Black Churches.⁴⁶ Some of these attorneys had only represented Black Churches,⁴⁷ and some of the attorneys hypothesized that these churches approached them for representation because they were African American themselves.⁴⁸

This racial demographic skew bears additional study. Though Black Churches disproportionately may be comprised of small congregationalist and nondenominational churches, they still may be filing under chapter 11 more often than they appear in these subsets of religious organizations. Further investigating why Black Churches turn to bankruptcy may expose variations in the lending market, both in terms of the secured lenders’ willingness to fund Black Churches’ building purchases and their willingness to negotiate modifications of the loans when the churches experience difficulty remaining current on their obligations.⁴⁹ Thus, banks and other lenders may influence the demographic skew of religious organization debtors. Further study also may reveal that Black Churches learn about chapter 11 from their social networks such that they are more likely to use the bankruptcy system, likewise influencing the demographic skew of religious organization debtors.⁵⁰

Finally, specific to these African American congregations, attorneys highlighted a consistent dynamic that further impacted the churches’ ability to withstand financial distress. The organizations’ boards yielded control of the

⁴⁵Interview with N. Ill. Attorney One, *supra* note 42, at 2; *see also* Interview with W. Tenn. Attorney Three, at 2 (May 15, 2013) (“In each of these cases, the church was dominated by one family of the minister.”); Interview with N. Ga. Attorney One, at 3 (May 10, 2013) (“[T]his [church] was family owned and family run.”); Interview with E. N.C. Attorney One, at 2 (May 3, 2013) (“This was basically a one guy show.”).

⁴⁶Of the thirty-two attorneys who represented Christian debtors, ten (32%) mentioned demographics. *See supra* note 32 for the definition of “Black Church.”

⁴⁷*See, e.g.*, Interview with S. Tex. Attorney Two, *supra* note 44, at 2 (“Without exception, [my and my partners’ clients] are all black churches. All of them. And they’re all congregationalist churches.”); Interview with E. N.C. Attorney Three, at 2 (May 15, 2013) (“All of these [churches] . . . have black congregations.”); Interview with C. Cal. Attorney Three, at 5 (April 22, 2013) (“I deal with black churches.”).

⁴⁸*See, e.g.*, Interview with N. Ga. Attorney Three, at 1 (June 20, 2013) (“[There are not a lot of African American corporate bankruptcy lawyers in the nation.”); Interview with Md. Attorney One, at 1 (May 6, 2013) (“[T]here’s not a lot of African American attorneys doing chapter 11.”); Interview with S. Tex. Attorney One, at 1 (May 2, 2013) (“There are very few lawyers, African American lawyers in [my] area.”).

⁴⁹*See infra* Part III.B for further discussion of lenders’ pre-bankruptcy actions.

⁵⁰*See supra* notes 17-21 and accompanying text.

church to one person, who became the “driving force”⁵¹ behind the congregation and who “called the shots.”⁵² One attorney commented, “the minister is a king, and his wife is the queen . . . without exception in every single black church I’ve dealt with.”⁵³ Attorneys thought that the lack of accountability this vesting of power sanctioned invited mismanagement that could put undue strain on church finances.⁵⁴

B. SIZE OF THE CONGREGATION

A religious organization’s size also may influence its propensity to seek bankruptcy protection. The religious institutions that filed during the study timeframe were overwhelmingly small based on their assets and debts. They owned a building worth a median of \$1.2 million and personal property valued at a median of approximately \$50,000.⁵⁵ Three-quarters of the debtors qualified as small businesses as defined by the Code.⁵⁶ The amount of the organizations’ assets and debts likely reflected a smaller membership and revenue base. Consequently, small churches may be more vulnerable to economic fluctuations, poor business decisions, and membership attrition.

The term “small church” encompasses two subcategories: “family run” congregations of fifty or fewer members and “pastoral” congregations of fifty to 150 members.⁵⁷ Both subcategories of churches tend to be nondenominational or congregationalist. A family church’s leadership is “organized around one or two matriarchs or patriarchs who are often the heads of extended biological families in the church,”⁵⁸ which attorneys noted in describing some of their clients as “family owned and family run.”⁵⁹ The patriarch or matri-

⁵¹Interview with Md. Attorney One, *supra* note 48, at 2.

⁵²Interview with E. N.C. Attorney Three, *supra* note 47, at 3; *see also* LYLE E. SCHALLER, *THE SMALL CHURCH IS DIFFERENT* 29 (1982) (“Regardless of how long they have been in existence, black congregations frequently are strongly pastor-centered.”).

⁵³Interview with S. Tex. Attorney Two, *supra* note 44, at 2.

⁵⁴Interview with E. N.C. Attorney Three, *supra* note 47, at 3 (“[T]here wasn’t enough supervision over finances.”); Interview with N. Ill. Attorney Four, at 3 (May 14, 2013) (“Some of these pastors are living large . . .”); Interview with W. Tenn. Attorney Two, at 4 (May 1, 2013) (“Their biggest problem was just gross, gross mismanagement [related to the lead minister’s actions].”).

⁵⁵Foohy, *Bankrupting the Faith*, *supra* note 2, at 738 tbl.3.

⁵⁶*Id.* at 739 n.106. The Code provides that a small business debtor is a debtor with aggregate debts as of the petition date not exceeding \$2,343,300 (as of April 2010). 11 U.S.C. § 101(51D) (2012).

⁵⁷“Small churches” generally are defined by the number of congregants, but also may be defined by the number of pastors and number of buildings owned. *See* John M. Koessler, *The Dynamics of Small Church Ministry*, 3 *THE MASTER’S SEMINARY J.* 175, 176 n.2 (1992) (discussing varying definitions of a “small church”); ALICE MANN, *THE IN-BETWEEN CHURCH: NAVIGATING SIZE TRANSITIONS IN CONGREGATIONS* 77 (1998) (categorizing churches that have less than 100 members as family-sized and pastoral-sized).

⁵⁸MANN, *supra* note 57, at 77; *see also* STEVEN E. BURT AND HAZEL A. ROPER, *RAISING SMALL CHURCH ESTEEM* 23 (1992) (“Not only does the Family Church feel like family to its participants, in some instances, the church literally is family.”).

⁵⁹Interview with N. Ga. Attorney One, *supra* note 45, at 3; *see supra* note 45.

arch typically controls the key operations of the church,⁶⁰ though independent congregations or congregations with loose affiliations tend to be “very pastor-centered, with the laity in a supportive role to that strong and magnetic ministerial personality.”⁶¹ Likewise, in a pastoral church, the pastor is the central figure.⁶² This type of church is the “one guy show” attorneys sometimes represented.⁶³

Scholars of congregational systems have noted that a small church’s size limits its finances, which in turn may hinder its sustainability and growth,⁶⁴ and which makes the cost of the building the church’s largest expense.⁶⁵ Attorneys likewise linked the size of the religious organization to serious financial instability.⁶⁶ They thought that small churches were impacted more severely by economic downturns,⁶⁷ and were more likely to have difficulty finding and negotiating competitively priced loans.⁶⁸

My interviews with leaders support the apparent denominational, demographic, and size skew of the religious organization debtors. A majority of the leaders interviewed were affiliated with congregationalist or nondenominational churches, and nine of the ten leaders were from predominately Afri-

⁶⁰See MANN, *supra* note 57, at 77 (noting that “the pastor functions in a chaplain role, leading worship and giving pastoral care”); Roy M. Oswald, *How to Minister Effectively in Family, Pastoral, Program, and Corporate-Sized Churches*, 17 ACTION INFORMATION 5, 5 (1991) (“It is the patriarchs and matriarchs who control the church’s leadership needs.”), available at http://enrichmentjournal.ag.org/200702/200702_000_various_size.cfm.

