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### Bankrupting the Faith

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# Bankrupting the Faith

## Missouri Law Review, Forthcoming

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# Bankrupting the Faith

Pamela Foohey\*

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## I. INTRODUCTION

“As a pastor, God trusts you with the spiritual guidance of His people and the handling of His money.” – Dave Ramsey<sup>1</sup>

Why would a church, synagogue, or religious school seek to reorganize under the Bankruptcy Code? What do their filings reveal about the use and effectiveness of Chapter 11? Before a string of Roman Catholic dioceses sought bankruptcy protection to handle litigation stemming from sexual abuse allegations,<sup>2</sup> the notion of religious organizations<sup>3</sup> filing for bankruptcy perhaps seemed unfathomable.<sup>4</sup> Nonetheless, between 2006 and 2011, faith-based institutions located throughout the United States filed over 500 petitions under Chapter 11.<sup>5</sup>

One of the most publicized filings was that of Crystal Cathedral Ministries,<sup>6</sup> the home of the internationally-distributed televangelist show and

1. *Real Debt Help: Get Out of Debt With Dave Ramsey's Total Money Makeover Plan*, DAVERAMSEY.COM, <http://www.daveramsey.com/homepage/church/> (last visited Nov. 29, 2012).

2. Between 2004 and 2012, eight dioceses, the Oregon Province of the Jesuits, and the Congregation of the Christian Brothers filed under Chapter 11. Information about all ten cases is available at *Bankruptcy Protection and the Sexual Abuse Crisis*, BISHOPACCOUNTABILITY.COM, <http://www.bishop-accountability.org/bankruptcy.htm> (last visited Nov. 28, 2012). See also Jonathan C. Lipson, *When Churches Fail: The Diocesan Debtor Dilemmas*, 79 S. CAL. L. REV. 363, 363-66 (2006) (discussing what benefits reorganization under Chapter 11 might bring to the dioceses); David A. Skeel, Jr., *Avoiding Moral Bankruptcy*, 44 B.C. L. REV. 1181, 1181-83 (2003) (noting that the diocese bankruptcies represent an effort to centralize litigation and that financial issues are secondary in these cases).

3. I use terms such as “faith-based organization,” “religious institution,” “religious organization,” and “religious entity” to mean any organization whose operations are motivated in a meaningful way by religious beliefs and principles. Previously religiously affiliated organizations, such as Goodwill Industries, are not included by my definition.

4. See, e.g., Skeel, *supra* note 2, at 1181 (“[T]he rumors that the Archdiocese [of Boston] was considering filing for bankruptcy took me – and I suspect most bankruptcy scholars – completely by surprise. It had never dawned on me that a religious organization would ever file for bankruptcy.”).

5. Chapter 11 provides for the reorganization of a business, though it also is available to natural persons and can be used to effect liquidation. 11 U.S.C. § 101(41) (2012). Religious organizations are eligible to file under Chapter 11 as “people.” *Id.* § 109(d). See *infra* Part II.A for a discussion of the methodology used to identify these petitions and create the dataset on which this Article relies.

6. Chapter 11 Voluntary Petition, *In re Crystal Cathedral Ministries*, No. 8:10-bk-24771 RK (Bankr. C.D. Cal. Oct. 18, 2010) [hereinafter Voluntary Petition]; see also *Crystal Cathedral Megachurch Files for Bankruptcy*, USA TODAY (Oct. 19, 2010, 10:11 AM), [http://usatoday30.usatoday.com/news/religion/2010-10-20-crystal19\\_ST\\_N.htm](http://usatoday30.usatoday.com/news/religion/2010-10-20-crystal19_ST_N.htm); Amy Taxin, *Crystal Cathedral Bankruptcy: Megachurch Files*

North America's longest running televised church service "Hour of Power."<sup>7</sup> Crystal Cathedral Ministries' road to bankruptcy began with the retirement of its founder.<sup>8</sup> The replacement pastor resigned after three unsettling years during which the church experienced unrest and member attrition.<sup>9</sup> Throughout these years, the economic downturn also took its toll, and between 2008 and 2010 Crystal Cathedral Ministries' gross revenue plummeted from almost \$55 million to below \$25 million.<sup>10</sup> By the time it filed under Chapter 11, nearly a dozen creditors had instigated lawsuits against it for unpaid debts.<sup>11</sup>

However, Catholic dioceses and megachurches are not the only religious institutions seeking to reorganize.<sup>12</sup> Instead, they are the minority.<sup>13</sup> This Article presents the results of a comprehensive empirical study of faith-based organizations that filed under Chapter 11 from the beginning of 2006 to the end of 2011, culled from a review of over 60,000 bankruptcy petitions.<sup>14</sup>

This Article examines the institutions' characteristics, reasons for filing, and case outcomes to investigate what benefits Chapter 11 brings to the organizations and whether bankruptcy is an effective solution to their financial problems. Based on the successful reorganizations and continued operations of some of the debtors in the study, it finds that Chapter 11 has the potential to provide a productive means for addressing their financial problems by offering religious organizations an avenue to rehabilitate their operations following economic downturns, failures and transitions in leadership, and standstills in negotiating with creditors.<sup>15</sup> In exploring these Chapter 11 cases, this Article not only reveals the previously unreported prevalence of religious organizations' bankruptcies,<sup>16</sup> but it also adds to only recently developing

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For Chapter 11, HUFFINGTON POST (Oct. 18, 2010, 10:11 PM), [http://www.huffingtonpost.com/2010/10/18/crystal-cathedral-bankrup\\_n\\_767219.html](http://www.huffingtonpost.com/2010/10/18/crystal-cathedral-bankrup_n_767219.html).