⁶¹SCHALLER, *supra* note 52, at 29.

⁶²MANN, *supra* note 57, at 77 (“The pastor is the central figure, holding together a small circle of leaders.”).

⁶³Interview with E. N.C. Attorney One, *supra* note 45, at 2. Small churches historically have been nondenominational or congregationalist; see W. CURRY MAVIS, *ADVANCING THE SMALLER LOCAL CHURCH* 11 (1957) (identifying one of small churches’ limitations as “a lack of denominational or community status”).

⁶⁴See LYLE SCHALLER, *THE SMALL MEMBERSHIP CHURCH* 100 (1994) (“Money, rather than ministry and mission, becomes the most influential factor in policy making.”); JACKSON W. CARROLL, *SMALL CHURCHES ARE BEAUTIFUL* 125 (1977) (“Churches with membership of less than two hundred persons are likely to have resources insufficient or barely adequate to maintain the institution and carry on a program.”).

⁶⁵See ANTHONY G. PAPPAS, *ENTERING THE WORLD OF THE SMALL CHURCH* 9 (2000) (describing the cost of the church building as “a threat”); LYLE SCHALLER, *44 WAYS TO INCREASE CHURCH ATTENDANCE* (1987) (listing real estate considerations as one of six main areas that church leaders need to consider); Dean B. McIntyre, *The Small Church Primer: Strengths, Weaknesses, Worship, and Music in the Small-Membership Church*, GBOD, <http://www.gbod.org/lead-your-church/general-resources/resource/the-small-church-primer-strengths-weaknesses-worship-and-music-in-the-small> (last visited Feb. 5, 2014) (describing how the purchase of an old building can lead a small church into serious financial problems).

⁶⁶Ten attorneys described their clients as either very small, small, or as having a membership of fewer than 200 congregants.

⁶⁷See Interview with E. N.C. Attorney Three, *supra* note 47, at 3; Interview with N. Tex. Attorney Two, at 4 (May 2, 2013).

⁶⁸Interview with N. Tex. Attorney Three, at 3 (May 13, 2013) (“[A] small church or small fledgling church or medium size church can’t get commercial business lending because they don’t have the proven track record, the cash flow . . .”).

can-American congregations.⁶⁹ With the exception of one, they each pastored a “small church,” with an active membership between 100 and 200 members at the time of the bankruptcy filing.⁷⁰

These leaders admitted that their congregations encountered difficulty paying the mortgage in the wake of the Great Recession and struggled with general mismanagement.⁷¹ Leaders further spoke of internal dynamics that they thought stalled the churches’ responses to their financial declines.⁷² They also identified trouble in obtaining loans as smaller organizations,⁷³ as well as their churches’ independence from overarching institutions as salient factors in difficulties they faced as leaders in resolving their churches’ financial problems.⁷⁴ In the case of one church affiliated with a more organized denomination, which theoretically could have intervened with financial assistance, the leader detailed how the church was required to pay dues to its parent organization every year, regardless of the church’s financial situation that year.⁷⁵ Overall, denomination and size (and possibly racial demographics), particularly when combined, may render certain subsets of

⁶⁹See *supra* Part I.B.

⁷⁰Two of the churches previously had memberships of between 400 and 500, but membership had declined significantly by the time the churches filed. One church had “faithful” membership of about 60, though approximately 200 people were on the membership roster. Interview with W. Tenn. Leader Two, at 3 (Mar. 17, 2014). Some leaders likewise described their churches as small. See, e.g., Interview with M. Fla. Leader Three, at 1 (May 14, 2013) (“We’re just a small congregation. . . . The oldest person in my church is the mother of my church”); Interview with C. Cal. Leader Two, at 1 (May 10, 2013) (“[I]t’s a small congregation.”); Interview with M. Fla. Leader Two, at 1 (May 3, 2013) (noting operational problems that accompanied the “small church”).

⁷¹See, e.g., Interview with C. Cal. Leader Two, *supra* note 70, at 1 (“[I]f the economic climate of a country is such that people are losing their jobs, and so forth, the church can’t function.”); Interview with M. Fla. Leader Two, *supra* note 70, at 1 (discussing how a previous pastor had mismanaged the church); Interview with C. Cal. Leader One, at 2 (Apr. 17, 2013) (detailing how previous management had created many of the church’s problems).

⁷²See Interview with W. Tenn. Leader Two, *supra* note 70, at 2 (“[W]hen you go through a crisis, information tends to travel, that is negative information. People tend to shun or reject. But then when they pretty much find out what’s going on . . . [they] find themselves coming back.”); Interview with M. Fla. Leader One, at 2 (Apr. 18, 2013) (commenting that the trustee board was slow to act “when it came time to turn things around”); Interview with W. Tenn. Leader One, at 2 (May 1, 2013) (describing how a church split was one of the main factors leading to the church filing for bankruptcy).

⁷³See Interview with M. Fla. Leader Three, *supra* note 70, at 3 (hypothesizing that banks thought of churches as risky small businesses); Interview with N. Ill. Leader One, at 3 (May 6, 2013) (describing the church’s mortgage lender as “totally heartless”); Interview with N. Ga. Leader One, at 2 (Apr. 17, 2013) (detailing how the church had a balloon note with “an interest rate that was floating and the bank at the time was not interested in giving us a lower rate”); see also Interview with S. Tex. Attorney One, *supra* note 48, at 3 (commenting that religious organizations encounter similar problems as consumers, such as the escalating interest rates of variable loans). Religious organization debtors’ chapter 11 filings likewise identified the effects of the Great Recession on their ability to find capital as one of the reasons they fell behind on mortgage payments. See Foohey, *Bankrupting the Faith*, *supra* note 2, at 758-62.

⁷⁴See Interview with C. Cal. Leader Two, *supra* note 70, at 1 (contrasting the Catholic Church’s “infrastructure” with less hierarchical Pentecostal assemblies).

⁷⁵Interview with C. Cal. Leader One, *supra* note 71, at 2-3.

religious organizations more susceptible to fluctuations in revenue and expenses that affect their ability to pay their debts, thereby causing them ultimately to turn to bankruptcy.⁷⁶

C. MANAGEMENT MISSTEPS

Though the Great Recession took its toll on religious organizations, as it did on small businesses generally,⁷⁷ the nature of religious organizations seemed to create additional and unique avenues for management failure. Like managers of for-profit businesses, leaders sometimes mismanaged the business aspects of the church, entering into unprofitable side ventures and misjudging cash flow versus expenses.⁷⁸ However, the leaders of many of the smaller congregations lacked business acumen, even more so than owners of small businesses. Consequently, these organizations' books and records often were in disarray, and their leaders generally were less sensitive to the business aspects of the churches, including not foreseeing and planning for the impact of the recession on the congregation's giving.⁷⁹

Even more unique to religious organizations, beloved pastors sometimes mishandled the churches' spiritual matters and made missteps in their personal lives that alienated their congregants.⁸⁰ When members lost faith in their churches' leaders, they reduced their contributions.⁸¹ Alternately, members simply left the congregation, likewise resulting in a reduction in cash flow.⁸² Considered together with the challenges of guiding a small congregation through financial problems, the unique issues of managing religious organizations may have made certain organizations even more susceptible to finding themselves in financial distress that eventually required them to turn to the bankruptcy system.

⁷⁶Denomination and size merely may correlate with religious organizations' chapter 11 filings. A more detailed study is necessary to assess whether size, denomination, and racial demographics are predictive of higher bankruptcy filing rates.

⁷⁷See Robert W. Fairlie, *Entrepreneurship, Economic Conditions, and the Great Recession*, 22 J. OF ECON. & MGMT. STRATEGY 207, 207 (2013) ("Business bankruptcy filings and closures increased sharply in the recent recession.").