7. See Disclosure Statement Describing First Amended Chapter 11 Plan Filed by Committee of Creditors Holding Unsecured Claims, *Crystal Cathedral*, No. 8:10-bk-24711 RK, 2011 WL 6916863 [hereinafter First Amended Chapter 11 Plan].

8. See Disclosure Statement Describing Amended Chapter 11 Plan Filed by Committee of Creditors Holding Unsecured Claims, *Crystal Cathedral*, No. 8:10-bk-24711 RK, 2011 WL 6916858 [hereinafter Chapter 11 Plan].

9. *Id.*

10. *Id.*

11. *Id.*; Debtor's Disclosure Statement Describing Chapter 11 Plan of Reorganization, *Crystal Cathedral*, Ch. 11 No. 8:10-bk-24711 RK, 2011 WL 6916851 (Trial Filing) [hereinafter Debtor's Disclosure Statement].

12. See *infra* Part II.A.

13. See *infra* Part II.A.

14. See *infra* Part II.A.

15. See *infra* Part IV.

16. This is the first article to focus on religious organizations filing for bankruptcy that are not Catholic dioceses or megachurches. See generally, e.g., Lipson, *supra* note 2 (discussing the Catholic dioceses' bankruptcy cases); Skeel, *supra* note 2 (same); Andrew Stone Mayo, Comment, *For God and Money: The Place of the Meg-*

scholarly discussions of nonprofit bankruptcies,<sup>17</sup> providing groundwork for future consideration of the Code's application to nonprofit entities.<sup>18</sup>

Further, drawing upon the religious organization cases, the Article responds to two broader debates about Chapter 11: the role of bankruptcy courts in adjudicating these cases, and the broad purposes of business reorganization. As to the former, an assessment of the religious organization cases parallels recent studies suggesting that Chapter 11 is not an inefficient method for addressing the financial problems of corporations.<sup>19</sup> The review additionally shows that a greater percentage of debtors confirm and consummate plans or otherwise benefit from Chapter 11 than historically thought.<sup>20</sup> As to the latter, in considering whether the religious organization cases focus

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*achurch Within the Bankruptcy Code*, 27 EMORY BANKR. DEV. J. 609 (2011) (discussing how the Bankruptcy Code applies to megachurches).

17. This Article also is one of the first articles to address nonprofit entities filing for bankruptcy and the uniqueness of their cases. See, e.g., Pamela Foohey, *Chapter 11 Reorganization and the Fair and Equitable Standard: How the Absolute Priority Rule Applies to All Nonprofit Entities*, 86 ST. JOHN'S L. REV. 31, 32-33 (2012) (noting that historically very few nonprofit entities sought bankruptcy protection, and though the Code does not prevent them from filing, Chapter 11 "was designed for and is predominately applied to for-profit entities' structure and business objectives"); Reid K. Weisbord, *Charitable Insolvency and Corporate Governance in Bankruptcy Reorganization* 2 n.2 (Berkely Sch. of Law Bus. Law Journal, Working Paper No. 2, 2013), available at <http://ssrn.com/abstract=2188940> (noting that legal scholarship on nonprofit bankruptcy is scarce and that most scholarship discusses these bankruptcies in discrete contexts, such as the bankruptcies of nonprofit health systems).

18. For example, the Code provides that involuntary petitions may not be filed against nonprofit entities and that nonprofit entities' Chapter 11 cases may not be converted to Chapter 7 cases without their consent. See 11 U.S.C. §§ 303(a), 1112(c) (2012); see also Foohey, *supra* note 17, at 36-37 (discussing why courts hold that the absolute priority rule does not apply to nonprofits entities and how this holding affects nonprofit reorganization cases). The data presented in this Article, along with future empirical studies of nonprofits entities' bankruptcy cases, may suggest a need to reconsider these and other Code provisions.

19. See Edward R. Morrison, *Bankruptcy Decision Making: An Empirical Study of Continuation Bias in Small-Business Bankruptcies*, 50 J.L. & ECON. 381, 381-83 (2007) [hereinafter *Bankruptcy Decision Making*] (finding that continuation bias "allowing failing businesses to linger under the protection of the court, which resists liquidation even when it is optimal" is "either absent or empirically unimportant" based on a sample of Chapter 11 cases filed by small businesses); Elizabeth Warren & Jay Lawrence Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 MICH. L. REV. 603, 604-06 (2009) [hereinafter *Success of Chapter 11*] ("These data show that much of the conventional wisdom about key elements of Chapter 11 is simply wrong. Contrary to so many assertions, Chapter 11 has been far more successful than supposed."); *infra* Part III.A.

20. See *infra* Part III.B.

more on preserving going-concern value<sup>21</sup> or keeping owner-operators and their small businesses together, the analysis reveals that the cases straddle these two accounts of Chapter 11, thereby identifying a set of cases that implicate multiple theories of business reorganization.<sup>22</sup>

For example, Ark of Safety Apostolic Faith Temple's (Ark of Safety) story encompasses many of the problems that the religious organizations in

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21. Going-concern value is the difference between the liquidation value of a debtor and value of the business if it continues operating. See H.R. REP. NO. 95-595, pt. 2, at 223 (1977).

22. See Douglas G. Baird & Edward R. Morrison, *Serial Entrepreneurs and Small Business Bankruptcies*, 105 COLUM. L. REV. 2310, 2311-14 (2005) (summarizing the going-concern account and positing that the focal point should be on the entrepreneur rather than the corporate entity in small business cases). In addition, focusing on the ex ante rather than ex post effects of bankruptcy law, others have argued that bankruptcy may serve to induce entrepreneurial risk taking by providing a "safety net," thereby driving economic growth. See Ralph Brubaker, *Artificial Impairment and the Single-Asset Real Estate Debtor*, 33 No. 4 Bankruptcy Law Letter 1, 8 (April 2013) (citing studies and noting further that "historically, [this ability of bankruptcy to encourage entrepreneurialism] seems to have been one of the principle justifications for bankruptcy law, widely perceived and acknowledged as such").

Other approaches to Chapter 11 also focus on goals beyond preserving going-concern value. See, e.g., KAREN GROSS, *FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM* 248-49 (1997); Charles J. Tabb, *The Future of Chapter 11*, 44 S.C. L. REV. 791, 802-07 (1993); Elizabeth Warren, *Bankruptcy Policy*, 54 U. CHI. L. REV. 775, 776-77 (1987). However, these approaches similarly focus on preserving the business. See Elizabeth Warren & Jay Lawrence Westbrook, *Contracting Out of Bankruptcy: An Empirical Intervention*, 118 HARV. L. REV. 1197, 1214-15 (2005) [hereinafter *Contracting Out of Bankruptcy*] (summarizing theories of "bargained bankruptcy" and arguing that empirical evidence demonstrates that bankruptcy brings together a host of "social and economic relationships" and thus cannot be reduced to a "two-party contract model" without a loss of efficiency). In contrast, the opposing main account of Chapter 11, termed the creditors' bargain theory, is that it serves to maximize the value of assets for creditors and shareholders. See generally, e.g., THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* (1986); Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 YALE L.J. 857 (1982) (setting forth the "simple creditors' bargain model"; Thomas H. Jackson & Robert E. Scott, *On the Nature of Bankruptcy: An Essay on Bankruptcy Sharing and the Creditors' Bargain*, 75 VA. L. REV. 155 (1989) (creating an "expanded creditors' bargain model"); Lynn M. LoPucki, *A Team Production Theory of Bankruptcy Reorganization*, 57 VAND. L. REV. 741 (2004) (positing a "team production theory" of bankruptcy reorganization and contrasting it with the creditors' bargain theory).

The differences between the focus of the going-concern value account and related accounts and the focus of the entrepreneurial accounts as they apply to religious organization debtors are the focus of this Article. In particular, the view of Chapter 11 presented in this Article through the cases of religious organization debtors draws upon and is an extension of the insights of Professors Baird and Morrison in *Serial Entrepreneurs and Small Business Bankruptcies*.

this study faced before filing. Formed in 1998 by Bishop Herman Jackson, Ark of Safety offered spiritual services and community outreach to the residents of Cicero, Illinois, a town ten miles west of Chicago.<sup>23</sup> Bishop Jackson held the church's first worship service in a small storefront.<sup>24</sup> The ministry grew and relocated to a 24,000 square foot building, purchased and owned by the church as a nonprofit corporation.<sup>25</sup> When Bishop Jackson divorced in 2008, "confusion and devastation" ensued, forming a gap within the church administration.<sup>26</sup> This resulted in decreased attendance and a significant portion of the members leaving the ministry.<sup>27</sup> Though many members stayed committed to Bishop Jackson and the congregation,<sup>28</sup> the souring economy led to layoffs, leaving many remaining parishioners unable to donate as much as they had in the past.<sup>29</sup> The economy further affected the church's financial condition when its daycare tenant abruptly ended its lease.<sup>30</sup> This added to the reduction in Ark of Safety's revenues and led to even more member attrition as families with children enrolled in the defunct daycare also left the church.<sup>31</sup> Ark of Safety struggled to find a new daycare tenant; once it did, it took more than a year before the new tenant could secure the required operating licenses.<sup>32</sup>

By early 2010, Ark of Safety could no longer remain current on its financial obligations.<sup>33</sup> Most distressing was its inability to pay the \$1 million mortgage on its church building valued at \$1.2 million.<sup>34</sup> Otherwise, it owed about \$150,000 to unsecured creditors, and owned a church organ, pews, furniture, and equipment housed in the church, which collectively were valued at under \$20,000.<sup>35</sup> The church filed a Chapter 11 petition with the stated hope of restructuring its mortgage.<sup>36</sup>

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23. See Disclosure Statement, *In re Ark of Safety Apostolic Faith Temple, Inc.*, No. 09-31025 (Bankr. N.D. Ill. Aug. 24, 2009), Doc. 32.

24. *Biographies*, ARK OF SAFETY APOSTOLIC FAITH TEMPLE, <http://www.arkof-safety.co/Biographies.html> (last visited Aug. 28, 2013).

25. See Disclosure Statement, *supra* note 23, at Doc. 32; *Biographies*, *supra* note 24.

26. Disclosure Statement, *supra* note 23, at Doc. 32.

27. *Id.*

28. I use the term congregation to mean a group of individuals – collectively, the congregation's members or the congregants – who meet together regularly for religious worship.