⁷⁸Foohy, *Bankrupting the Faith*, *supra* note 2, at 762-67.

⁷⁹See, e.g., Interview with C. Cal. Attorney Six, at 4 (May 10, 2013) ("[T]heir books are in even worse shape than most businesses."); Interview with N. Ill. Attorney Three, at 6 (May 9, 2013) ("[M]any of these churches . . . are not particularly sophisticated with respect to finances"); Interview with M. Fla. Attorney Three, at 5 (May 8, 2013) (noting how a client's leaders' "lack of business acumen" proved frustrating); Interview with C. Cal. Attorney One, *supra* note 43, at 3 (describing how the church's leaders "overextended themselves in terms of their operating expenses . . .").

⁸⁰Foohy, *Bankrupting the Faith*, *supra* note 2, at 762-67.

⁸¹*Id.*

⁸²*Id.*; see also Interview with S. Tex. Attorney One, *supra* note 48, at 3 ("The neighborhood was in transition, and they lost membership. And then they had a number of members who were laid off."); Interview with M. Fla. Attorney One, at 3 (May 2, 2013) (noting that in the cases handled, the church either suffered a loss of membership or its members were dealing with their own financial troubles).

III. CHALLENGES IN REPRESENTING RELIGIOUS ORGANIZATIONS IN CHAPTER 11

The characteristics of many of the religious organizations that sought to reorganize likewise influenced the chapter 11 process, and presented bankruptcy attorneys with several stumbling blocks during their representations of religious organization debtors. In discussing these difficulties, attorneys highlighted practical considerations they thought other attorneys, judges, and parties involved in future cases may benefit from bearing in mind.

A. UNCLEAR GOVERNING STRUCTURE: WHO IS THE CLIENT?

Attorneys identified religious organizations' governing structure as the leading "special consideration" to take into account in representing a religious organization in chapter 11.⁸³ All of the attorneys' clients were overseen by a board, usually called the trustee board.⁸⁴ To file a chapter 11 petition, the organizations' articles of incorporation typically required this board to give written authorization.⁸⁵ However, some churches' bylaws gave authority to the "body" or laity, possibly requiring consensus among all members.⁸⁶ As an initial matter, this prompted questions about who had the ability to authorize a filing.⁸⁷

The main challenge, however, related to the board frequently granting significant control over the operations of the church to one pastor, who often also effectively controlled the board.⁸⁸ In these instances, attorneys' primary contact was usually this pastor.⁸⁹ The resulting mismatch between who at-

⁸³One open-ended question I asked attorneys was: "Are there any special considerations that must be thought through when representing religious organizations?"

⁸⁴State law provides that nonprofit corporations must be governed by boards. See ELIZABETH SCHMIDT, *NONPROFIT LAW: THE LIFE CYCLE OF A CHARITABLE ORGANIZATION* 47 (2011).

⁸⁵See, e.g., Interview with W. Tenn. Attorney Three, *supra* note 45, at 2 ("In order to satisfy the requirements of the Bankruptcy Code, I had to make sure that the board functioned appropriately."); Interview with Md. Attorney One, *supra* note 48, at 2 ("[O]nce [the church] get to the point of making a corporate resolution, you're basically dealing primarily with that lead person who signed the resolution.").

⁸⁶See Interview with W. Tenn. Attorney One, at 2 (May 2, 2013) (noting that where a church belonged to the "body" under its bylaws, the church had authorized the pastor to make all the decisions).

⁸⁷See Interview with N. Tex. Attorney Two, *supra* note 67, at 3 (noting that in one case, the secured creditor filed a motion questioning whether the church had secured proper authorization to file).

⁸⁸See, e.g., Interview with N. Ga. Attorney Two, at 2 (May 21, 2013) ("[A]ll of them have had [boards], some to a lesser extent than others."); Interview with Md. Attorney One, *supra* note 48, at 2 (comparing churches to "small business, sole proprietors . . . because there's usually one person that's the driving force behind [the church]"); Interview with N. Ga. Attorney One, *supra* note 45, at 3 (describing how the lead pastor controlled the board, which was comprised of family members); see also *supra* Part II.A.

⁸⁹In two other less common scenarios, the lead pastor or reverend was not the attorneys' primary contact. In the first scenario, the pastor had moved to a different congregation or the congregation essentially had ousted the pastor. The senior deacon or trustee board then was left in charge. See Interview with Md. Attorney Two, at 2 (May 7, 2013) (noting that two senior deacons were the attorney's primary contacts after the lead pastor had left the congregation). Second, the religious organization employed a

torneys interacted with and reported to, and who had the ability, at least on paper, to make decisions for the organization resulted in questions about who truly “was speaking with authority.”⁹⁰ Even if a church’s board members and congregants were deferential to their pastor, attorneys still struggled to make sure that everyone who needed to be involved was in “alignment” with the decisions that were being made.⁹¹

In this way, attorneys described religious organization chapter 11 cases as requiring “consensus building”⁹² and “acting almost as a referee,”⁹³ much more so than in small business cases. It took time to determine the pecking order of authority,⁹⁴ to get a “feel for what is going on” besides the pastor’s story,⁹⁵ and more generally to be sensitive to the different cultures that exist within religious organizations.⁹⁶ The “slippery” nature⁹⁷ of these organizations left attorneys feeling that they had more than one client,⁹⁸ and that an entire community was at stake.⁹⁹ Because of the community aspect of the representation, attorneys enjoyed being part of these cases, even if they had to expend time and energy navigating the governing structure and culture.¹⁰⁰ But they nonetheless focused on how crucial it is to be “smart” about interacting with the leader who comes to them, with the board members who may have the final say, and with the members whose input (monetary and otherwise) may be vital to saving the congregation.¹⁰¹

stricter governing structure whereby the head of the trustee board or the president of the congregation was the attorney’s main contact. *See* Interview with N. Ill. Attorney Six, at 4 (May 28, 2013) (describing interacting with the president of the congregation of a church affiliated with a more organized denomination).

⁹⁰Interview with E. N.C. Attorney One, *supra* note 45, at 2.

⁹¹Interview with E. N.C. Attorney Two, at 5 (May 13, 2013). *See also* Interview with N. Ill. Attorney Three, *supra* note 79, at 1 (describing how it was “difficult” to get in contact with all the people who ran the church); Interview with Md. Attorney Two, *supra* note 89, at 2 (noting that it took extra time to make sure that the governing body was “on the same page” as to what the church should do).

⁹²Interview with C. Cal. Attorney Two, at 2 (Apr. 18, 2013).

⁹³Interview with W. Tenn. Attorney One, *supra* note 86, at 4.

⁹⁴Interview with S. Tex. Attorney Two, *supra* note 44, at 3; *see also* Interview with N. Ill. Attorney One, *supra* note 42, at 6 (noting that answers to questions about who owns the church entity “are simpler for small businesses, and they can be very convoluted for churches. Who is the client, who has the authority, that sort of thing”).

⁹⁵Interview with C. Cal. Attorney Three, *supra* note 47, at 2.

⁹⁶Interview with C. Cal. Attorney Two, *supra* note 92, at 2.

⁹⁷Interview with S. Fla. Attorney Two, at 5 (Apr. 23, 2013).

⁹⁸*See* Interview with W. Tenn. Attorney Two, *supra* note 54, at 6 (“[W]ith the church, you’re dealing with at least two people, possibly ten people.”); Interview with C. Cal. Attorney Six, *supra* note 79, at 4 (“There’s more collective input.”).

⁹⁹*See* Interview with N. Ga. Attorney Two, *supra* note 88, at 1 (“You have to take into consideration the congregation, the other leaders in the church, the implication for the church and the community.”).

¹⁰⁰*See infra* Part III.E.

¹⁰¹*See, e.g.*, Interview with Md. Attorney Three, at 5 (May 24, 2013) (noting that “my approach is going to be different the next time” in representing a church); Interview with C. Cal. Attorney Six, *supra* note 79, at 5 (noting that in future representations “I’ll know what to look for”); Interview with S. Fla.

B. THE CHURCH BUILDING AS AN ALBATROSS

Regardless of the underlying causes of religious organizations' financial distress, the primary goal of the vast majority of congregations studied was to save their building from foreclosure.¹⁰² Attorneys representing religious organization debtors offered two insights into the unique issues surrounding saving the building that may have significantly influenced some of their clients' paths to bankruptcy, the reorganization processes, and case outcomes.

First, attorneys emphasized the strong emotional attachment that congregations have to their buildings. Congregants seemed to view their church building as "somewhere they can go and be proud and worship and invite other churches to visit and raise their families in. They are looking for a home."¹⁰³ Filing for bankruptcy was not merely about saving equity in a building, but about "keep[ing] the congregation and keep[ing] the church together."¹⁰⁴ The loss of a particular building may have equaled the loss of the congregation.¹⁰⁵ In short, "they fall in love with that one church."¹⁰⁶

Because leaders and congregants often were "not driven by normal business considerations,"¹⁰⁷ they may have behaved irrationally when faced with a foreclosing lender. Bankruptcy provided a venue for them to realize that they needed to downsize, to "get over" ¹⁰⁸ losing their "spiritual homes."¹⁰⁹ At the same time, the automatic stay¹¹⁰ and the chapter 11 process gave leaders an opportunity to try to sell the buildings at higher than fire sale prices, potentially preserving some of the organizations' equity, which they could use to rebuild their congregations.¹¹¹

Attorney Two, *supra* note 97, at 5 (stating that "I'd be a lot smarter about" representing churches in the future).

¹⁰²See, e.g., Interview with Md. Attorney One, *supra* note 48, at 2 ("[A]t least in this area, it's all been about the real estate."); Interview with M. Fla. Attorney One, *supra* note 82, at 4 (noting that both cases handled were about the mortgage); Interview with C. Cal. Attorney Three, *supra* note 47, at 5 ("[C]hurches . . . got a little too ambitious and took on more debt than they could service").

¹⁰³Interview with C. Cal. Attorney Three, *supra* note 47, at 6.

¹⁰⁴Interview with E. N.C. Attorney One, *supra* note 45, at 4.

¹⁰⁵See Interview with E. N.C. Attorney Two, *supra* note 91, at 6 ("[I]t would have been really disruptive to the church had they lost their buildings."); Interview with W. Tenn. Attorney Two, *supra* note 54, at 7 ("[I]f you don't have a building, I don't think you stay together very long.").

¹⁰⁶Interview with N. Tex. Attorney Three, *supra* note 68, at 4.

¹⁰⁷Interview with S. Fla. Attorney Two, *supra* note 97, at 4.

¹⁰⁸Interview with C. Cal. Attorney Three, *supra* note 47, at 6.

¹⁰⁹See Foohey, *Bankrupting the Faith*, *supra* note 2, at 767-68 (discussing how congregants "seem to become intertwined with the institutions' buildings").

¹¹⁰See 11 U.S.C. § 362(a) (2012) (imposing a stay on various actions by creditors to collect on their claims against the debtor).

¹¹¹See, e.g., Interview with Md. Attorney Two, *supra* note 89, at 2 (describing how a client sold its building during its case); Interview with N. Ill. Attorney Two, at 2 (May 7, 2013) (describing how a client planned to sell property); Interview with N. Ill. Attorney One, *supra* note 42, at 4 ("[T]he automatic stay give[s] churches] some breathing space to . . . make transitions").

Second, attorneys theorized that although mortgage lenders had threatened or initiated foreclosure proceedings, on balance, lenders did not want to foreclose on a church.¹¹² Banks may have worried that a church building would prove difficult to sell given that it is “built to be a church”¹¹³ and that the bank would not be able to “do anything with a church building except have a church in it.”¹¹⁴ Foreclosing on a religious organization also could invite bad publicity. For example, one attorney questioned, “in the end, who’s going to foreclose on a church in a small town?”¹¹⁵

When pressed as to why banks would initiate proceedings they were not eager to conclude, one attorney hypothesized that federal legislation may require them to “pursue all of their rights and remedies,” including foreclosure.¹¹⁶ Alternatively, mortgage lenders may threaten foreclosure in order to convince religious organizations’ leaders that they need to make concessions. In some instances, leaders seemed to become so entrenched in their refusal to compromise on any item having to do with their members’ “spiritual homes” that they became “convinced that the bank was the devil.”¹¹⁷ Conversely, lenders’ unwillingness to make deals with religious organizations, for whatever reason, may have impeded the productivity of negotiations, eventually requiring foreclosure.¹¹⁸

Moreover, though banks might have initiated foreclosure proceedings, some of the church leaders interviewed indicated that they learned of the possibility of filing bankruptcy from their lenders.¹¹⁹ One explanation for why lenders would start a foreclosure but suggest a bankruptcy filing to their borrowers is that a chapter 11 proceeding offered the lender a way to gain access to the debtor’s financial records, allowing it to better assess the religious organization’s continued viability.¹²⁰ As an added bonus, the chapter 11 process would force the churches to conform to budgeting requirements and

¹¹²But see Interview with M. Fla. Attorney One, *supra* note 82, at 4 (hypothesizing that banks may wait to initiate foreclosure proceedings, but once started, would follow through).

¹¹³Interview with W. Tenn. Attorney Three, *supra* note 45, at 2.

¹¹⁴Interview with W. Tenn. Attorney Two, *supra* note 54, at 3; see also *id.* (“[S]ometimes, some of the banks, if you just say, well, here are the keys, they’ll back off and work with you.”).

¹¹⁵Interview with N. Tex. Attorney Two, *supra* note 67, at 5; see also Interview with N. Ill. Attorney Four, *supra* note 54, at 4 (“[M]any banks are reluctant to foreclose on some of these churches for various reasons . . . goodwill and their reputation in the community and so forth.”).

¹¹⁶Interview with N. Ga. Attorney Three, *supra* note 48, at 4; see also W. Tenn. Attorney Two, *supra* note 54, at 9 (“These big banks, federal regulations don’t permit them to work with people.”).

¹¹⁷Interview with W. Tenn. Attorney Two, *supra* note 54, at 7.

¹¹⁸One explanation relates to leaders’ poor record keeping skills. See *supra* note 79 and accompanying text. Lenders may have foreclosed because they had little way of knowing the financial stability of the religious organization debtors and effectively decided to cut their losses and move on.

¹¹⁹Interview with M. Fla. Leader Three, *supra* note 70, at 3; Interview with W. Tenn. Leader One, *supra* note 72, at 3; Interview with M. Fla. Leader One, *supra* note 72, at 2.

¹²⁰Debtors must file schedules detailing assets, debts, and financial affairs, and monthly reports of net income. 11 U.S.C. § 521(a) (2012).

reorganization plans, as required by the Code.¹²¹

In short, prior to filing, religious organizations' buildings become an albatross for some debtors and lenders. Overly emotional attachment of leaders and congregants to their "spiritual homes" may have impeded progress in restructuring their mortgages, while lenders also may have heeded their own interests that likewise stalled negotiations. Post-filing, lenders' apparent desire not to foreclose on churches may have opened the door for successful negotiations during the chapter 11 proceedings. Leaders' ultimate goal of preserving their congregations similarly may have led to productive outcomes as leaders came to realize what was achievable.