29. See Disclosure Statement, *supra* note 23, at Doc. 32.

30. *Id.*

31. *Id.*

32. *Id.*

33. See *id.*

34. *Id.*

35. *Id.*

36. *Id.*



Supported by its remaining members' continued faith in Bishop Jackson and the congregation, a paying daycare tenant, two new renters of its sanctuary space, and its administration's agreement to forgo their salaries for a year, Ark of Safety obtained confirmation of its reorganization plan, which mainly restructured the payments on its mortgage.<sup>37</sup> As of February 2013, it continued to operate in the same building.<sup>38</sup>

Like Crystal Cathedral Ministries and Ark of Safety, the faith-based institutions that file under Chapter 11 predominately operate places of worship.<sup>39</sup> Some run schools, and others operate food pantries, daycares, and halfway houses in addition to their places of worship.<sup>40</sup> The filing entities span Christian denominations, and include Jewish, Buddhist, Hindu, and Islamic institutions.<sup>41</sup> Overall, they reflect the religious makeup of Americans, although certain Christian denominations are overrepresented in comparison to congregations nationwide.<sup>42</sup>

Though religious in character, many of the organizations exhibit the hallmarks and financial vulnerabilities of small businesses, which lead them to bankruptcy.<sup>43</sup> One of their greatest vulnerabilities stems from their affiliations. The denominations overrepresented in Chapter 11 generally are those with governing bodies that may not be able to offer financial support in times of need, such as the Reformed Church in America with which Crystal Cathe-

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37. *Id.*; Order Confirming Chapter 11 Plan, *In re* Ark of Safety Apostolic Faith Temple, Inc., No. 09-31025 (Bankr. N.D. Ill. May 11, 2010), Doc. 55.

38. *See* ARK OF SAFETY APOSTOLIC FAITH TEMPLE, <http://www.arkofsafety.co/default.html> (last visited Aug. 28, 2013).

39. *See infra* Table 2.

40. *See infra* Table 2.

41. *See infra* Table 2 and note 97.

42. *See infra* Part II.B.

43. "Small business" is an imprecise term. Scholars generally have divided cases and debtors into "small" and "large" groups based on total assets or debts, or whether the company was publicly traded. Stephen J. Lubben, *The Types of Chapter 11 Cases*, 84 AM. BANKR. L.J. 233, 233 (2010); *see also* Brian A. Blum, *The Goals and Process of Reorganizing Small Businesses in Bankruptcy*, 4 J. SMALL & EMERGING BUS. L. 181, 188-93 (2000) (discussing different ideas of what constitutes a small business). "Small" also is defined based on number of employees or average annual revenue. *See* Baird & Morrison, *supra* note 22, at 2316 n.25. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 [hereinafter BAPCPA], added a definition to the Bankruptcy Code that provides that a "small business debtor" is a debtor with "aggregate noncontingent liquidated secured and unsecured debts" as of the petition date not exceeding \$2 million, which is adjusted on 3-year intervals (and here adjusted effective April 2010, \$2,343,300). 11 U.S.C. §§ 101(51D), 10 (2012). A leading prior legislative recommendation proposed defining a small business debtor as one with less than \$5 million in liquidated and noncontingent debt. *See* NATIONAL BANKR. REVIEW COMM'N, BANKRUPTCY: THE NEXT TWENTY YEARS 618 (Oct. 20, 1997), *available at* <http://govinfo.library.unt.edu/nbrcreport/15smallbu.pdf> (last visited Aug. 28, 2013).

dral Ministries is affiliated.<sup>44</sup> Likewise, the faith-based institutions in this study do not have other religious organizations to turn to for financial help when they encounter problems paying their debts.<sup>45</sup>

The data show that the vast majority of religious organizations that file under Chapter 11 do so because of concerns about paying mortgages on real property.<sup>46</sup> They seek to reorganize primarily so that they may restructure their mortgage payments and retain their real property.<sup>47</sup> Like Ark of Safety, they arrive in bankruptcy court holding almost all of the value of their assets in real property and owing almost all of their debts on that real property.<sup>48</sup> They tend to own buildings worth more than the debts securing them, indicating that there may be value to be saved.<sup>49</sup> Similarly, they have operated for a relatively long time under the leadership of a key pastor or reverend.<sup>50</sup> In fact, most of the organizations were formed two decades or more prior to their bankruptcies, suggesting that relatively stable congregations are using reorganization to preserve not only a building, but also an established community invested in continuing to assemble in the particular building viewed as their spiritual home.<sup>51</sup>

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44. See *History*, SHEPHERD'S GROVE, <http://www.shepherdsgrove.org/about/history.php> (last visited Aug. 28, 2013) (As of July 7, 2013, Crystal Cathedral Ministries had been purchased by the Orange County, CA Diocese of the Roman Catholic church and renamed "Shepherd's Grove.").

45. See *infra* Part II.B. This organizational structure may raise questions and lead to future inquiries regarding the "theory of the firm" as it applies to religious institutions and, by extension, nonprofit entities. See, e.g., Brooks B. Hull & Frederick Bold, *Towards an Economic Theory of the Church*, 16 INT'L. J. OF SOC. ECONOMICS 5 (1989) (employing the theory of the firm to explain behavior of churches); Usha Rodrigues, *Entity and Identity*, 60 EMORY L.J. 1257, 1273-79, 1313 (2011) (surveying existing theories of the firm and nonprofit entities, arguing that these theories do not explain fully the existence of nonprofits, and setting forth a "social identity theory of the nonprofit"). Because this Article primarily seeks to explore the Chapter 11 cases of religious organizations as to their productivity and how they inform debates about the efficiency and theories of Chapter 11, it does not take up this inquiry further. Nonetheless, applying the results of this study to theories of religious institution and nonprofit organizational structures may be an interesting and useful future extension of this Article.