C. LICENSES AND PERMITS; CASH COLLATERAL DISPUTES

Although saving the building was the primary goal of reorganization, attorneys identified two other significant hurdles that threatened the reorganization effort. First, in an attempt to generate revenue to meet expenses, some organizations undertook side businesses, such as operating daycares and delis. These side operations required the maintenance of licenses and permits and timely inspections. Unfortunately, some leaders were not versed in the intricacies of these requirements or were not sufficiently attentive to the business aspects of the church to keep up with the requirements. Lapsed licenses, revoked permits, and unanticipated problems with local ordinances plagued a few attorneys.¹²²

Second, more prevalently, religious organizations faced disputes about cash collateral upon filing.¹²³ Some attorneys were surprised when lenders asserted that monies coming into the church from congregants' donations were part of their collateral and that the lenders had a right to influence how the funds were spent on a monthly basis.¹²⁴ Approaching the issue from a religious perspective, one attorney thought it "offensive" and "crass" that the

¹²¹Monthly reporting may function as a budgeting tool. See Interview with W. Tenn. Leader Two, *supra* note 70, at 7 (referencing the reporting requirements and noting that keeping records is "extremely important"); Interview with M. Fla. Leader Two, *supra* note 70, at 4 (discussing how the chapter 11 process allowed the church to make budget adjustments). To be confirmed, bankruptcy courts must find proposed plans feasible, among other requirements. 11 U.S.C. § 1129(a); see also Interview with C. Cal. Leader One, *supra* note 71, at 6 (describing how the confirmed plan helped the church "stay on top of the finances as it relates to chapter 11").

¹²²See Interview with S. Fla. Attorney Three, *supra* note 41, at 4 (noting that questions arose as to a deli license); Interview with C. Cal. Attorney Four, at 2 (Apr. 18, 2013) (discussing how some religious organizations donate or sell food and noting that "they might not be aware about these special licenses that they need").

¹²³Cash collateral refers to "cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents" that are property of the estate and subject to a security interest. 11 U.S.C. § 363(a) (2012). The debtor-in-possession or trustee must obtain permission from the secured party or an order from the bankruptcy court to use cash collateral in the ordinary course of business during the chapter 11 case. 11 U.S.C. § 363(c).

¹²⁴See Interview with N. Ill. Attorney Five, at 2 (May 16, 2013) (noting issues with cash collateral);

bank claimed a security interest in the “general church revenues” because “the church is the body of Christ, it’s the people.”¹²⁵

While not all lenders claimed a lien on the collections and pledges,¹²⁶ one attorney counseled that if there is any possibility that lenders might claim a right to donations and pledges, the debtor should preemptively file a motion requesting that the court “determine that the tithes and offerings are not cash collateral.”¹²⁷ This advice reflected the attorney’s concern that not having control over cash flow post-petition could severely impact the church’s ability to reorganize.¹²⁸ Attorneys’ emphasis on cash flow reflected their greater concern about creating confirmable plans for organizations whose revenue came from members’ voluntary donations.

D. ESTABLISHING REALISTIC EXPECTATIONS REGARDING FUTURE REVENUES

The most serious obstacle that attorneys faced in these cases related to the need to demonstrate that the debtors would have positive cash flow in the future. Perhaps the most distinctive characteristic of many of the religious organizations was that their income defied projection. Attorneys contrasted for-profit business cases, where the debtor could extrapolate future revenue from past performance, with religious organization cases, where “[p]ast performance [didn’t] seem to matter in the church if the congregation want[ed] to survive.”¹²⁹ Religious organizations in the end are businesses that principally offer religious services, but “the individuals who take advantage of those services are not obligated to pay anything.”¹³⁰ Put differently, “[a] church sells salvation and peace of mind. And the parishioners contribute voluntarily for that.”¹³¹ And although “that’s functionally equivalent to a small business selling its product or service,”¹³² attorneys thought that the nature of religious organizations’ services made it more difficult to determine “how much [money] is going to go in the basket each Sunday.”¹³³

Crucially, the concomitant complexity in making projections translated to

Interview with S. Fla. Attorney One, *supra* note 41, at 3 (noting that the biggest conflict in the case was over cash collateral).

¹²⁵Interview with E. N.C. Attorney Two, *supra* note 91, at 3.

¹²⁶See Interview with N. Ga. Attorney Three, *supra* note 48, at 2 (discussing how helpful it is that “the church’s tithes and offerings . . . are not usually cash collateral”); Interview with S. Tex. Attorney One, *supra* note 48, at 3 (noting that the lenders’ attorney did not “push” about cash collateral).

¹²⁷Interview with N. Ga. Attorney Three, *supra* note 48, at 2.

¹²⁸*Id.*

¹²⁹Interview with C. Cal. Attorney Six, *supra* note 79, at 6.

¹³⁰Interview with M. Fla. Attorney Three, *supra* note 79, at 2.

¹³¹Interview with C. Cal. Attorney One, *supra* note 43, at 3.

¹³²*Id.*

¹³³Interview with N. Ill. Attorney Four, *supra* note 54, at 2; see also Interview with N. Ga. Attorney Two, *supra* note 88, at 3 (noting that income projections may not materialize); Interview with N. Ill.

attorneys worrying about crafting plans that bankruptcy courts, creditors, and the United States Trustee would find credible.¹³⁴ Their concerns seemed to derive from two primary considerations. The first relates to religious organizations' "customers." Congregants did not necessarily behave like typical consumers. "Everything [was] dependent on the congregation."¹³⁵ If a "critical mass" of members wanted to see the church survive, money almost magically flowed into the church.¹³⁶ For example, in the context of a church with a larger membership base—that is, one that could achieve a critical mass of committed members—if the church needed more money, "the congregation just came up with it."¹³⁷ Moreover, if congregants did not have sufficient liquid funds available, members would do "what they [had] to do in order to keep their church afloat," including personally guaranteeing loans.¹³⁸

On the other hand, if congregants became disillusioned, they tended to leave the church as a group, resulting in the church perishing swiftly and the bankruptcy court dismissing the case quickly.¹³⁹ This dynamic overall did not reflect the standard model for projecting revenues. And this led attorneys to note that "how the church is going to pay for things" is "something that has to get a little more attention, a little more thought."¹⁴⁰

Attorneys also thought that leaders had unrealistic expectations about what chapter 11 could achieve for their organizations. Leaders assumed that upon filing, bankruptcy was "going to solve all of our problems."¹⁴¹ They

Attorney One, note 42, at 3-4 (noting that "[churches'] revenues are not as predictable" because they are relying on donations).

¹³⁴See, e.g., Interview with W. Tenn. Attorney Three, *supra* note 45, at 2 (contrasting small businesses with churches, as to which "[y]ou don't have the ability to make close projections regarding income"); Interview with N. Ga. Attorney One, *supra* note 45, at 4 (noting that the bank "wanted to just have a good understanding that there was going to be a revenue stream to satisfy [the church's] debt"); Interview with C. Cal. Attorney Five, at 3 (May 7, 2013) (commenting that someone "could throw in one of these religious things and mess everything up").

¹³⁵Interview with E. N.C. Attorney Three, *supra* note 47, at 2.

¹³⁶Interview with C. Cal. Attorney Two, *supra* note 92, at 6; see also Interview with N. Ill. Attorney Six, *supra* note 89, at 2 ("[A] lot of [the plan process] was getting support from members of the church . . .").

¹³⁷Interview with C. Cal. Attorney Six, *supra* note 79, at 4.

¹³⁸Interview with N. Ill. Attorney Four, *supra* note 54, at 4; see also Interview with N. Ga. Attorney One, *supra* note 45, at 4 (noting that a bishop personally guaranteed a church's obligation); Interview with W. Tenn. Attorney One, *supra* note 86, at 4 ("[B]anks want people to personally guarantee loans."). Very few religious organizations' loans initially were guaranteed or co-signed by leaders or congregants. See Foohey, *Bankrupting the Faith*, *supra* note 2, at 760.