46. See *infra* Part II.B.

47. See *infra* note 196 and accompanying text.

48. See *infra* Table 3. Crystal Cathedral Ministries similarly arrived in bankruptcy court holding a majority of its assets in real property and owing a majority of its debts on that real property. See Debtor's Disclosure Statement, *supra* note 11. However, because it owed significant unsecured debts, it owed proportionally less of its debts on real property than other religious organizations in this study. See *id.* Nonetheless, it too filed to save its real property. See *id.*

49. See *infra* Part II.B.

50. See sources cited *supra* note 6.

51. See *infra* Parts II.B, IV.C.

Filing to save encumbered property or keep a congregation together, however, is merely a symptom of underlying problems. The more interesting and significant story of religious organization cases is how the institutions came to need bankruptcy protection. Two primary precipitators emerge from their cases.<sup>52</sup> Unsurprisingly, as evident in Crystal Cathedral Ministries' and Ark of Safety's situations, the first is the Great Recession and its effect on income, jobs, and secured lending.<sup>53</sup> As incomes declined and jobs disappeared, congregants could not give as much to their churches, and as the market for secured lending tightened, banks were unwilling to refinance mortgages.<sup>54</sup> Further, as with Ark of Safety, some religious organizations lost even more revenue when tenants renting space in their church buildings ended leases or simply did not pay.<sup>55</sup>

The second is the more intriguing precipitator. An investigation of their cases indicates that these institutions are driven by and dependent on their leaders.<sup>56</sup> When leaders make poor business (or life) decisions, move away, or die, congregants lose faith, move with them, or abandon the religious community.<sup>57</sup> Poor leadership also is evident in both Crystal Cathedral Ministries' and Ark of Safety's stories.<sup>58</sup>

In the wake of destabilizing events, the remaining leaders and congregants must pick up the pieces.<sup>59</sup> Across both stories, the ultimate goal is to keep the congregation alive, allowing members to continue to worship and attend daycare and school in the same physical space they have worked hard to afford and construct and have gathered in for years.<sup>60</sup> In some instances, the congregation's continuation also permits a pastor to retain his ministry.<sup>61</sup>

Further, this examination of the causes and outcomes of the religious organizations' bankruptcy cases reveals that their cases connect with multiple theories of the purposes of Chapter 11. As noted, one of the primary accounts of Chapter 11 is that reorganization and sales preserve going-concern value of financially-distressed businesses.<sup>62</sup> Relating to this account, in empirically studying Chapter 11, scholars have concentrated on large, publicly-traded

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52. See *infra* Part IV.

53. Debtor's Disclosure Statement, *supra* note 11; Disclosure Statement, *supra* note 23, at 3.

54. Debtor's Disclosure Statement, *supra* note 11; Disclosure Statement, *supra* note 23, at 3.

55. Disclosure Statement, *supra* note 23, at 3.

56. See *infra* Part IV.B.

57. See *infra* Part IV.B.

58. Debtor's Disclosure Statement, *supra* note 11; Disclosure Statement, *supra* note 23, at 3.

59. See *infra* Part IV.B.

60. See *infra* Part IV.C.

61. See *infra* Part IV.C.

62. See Baird & Morrison, *supra* note 22, at 2312-14 (summarizing the standard account).

companies or certain issues, such as professional fees.<sup>63</sup> Relatively recently, more attention has been directed to the cases of small business debtors.<sup>64</sup> Notably, drawing on a dataset of Chapter 11 filings in the Bankruptcy Court for the Northern District of Illinois during 1998 (the Baird-Morrison study), Professors Douglas Baird and Edward Morrison posit a conception of small business reorganization as primarily retarding entrepreneurs' re-deployment of their human capital by encouraging entrepreneurs to continue operating their current business entities rather than dissolving those entities and starting anew.<sup>65</sup> Contrary to the primary account, they emphasize that primary focus should be on the entrepreneur running the business.<sup>66</sup>

The religious organization cases in this study contain elements of both these accounts. The data show that even those institutions that file in reaction

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63. See, e.g., LYNN M. LOPUCKI, *COURTING FAILURE: HOW COMPETITION FOR BIG CASES IS CORRUPTING THE BANKRUPTCY COURTS* (2005) (examining the Chapter 11 reorganization process in bankruptcy courts that historically handle most of the largest bankruptcy cases); LYNN M. LOPUCKI & JOSEPH W. DOHERTY, *PROFESSIONAL FEES IN CORPORATE BANKRUPTCIES: DATA, ANALYSIS, AND EVALUATION* (2011) (examining the professional fees based on court files in 102 of the largest bankruptcy cases); Elizabeth Warren & Jay Lawrence Westbrook, *Financial Characteristics of Businesses in Bankruptcy*, 73 AM. BANKR. L. J. 499, 506-07 (1999) [hereinafter *Financial Characteristics*] (summarizing studies of business bankruptcy from the 1960s through the 1990s); see also Robert M. Lawless et. al, *A Glimpse at Professional Fees and Other Direct Costs in Small Firm Bankruptcies*, 1994 U. ILL. L. REV. 847, 848-49 (noting that many studies that include smaller companies rely on data from bankruptcies filed prior to the enactment of the Bankruptcy Code).

64. See, e.g., Baird & Morrison, *supra* note 22, at 2310 (studying businesses that filed under Chapter 11 in one bankruptcy court over one year and focusing on small business bankruptcies); *Bankruptcy Decision Making*, *supra* note 19, at 381 (examining the shutdown decision of small businesses in a sample of Chapter 11 cases filed in one bankruptcy court over one year); Edward R. Morrison, *Bargaining Around Bankruptcy: Small Business Workouts and State Law*, 38 J. LEGAL STUD. 255 (2009) (examining when distressed small businesses opt to file for bankruptcy rather than liquidate under state law based on distressed businesses located in Cook County, Illinois); Teresa Sullivan et. al, *FINANCIAL DIFFICULTIES OF SMALL BUSINESSES AND REASONS FOR THEIR FAILURE* (1998), available at <http://archive.sba.gov/advo/research/rs188tot.pdf> (reporting on the bankruptcies of small businesses filed in 1994); *Success of Chapter 11*, *supra* note 19 (examining Chapter 11 cases filed in 1994 and 2002 across several jurisdictions and positing that BAPCPA's amendments to Chapter 11 may be detrimental to small business debtors).

65. Baird & Morrison, *supra* note 22, at 2311-12.

66. *Id.* at 2366. Scholars previously have identified and discussed the dependence of small businesses on their owner-operators. See, e.g., Lynn M. Lopucki, *The Debtor in Full Control -- Systems Failure Under Chapter 11 of the Bankruptcy Code? Second Installment*, 57 AM. BANKR. L.J. 247, 263-66 (1983) [hereinafter *Systems Failure Part 2*] (noting that "[t]here is a broad consensus among students of business failure that the large majority of businesses which fail do so because of poor management").

to the economic downturn are dependent on the overarching management of a leader, like Bishop Jackson.<sup>67</sup> Otherwise, they generally rise or fall with leaders who energize their congregations.<sup>68</sup> The benefits they seek from Chapter 11 mirror some of the reasons other small businesses file. They want some breathing space from creditors while they assess their operations;<sup>69</sup> they no longer can meet their creditors' demands and seek a stay of collection activities;<sup>70</sup> and they hope to change negotiating dynamics with secured creditors that are refusing to bargain with leadership.<sup>71</sup>

Thus, the religious organizations enter Chapter 11 with significant assets and reorganization prospects that potentially make the process valuable to them and their creditors.<sup>72</sup> Particular attention should be directed to the leaders' abilities to marshal their organizations through the turmoil that led to bankruptcy, but consideration also must be given to the continuation prospects of the congregation that makes up the religious entity that owns the property.<sup>73</sup> Both approaches are critical, and using them in combination is fundamental to assessing religious institutions' reorganizations.<sup>74</sup>

Part II describes the methodology and dataset, provides an overview of the affiliations, operations, and financial characteristics of the religious or-

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67. See *infra* Part IV.A.

68. See *infra* Part IV.B.

69. The going-concern account explains this breathing space as benefitting the corporate debtor, while the small business account stresses that the value of breathing space accrues to the entrepreneur herself. Compare A. Mechele Dickerson, *The Many Faces of Chapter 11: A Reply to Professor Baird*, 12 AM. BANKR. L.J. 209, 116 n.42 (2004), with Baird & Morrison, *supra* note 22, at 2315 n.22. To the extent a religious organization's survival is contingent on its leader, bankruptcy may afford them time to integrate a new leader into the organization. In this way, the breathing space may benefit the corporate debtor. On the other hand, bankruptcy may afford an existing pastor time to realign a congregation's activities with its finances and priorities. Though the organization benefits, the pastor may benefit more.

70. The automatic stay generally suspends debt service and creditors' collection activities. 11 U.S.C. § 362(a) (2012).

71. See Baird & Morrison, *supra* note 22, at 2315-16 (summarizing the benefits that entrepreneurs may receive from Chapter 11).

72. See *infra* Part IV.C.

73. See *infra* Part V.

74. Professors Baird and Morrison recognize that small business cases may exist in which the business may be worth saving because of the value of specialized assets, and identify restaurants as one industry prone to the accumulation of specialized assets. See Baird & Morrison, *supra* note 22, at 2345-46. However, they note that the restaurant debtors in their sample used Chapter 11 successfully and beneficially not because they preserved these assets, but because the skills of the owner-operator were matched to the enterprise. *Id.* at 2345-49. They ultimately conclude that in the vast majority of cases there is no business worth saving. *Id.* at 2366. The view of Chapter 11 presented in this Article through the cases of religious organization debtors is an extension of their work, not an entirely new view of Chapter 11. See *infra* Part V.

ganization debtors, and contrasts these characteristics with those of other small business debtors. Parts III and IV focus on the cases. Part III traces their procedural histories and outcomes to evaluate the workings of bankruptcy courts. Part IV highlights the most prevalent stories of the religious organizations in this study, and then considers how Chapter 11 aided them and whether reorganization offered an effective solution to their financial problems. Expanding on the usefulness of reorganization to faith-based institutions, Part V explores what the cases reveal about business bankruptcies. Part VI concludes with suggestions for further research into and conceptualizations of business reorganization.

## II. IDENTIFYING RELIGIOUS BANKRUPTCIES

### *A. Methodology and Data*<sup>75</sup>

The data for this Article comes from the case files of bankruptcy courts across the country as available via the Public Access to Court Electronic Records (PACER) service. Because there is no reliable method to pinpoint religious organizations from the identification data debtors submit to bankruptcy courts as part of filing under the Bankruptcy Code, to isolate these entities I reviewed the petitioner's name of each of the over 60,000 entities or individuals that filed under Chapter 11 in every bankruptcy court in the fifty United States and the District of Columbia from January 1, 2006, to December 31, 2011.<sup>76</sup> Based on the petitioners' names, I first assembled a pool of petitions

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75. The study involves a dataset of 497 cases. This dataset is on file with the author.