¹³⁹See Interview with Md. Attorney Three, *supra* note 101, at 4 (noting that the operating reports every month showed negative disposable income and thus a plan was not feasible); Interview with N. Ill. Attorney Five, *supra* note 124, at 3 ("[I]f they don't have the money coming in, the case isn't going to last much to begin with.").

¹⁴⁰See Interview with Md. Attorney Two, *supra* note 89, at 5.

¹⁴¹Interview with Md. Attorney Three, *supra* note 101, at 2-3. See also Interview with C. Cal. Attorney Three, *supra* note 47, at 5 ("Whether it's a nonprofit or a consumer, you're still dealing with people. And people have funny ideas about stuff.").

believed “God will provide a donor if they need the money,”¹⁴² had unrealistic ideas about how they would cut expenses,¹⁴³ and “[didn’t] like to think of [the churches] as businesses.”¹⁴⁴ Attorneys sometimes “[did] not get the level of cooperation that [they thought they] should, which caused “delays” and “problems.”¹⁴⁵ This further contributed to the difficulty in putting forth a realistic proposal for restructuring the mortgage.

E. ATTORNEY COMPENSATION

Though many chapter 11 debtors may pay their bankruptcy attorneys reluctantly, some religious organization clients seemed to believe they had a religious right to a break on fees. Some leaders asked for a reduction in attorneys’ fees, claiming that attorneys were “doing it for the better good of the community”¹⁴⁶ or should “have mercy” on the congregation.¹⁴⁷ Attorneys likewise had taken on the representations with the assumption that there was a “little bit higher risk of not being paid in full” as compared to small business clients.¹⁴⁸ In fact, attorneys were willing to cut religious organizations breaks: 63% of the attorneys reduced their hourly rate, lowered their retainer, were “more generous” with time, or otherwise adapted their fees.¹⁴⁹ Some attorneys explicitly mentioned that the religious nature of the organization motivated them to tailor their fees.¹⁵⁰ In contrast, a few attorneys did not believe the nature of the client’s business should influence the fees they charged.¹⁵¹

¹⁴²Interview with N. Ill. Attorney Five, *supra* note 124, at 4.

¹⁴³See Interview with N. Ill. Attorney Four, *supra* note 54, at 4 (“[P]reacher says, I can do this, I can increase the tithes, and I can increase the offerings, and I can cut ten percent of money and staff, cut my salary, so forth.”); Interview with M. Fla. Attorney One, *supra* note 82, at 2 (“You just have to make sure they are being realistic . . .”).

¹⁴⁴Interview with N. Ill. Attorney One, *supra* note 42, at 2; *see also* Interview with N. Tex. Attorney Three, *supra* note 68, at 2 (“[Church leaders] don’t really understand the financial part of the business.”); Interview with N. Ill. Attorney Two, *supra* note 111, at 4 (“[Leaders] don’t think like a business.”).

¹⁴⁵Interview with Md. Attorney One, *supra* note 48, at 3. *See also* Interview with C. Cal. Attorney Five, *supra* note 134, at 3 (commenting that religious organization leaders sometimes “want to play attorney”).

¹⁴⁶Interview with N. Ill. Attorney Five, *supra* note 124, at 2.

¹⁴⁷Interview with Md. Attorney Three, *supra* note 101, at 2; *see also* Interview with C. Cal. Attorney Six, *supra* note 79, at 2 (noting that clients “tried to box me in from the beginning” regarding fees).

¹⁴⁸Interview with E. N.C. Attorney One, *supra* note 45, at 2; *see also* Interview with S. Fla. Attorney Three, *supra* note 41, at 2 (“Did I know I was going to eat something at the end? Yes.”).

¹⁴⁹Interview with C. Cal. Attorney Two, *supra* note 92, at 2.

¹⁵⁰See Interview with N. Ill. Attorney Four, *supra* note 54, at 2 (“I try to give the churches a discount.”); Interview with Md. Attorney Two, *supra* note 89, at 2 (“I did discount my fee just because of the nature of the organization.”); Interview with W. Tenn. Attorney One, *supra* note 86, at 1 (“I did adapt them because of the nature of the situation.”).

¹⁵¹See Interview with N. Ill. Attorney One, *supra* note 42, at 2 (noting that there is a misconception that nonprofits should pay less); Interview with S. Fla. Attorney Two, *supra* note 97, at 2 (“I treat it like an entity like any other entity, be it a church or a charitable organization or foundation.”); Interview with

The uniqueness of religious organization chapter 11 cases and the increased risk of nonpayment of fees theoretically could cause attorneys to hesitate to take on future representations of religious organization debtors. But even those attorneys who adapted their fees and who acknowledged that these cases were “complex”¹⁵² and required “extra effort”¹⁵³ said that they would represent another religious organization if approached.¹⁵⁴ Indeed, a subset of the attorneys interviewed found the work particularly “rewarding”¹⁵⁵ and “more fulfilling” as compared to their other debtor work.¹⁵⁶ Representing religious organization debtors gave these attorneys a greater sense of helping their communities.¹⁵⁷ In some instances, it provided them with the chance to integrate their professional lives with their own faith.¹⁵⁸ Moreover, regardless of the attorneys’ individual views, their combined experiences show that even in the face of the hurdles detailed above, the chapter 11 process assisted religious organizations in retaining their buildings and maintaining their communities, in turn potentially affording creditors greater recoveries.

IV. SUCCESS THROUGH THE REORGANIZATION PROCESS

“Success” in chapter 11 is relative and often difficult to define. Scholars traditionally have measured success based on the percentage of cases in which a plan is confirmed.¹⁵⁹ In the context of religious organizations’ chapter 11 cases, considering debtors’ primary goal of preserving their communities and

C. Cal. Attorney One, *supra* note 43, at 3 (explaining that there was nothing different between a church and a small business that needed to reorganize).

¹⁵²Interview with N. Ga. Attorney Two, *supra* note 88, at 1; *see also* Interview with W. Tenn. Attorney One, *supra* note 86, at 4 (characterizing the cases as “challenging”); Interview with S. Fla. Attorney One, *supra* note 41, at 5 (same).

¹⁵³Interview with N. Tex. Attorney One, at 4 (May 1, 2013).

¹⁵⁴Thirty out of thirty-two attorneys who were continuing their chapter 11 practices said they would represent a religious organization again. One other attorney was retiring and two other attorneys were focusing on consumer cases going forward. Attorneys who indicated that they may hesitate to take on another religious institution’s reorganization case alluded to the internal dynamics and lack of revenue unless the congregation backed the church, the probability of which seemed random, as prompting their reluctance.

¹⁵⁵Interview with S. Fla. Attorney One, *supra* note 41, at 5.

¹⁵⁶Interview with C. Cal. Attorney Four, *supra* note 122, at 5.

¹⁵⁷*See* Interview with N. Ill. Attorney Four, *supra* note 54, at 6 (“Many churches that come to me are people that have nowhere else to go.”); Interview with N. Tex. Attorney One, *supra* note 153, at 4 (“I really want to make it work because these people contribute to the community and they’re good people.”).

¹⁵⁸*See* Interview with E. N.C. Attorney Two, *supra* note 91, at 6 (describing the representation in terms of “ministry”); Interview with S. Tex. Attorney Two, *supra* note 44, at 7 (noting the benefit of being able to speak “the language of religion”).