76. Religious congregations (for instance, churches, synagogues, mosques) that meet the requirements of 26 U.S.C. § 501(c)(3) automatically are considered tax-exempt under the Internal Revenue Code; other religious organizations generally must apply to the Internal Revenue Service (IRS) for tax-exempt status. *Tax Guide for Churches and Religious Organizations*, INTERNAL REVENUE SERVICE, 3, available at <http://www.irs.gov/pub/irs-pdf/p1828.pdf>. Conceptually, all faith-based organizations that file under Chapter 11 are nonprofit and/or tax-exempt organizations qualified under § 501(c)(3) and should identify themselves as such on the face sheet of their voluntary petitions. This listing thus could serve as an initial identification method. Relatedly, almost all of the petitioners identified themselves as corporations on their petitions or were incorporated at the time of their filings as evident by their names as stated on their petitions (95.9% of the petitions; another 1.9% reported "other," but identified themselves as nonprofit organizations). It seems logical to assume that almost all of the petitioners would list themselves as nonprofit or tax-exempt organizations. Nonetheless, only 66.3% of the entities identified themselves as such. Accordingly, using the nonprofit or tax-exempt organization identification on the voluntary petition would yield an incomplete and potentially biased list of debtors. In the context of identifying business bankruptcies, scholars have relied on the petitioner's name to sort business Chapter 11 cases from individual Chapter 11 cases. See, e.g., *Success of Chapter 11*, *supra* note 19, at 609 (relying on the name in the case title to

that possibly were those of faith-based organizations. The pool included cases in which: (1) the petitioner's name included words generally associated with religion, such as church, worship, ministry, Christian, covenant, or temple; or (2) the petitioner's name included words generally associated with nonprofits, such as freedom, community, love, care, and society. I eliminated cases of petitioners with the names of individuals, and with names generally associated with for-profit businesses, such as consulting, development, enterprises, properties, realty, and trucking.<sup>77</sup> From the resulting list of possible faith-based institutions, I reviewed documents filed in each case to determine whether the petitioner actually was a religious organization.<sup>78</sup>

After combining jointly administered cases, I identified a total of 516 cases and 473 unique religious organization debtors spanning the study's six-year timeframe.<sup>79</sup> I removed nineteen of these cases from the dataset, including seven cases filed by Catholic dioceses and related entities. These cases stem from sex abuse allegations and ultimately represent an effort to handle

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identify cases); *Financial Characteristics*, *supra* note 63, at 512 (detailing criteria for determining a case to be a business bankruptcy and partially relying on the petitioner's name).

77. I reviewed the petitioners' names three times to verify that I had identified as many of the potentially relevant filings as possible. The initial list of all Chapter 11 cases filed between January 1, 2006, and December 31, 2011, was based on two downloads from PACER of petitions filed in every bankruptcy court in the United States and the District of Columbia. In September 2011, I downloaded a list of all Chapter 11 petitions filed between January 1, 2006, and June 30, 2011, and in March 2012, I downloaded a list of all Chapter 11 petitions filed between July 1, 2011, and December 31, 2011. Because of PACER's capabilities, it is unclear whether the exact same list of Chapter 11 petitions will be created if a search of all Chapter 11 petitions filed in these jurisdictions during the study's timeframe was run at this time. The Administrative Office of the United States Courts (AO) reported 61,260 Chapter 11 cases filed in these jurisdictions during the study's timeframe, including Chapter 11 cases involving predominately non-business debt. *Bankruptcy Statistics*, UNITED STATES COURTS, <http://www.uscourts.gov/Statistics/BankruptcyStatistics.aspx> (last visited Aug. 29, 2013).

78. If I had difficulty determining the nature of the organization, I retained it in the sample if the debtor identified itself as a nonprofit organization on its petition or if the word church, worship, ministry, Christian, or similar appeared in its name. In some instances, I performed an Internet search to research the nature of the organization. The objective of this identification process was to minimize any of my judgments that could introduce bias into the dataset.

79. For example, the cases of nine entities related to Saint Vincent Catholic Medical Center in New York were jointly administered. See Order Granting Motion for Joint Administration, *In re Saint Vincents Catholic Medical Centers of New York*, No. 10-11963 (Bankr. S.D.N.Y. Apr. 14, 2010). Thirty-seven organizations filed twice, and three filed three times over the study's timeframe. See *supra* note 75. Four cases were transferred, two intra-district and two across districts in the same state. See *supra* note 75.

widespread litigation.<sup>80</sup> I also removed twelve cases of debtors that duplicate services provided in the private market – two hospitals, four senior living communities, three YMCAs, and three others. For example, the senior living community cases involve real estate development, and the faith-based portions of the debtors' missions are only tangentially related to their everyday operations; similarly, the YMCAs are part of a national coordinated network of organizations that provide recreational services with minimal to no emphasis on faith.<sup>81</sup> Removal of these institutions and their cases produced a final dataset of 497 cases filed by 454 unique religious organizations.<sup>82</sup>

As depicted in Figure 1, the number of cases filed by religious entities per year exhibited an upward trend from 2006 to 2011.<sup>83</sup> In contrast, total

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80. See Lipson, *supra* note 2, at 363-65 (analogizing the diocese cases to mass tort bankruptcy cases and commenting that “[a]s with most mass tort bankruptcies, these cases present a struggle between two sets of comparatively innocent parties: tort claimants (the victims of the sexual abuse) and other creditors, on the one hand, versus the parishioners, or church members, on the other”).