¹⁵⁹*See* Foohey, *Bankrupting the Faith*, *supra* note 2, at 752; Lynn M. LoPucki, *The Debtor in Full Control—Systems Failure Under Chapter 11 of the Bankruptcy Code?* (pt. 1), 57 AM. BANKR. L. J. 99, 106 (1983) (“From the viewpoint of the courts or policy makers, confirmation and consummation of a plan are probably both necessary elements of success.”).

secondary goal of saving their buildings (which may be necessary to achieve their primary goal),¹⁶⁰ success may be broadened to include outcomes whereby congregations continued operating post-bankruptcy. Such outcomes would include a settlement between the debtor and its creditors during the case, a settlement achieved out-of-court after the case was dismissed, or a sale of assets that yielded sufficient funds for the congregation to continue operating, albeit possibly in a different location. From this broader perspective of success, the chapter 11 process seemed highly successful in achieving these goals for religious organizations.

Solely from reviewing court records, 34% of the religious organization cases studied ended productively.¹⁶¹ The court confirmed a plan in 25% of the cases, and in 9% of the cases, the debtor and its creditors negotiated a settlement during the pendency of the case that allowed the organization to continue operating post-bankruptcy.¹⁶² In the context of chapter 11 generally, this percentage reflects a success rate on par with or greater than previous reports of success in cases filed by for-profit businesses.¹⁶³

Bankruptcy court records reflect that judges dismissed the other cases for various reasons, including because the debtor failed to file documents timely, secured creditors or the UST argued that the reorganization was not feasible, or the debtor filed a motion to dismiss that contained little or no explanation of why it sought dismissal.¹⁶⁴ The filing data also show that the court dismissed these cases relatively quickly,¹⁶⁵ thereby reducing administrative expenses, possible general loss of value, and the time during which creditors

¹⁶⁰See Foohey, *Bankrupting the Faith*, *supra* note 2, at 767-68 (noting that the survival of a congregation often seemed tied to saving the church building).

¹⁶¹*Id.* at 756 tbl.6.

¹⁶²*Id.* If confirmed liquidation plans are added to the calculation, 35% of cases ended productively. *Id.*

¹⁶³See, e.g., Anne Lawton, *Chapter 11 Triage: Diagnosing a Debtor's Prospects for Success*, 54 ARIZ. L. REV. 985, 1004 (2012) (reporting a 34% confirmation rate in a sample of chapter 11 cases filed in 2004); Warren & Westbrook, *supra* note 8, at 615 (reporting a 30.3% confirmation rate in a sample of chapter 11 cases filed in 1994 and a 33.4% confirmation rate in a sample of chapter 11 cases filed in 2004); Douglas G. Baird & Edward R. Morrison, *Serial Entrepreneurs and Small Business Bankruptcies*, 105 COLUM. L. REV. 2310, 2324 (2005) (studying small businesses that filed under chapter 11 in the Northern District of Illinois during 1998 and reporting a 22% confirmation rate, plus an additional 8% of cases that ended in a consensual agreement between the debtor and creditors, for a combined success rate of 30%); Edward M. Flynn, *Statistical Analysis of Chapter 11*, Administrative Office of the United States Courts 10-11 (Oct. 1989) (unpublished report) (reporting a 17% confirmation rate for chapter 11 cases filed between 1979 to 1986).

¹⁶⁴Foohey, *Bankrupting the Faith*, *supra* note 2, at 745-49.

¹⁶⁵For example, the median time frame in which bankruptcy courts disposed of cases was seven and one-half months and, in cases in which no plan had been proposed, the median was four and one-half months. *Id.* at 747 tbl. 4. A prior study of chapter 11 characterized the median time of seven months as "remarkably quick." Warren & Westbrook, *supra* note 8, at 631-32; see also Foohey, *Bankrupting the Faith*, *supra* note 2, at 745-46 (discussing reasonable benchmarks of how long it takes to sell a business privately or reorganize under previous bankruptcy laws).

were unable to collect on their debts.¹⁶⁶

But one can glean only so much information from court records in terms of analyzing the successes of chapter 11. The interviews with attorneys indicate that many more cases ended productively than is evident from examining the filing data, and that a sizable majority of the religious organizations survived post-bankruptcy, even if they had to relocate the congregation. Table 3 summarizes the outcome of the fifty two religious organization chapter 11 cases that attorneys discussed in detail during the interviews.¹⁶⁷

Table 3: Outcomes of Religious Organization Cases Handled by Interviewed Attorneys

	N	%
Reorganization Plan Confirmed	12	23.1
Agreement with Creditors	18	34.6
Dismissed; Resolved Issues Later	3	5.8
Dismissed; Closed or Unresolved	19	36.5
Total	52	100.0

In 23% of these fifty two cases, the court confirmed a reorganization plan. This percentage aligns with the reorganization plan confirmation rate among all religious organization debtors that filed during the study timeframe.¹⁶⁸ But in another 35% of the cases, the debtor and its creditors came to an agreement during the pendency of the proceedings, a percentage that is almost four times greater than what I was able to verify through a conservative review of court records. Fifteen (83%) of the eighteen court-approved agreements involved a refinancing or similar form of settlement with the mortgage lender.¹⁶⁹ This suggests that relying on court records alone fails to capture a significant portion of bankruptcy cases that end constructively.¹⁷⁰

Additionally, in three cases that the court dismissed without an agree-

¹⁶⁶See Foohey, *Bankrupting the Faith*, *supra* note 2, at 743.

¹⁶⁷The attorneys I interviewed handled a total of seventy cases. Because of time limitations, I only could discuss with each attorney at most three cases during a given interview because I wanted to discuss each case in-depth. As some attorneys represented as many as five religious organizations during the study timeframe, I asked these attorneys to focus on at most three cases.

¹⁶⁸This suggests that the attorneys I interviewed had handled cases that constituted a representative sample of religious organization debtors generally.

¹⁶⁹In the other three cases, the debtor entered into a payment agreement with the Internal Revenue Service, a financing agreement with a new lender, and an agreement with its secured creditor whereby it sold its property and then used the proceeds to move to a new location.

¹⁷⁰Though attorneys may have a tendency to exaggerate the productiveness of cases, the 35% figure is based on whether the debtor and its creditors entered into a consensual agreement that resolved the case. Another possible source of corroboration would be a future review of the registries of deeds in order to determine what percentage of debtors still owned their buildings post-bankruptcy.

ment in place, the debtor subsequently resolved its financial issues and was able to stay indefinitely in its pre-filing location.¹⁷¹ Adding these cases yields a 64% success rate. Of course, it is unknown whether the debtors could have attained the same outcomes through negotiated arrangements outside of bankruptcy, particularly if the attorneys are correct in their supposition that lenders ultimately do not want to foreclose on a church building. Nonetheless, the interviewed leaders indicated that they tried to work with their creditors before turning to bankruptcy.¹⁷² The chapter 11 process, thus, may have greatly facilitated the negotiations.¹⁷³

At the time of the interviews in spring 2013, the attorneys indicated that thirty seven (71%) of the fifty two religious organizations remained operating,¹⁷⁴ although at least seven had moved locations and two were in the midst of foreclosure.¹⁷⁵ This percentage is higher than the 64% success rate because several of the churches moved locations after the court dismissed their cases, effectively restarting. Significantly, these results contradict the results of a prior study of small businesses' chapter 11 filings in the Northern District of Illinois during 1998, which found that nearly 60% of the businesses closed post-bankruptcy.¹⁷⁶

Nonetheless, although a majority of debtors were operating months or years after their cases ended, their continued operation did not necessarily mean that they would be able to meet the specifics of their plans and agreements over the long term.¹⁷⁷ Interviewed leaders seemed concerned about their churches' survival, explaining that staying current with expenses remained a struggle: "we are able to pay as we go and keep our nose clean."¹⁷⁸

¹⁷¹In one case, a parent association stepped in to save the debtor, who ran a Christian school; and in the two other cases, the mortgage lender and the debtor came to an agreement post-dismissal.

¹⁷²See, e.g., Interview with W. Tenn. Leader Two, *supra* note 70, at 4 (stating that the church tried to negotiate with the mortgage lender, among other non-legal actions); Interview with N. Ill. Leader One, *supra* note 73, at 2-3 (noting that the leadership thought their mortgage creditor would modify their loan); Interview with M. Fla. Leader Two, *supra* note 70, at 1 (detailing how the leadership was unsuccessful in renegotiating the mortgage loan); Interview with C. Cal. Leader Two, *supra* note 70, at 2 ("We went to the bank several times and tried to get a modification or work some terms out.").

¹⁷³The fact that some lenders told religious organizations' leaders to consider bankruptcy further suggests that negotiated agreements may not have been possible in some instances. See *supra* note 119 and accompanying text.

¹⁷⁴As to six debtors, the attorneys had lost contact with their clients such that they did not know whether the organization was operating as of the time of the interview.

¹⁷⁵Not all of the attorneys discussed exactly where their clients were operating as of the time of the interviews.

¹⁷⁶Edward R. Morrison, *Bankruptcy Decision Making: An Empirical Study of Continuation Bias in Small-Business Bankruptcies*, 50 J. L. & ECON. 381, 382 (2007).

¹⁷⁷See Baird & Morrison, *supra* note 163, at 2324-25 (finding that 44% of the studied small business debtors that confirmed reorganization plans defaulted on their plans with about two and a half years of confirmation).

¹⁷⁸Interview with M. Fla. Leader Two, *supra* note 70, at 4-5; see also Interview with C. Cal. Leader Two, *supra* note 70, at 2 (explaining that the church planned to sell its building with the hope of retaining

Reorganization may have prevented or at least delayed foreclosure, but the churches still needed to resolve the underlying operational problems that had landed them in bankruptcy.

Yet most of the leaders considered their bankruptcy cases productive because they helped the churches begin to address these underlying issues,¹⁷⁹ which may bode well for the churches' continued operations. For instance, one leader thought that the congregation was stronger post-bankruptcy. The members "stood firm as a church," which "increase[d] their faith and increase[d] their tithing as well."¹⁸⁰ Even if they foresaw relinquishing their buildings in the future, leaders claimed that their cases "gave them more time" to be in their physical spaces, and in turn gave them more time to convince the most committed members to understand that moving the congregation to a new smaller location may be for the best.¹⁸¹ Attorneys similarly noted that the church filings "focuse[d] everybody's attention on what need[ed] to be done."¹⁸² Some attorneys added that, even in those cases that resulted in the church dissolving, the process helped leaders and members realize sooner that their ministries were not viable, which in turn aided them in making the necessary shut-down transitions.¹⁸³

These continued successes suggest that for those religious institutions not part of larger organizations to which they could turn for financial assistance, or that had reached an impasse in negotiations with their creditors, filing under chapter 11 offered a potentially worthwhile option. Importantly, the longer-term results provide evidence that at least one set of what ultimately are small businesses are using chapter 11 in a way that appears to be productive for debtors and their creditors.¹⁸⁴ In contrast to prior assertions that

some money to use to "relocate to something more affordable"); Interview with M. Fla. Leader One, *supra* note 72, at 4 (discussing how the case only is "going to be successful if we come out on the other end of the mortgage"); Interview with N. Ill. Attorney Three, *supra* note 79, at 5 (noting that post-reorganization, religious organizations are "struggling; they're all in a struggle capacity").

¹⁷⁹Seven of the ten leaders stated that they thought their church's case was successful.

¹⁸⁰Interview with M. Fla. Leader Three, *supra* note 70, at 6.

¹⁸¹Interview with C. Cal. Leader Two, *supra* note 70, at 8; *see also* Interview with W. Tenn. Leader One, *supra* note 72, at 4 (noting that the building was "personal," but that they ultimately "decided to turn it back over to the bank").

¹⁸²Interview with C. Cal. Attorney One, *supra* note 43, at 3.

¹⁸³*See, e.g.*, Interview with Md. Attorney Three, *supra* note 101, at 4-5 (noting that operating reports showed negative income every month, which led the attorney to discuss the church's survival prospects); Interview with E. N.C. Attorney One, *supra* note 45, at 4 ("[W]e bought them . . . time in which to try to make things happen"); Interview with N. Ill. Attorney One, *supra* note 42, at 4 ("If you solve the problems, and if you make transitions, then you have used the chapter 11 process well."). Seen from this broader perspective, almost all of the debtors may have benefited from the chapter 11 process. Depending on what could have been achieved without resorting to bankruptcy, most creditors on balance also may have benefitted from being forced to participate in the chapter 11 process.

¹⁸⁴*See supra* note 56 and accompanying text (noting that third-quarters of the studied religious organizations qualified as small business debtors).

the chapter 11 process wastes resources and usually is unproductive,¹⁸⁵ the religious organizations' chapter 11 cases studied predominately can be categorized as successful. Other subsets of small businesses likewise may find chapter 11 beneficial to themselves and their creditors—a question that bears additional study, particular in light of BAPCPA's amendments directed toward small business debtors.¹⁸⁶

CONCLUSION

This Article sought to expand on my prior conclusion based on case filings that chapter 11 had the potential to offer religious organizations an effective solution to their financial distress. The results of my interviews with religious organizations' leaders and their bankruptcy attorneys substantiate this conclusion. They also reveal a success rate considerably higher than evident from examining court records alone, and considerably higher than previously reported success rates in chapter 11 cases filed by small businesses, a result that is important to ongoing debates about small businesses' use of bankruptcy.

Going forward, attorneys may call upon the findings detailed above to establish realistic benchmarks of what their religious organization clients can hope to achieve in chapter 11. This may reduce unproductive friction during the cases, and result in more constructive (and possibly swifter) negotiations and allow leaders with unsustainable congregations to realize that they may need to move on sooner, potentially increasing the success rate in the future.¹⁸⁷ Attorneys also may leverage the findings to convince lenders and other creditors to negotiate outside bankruptcy, thereby saving the costs of chapter 11. If a creditor's tactics drive a religious organization to file under chapter 11, there is a substantial chance that the case will end with a confirmed plan or other agreement that allows the organization to continue operating. In short, as one attorney remarked, "there's a space to help [religious organizations] with the [chapter 11] process so they can either maintain the

¹⁸⁵See Warren & Westbrook, *supra* note 8, at 604-05 ("[Critics] claim that the current Chapter 11 system suffers from high failure rates and endless delays that prevent the system from yielding much value."); Morrison, *supra* note 176, at 381-82 (noting that critics argue that "Chapter 11 prevents or retards the reallocation of assets.").

¹⁸⁶See James B. Haines Jr. & Philip J. Hendel, *No Easy Answers: Small Business Bankruptcy After BAPCPA*, 47 B.C. L. REV. 71 (2005) (overviewing the small business provisions that BAPCPA added to the Code). This Article is the first to report longer-term outcomes of chapter 11 cases filed by small businesses post-BAPCPA.

¹⁸⁷Generally, shorter cases reduce the costs of reorganization to both debtors and creditors. In a religious reorganization case, however, it could be argued that there is value to be realized from remaining in chapter 11 longer. The chapter 11 process forces the debtor to be subject to greater financial accountability and controls, giving these leaders more practice at managing their organizations' budgets, which may in turn increase the probability that the churches will be able to meet their obligations in the future.

asset or sell the asset to the benefit of the church.”¹⁸⁸

Finally, the results of the interviews call attention to another aspect of these chapter 11 cases that was not obvious from an examination of court records. Black Churches seem to turn to chapter 11 in the face of financial distress more often than churches with other membership demographics. The racial demographic skew among religious organization debtors presents two main avenues for future study: why Black Churches turn to bankruptcy, and the role of secured lenders in funding this subset of churches.

¹⁸⁸Interview with Md. Attorney Two, *supra* note 89, at 5.