81. See *The Y: About Us*, YMCA, <http://www.ymca.net/about-us/> (last visited Aug. 29, 2013). The hospitals' cases also implicate rarely used provisions of the Bankruptcy Code and other unique considerations. See, e.g., 11 U.S.C. § 333 (2012) (requiring the appointment of a patient care ombudsman within thirty days of the petition date unless the court finds that the appointment is unnecessary based on the facts of the case); *id.* § 363(d)(1) (providing that bankruptcy cannot be used to evade state and federal processes regarding hospital sales). The three other debtors operate businesses that predominately provide services available in the private market: the first (Church Mortgage and Loan Corporation) issued mortgages to faith-based institutions, the second (Lambuth University) is a now-closed university, and the third (Fox River Country Day School) is a now-closed school with religious roots, but unclear continued affiliation. See Motion of the Debtor-in-Possession for an Order Approving the Sale of Real Property (Hemlock Hills), *In re Church Mortg. & Loan Corp.*, No. 608BK02363 (Bankr. N.D. Fla. Mar. 28, 2008) [hereinafter *Church Mortgage*]; Court Docket, *In re Lambuth University*, No. 11-11942 (Bankr. N.D. Tenn. June 30, 2011); Richard Morgan, *Board of Lambuth University in Jackson Votes to Cease Operations June 30*, THE COMMERCIAL APPEAL (last updated Apr. 14, 2011, 10:59 PM), <http://www.commercialappeal.com/news/2011/apr/14/lambuth-university-jackson-close-its-doors-june-30/>; Court Docket, *In re Fox River Country Day School*, No. 11-44558 (Bankr. N.D. Ill. Nov. 1, 2011); Jameel Naqvi, *Fox River Country Day School Closing*, DAILY HERALD (June 14, 2011, 5:21 PM), <http://www.dailyherald.com/article/20110614/news/706149859/>.

82. Because the dataset contains data from several years, the possibility that the findings are attributable to idiosyncratic factors of any individual year is minimized. The effects of the Great Recession, of course, are apparent in the data and affect the findings in this Article, as explored *infra* in Part IV.A.

83. Figure 1 presents the following data regarding cases filed per year of the study:



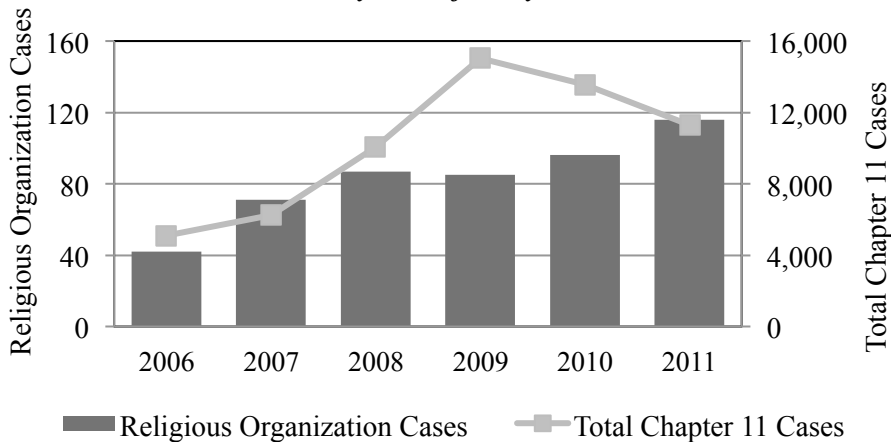
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Chapter 11 filings, as reported by the Administrative Office of the United States Courts (AO), increased from 2006 to 2009, when they peaked, and decreased in 2010 and 2011.<sup>84</sup>

**Figure 1: Number of Total Chapter 11 Cases and Religious Organization Chapter 11 Cases Filed by Year of Study**



The number of religious organization cases per year is exceedingly small relative to estimates of the number of faith-based institutions operating in the United States and relative to the number that close in a given year. Because many have few members and lack permanent locations, determining the precise number of organizations is difficult.<sup>85</sup> However, as a rough (and necessarily low) approximation of the number of religious entities operating nationwide during a given year, research suggests that there were about 320,750 congregations operating in the United States in 2012 and about 323,643 congregations in 2013.<sup>86</sup> Approximately 1% (3,208) of religious

	Year					
	2006	2007	2008	2009	2010	2011
<b>Religious Organization Cases</b>	42	71	87	85	96	116
<b>Total Chapter 11 Cases</b>	5,090	6,255	10,029	15,025	13,552	11,309

84. See *Bankruptcy Statistics*, *supra* note 77. Total Chapter 11 filings figures exclude cases filed outside the fifty United States and the District of Columbia.

85. Determining the precise number of organizations also is difficult because in addition to often automatically being considered tax-exempt under the Internal Revenue Code, churches, mission societies, and certain other faith-based institutions are not required to file tax returns with the IRS. See *Tax Guide for Churches and Religious Organizations*, *supra* note 76, at 3, 22.

86. *Quick Facts About Nonprofits*, NATIONAL CENTER FOR CHARITABLE STATISTICS, <http://nccs.urban.org/statistics/quickfacts.cfm> (last visited Aug. 29, 2013) (providing a frequently updated approximation of congregations in the United States).

congregations close their doors each year.<sup>87</sup> Of those 3,208, about 2.6% (83) file under Chapter 11.<sup>88</sup>

Of the ninety possible federal jurisdictions, the cases in the dataset came from sixty-nine jurisdictions.<sup>89</sup> Interestingly, half of the cases originated in just ten jurisdictions. During the study's timeframe, Chapter 11 cases more generally also were filed in a small, though different, set of jurisdictions.<sup>90</sup> Table 1 summarizes the distribution of religious organization cases across these ten jurisdictions as contrasted with the percentage of all Chapter 11 cases that originated in those jurisdictions during the study's timeframe.<sup>91</sup> Overall, religious institutions are filing at different rates and in different locations than other Chapter 11 debtors.<sup>92</sup>

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This figure is similar to other estimates of religious congregations during the study's timeframe. See, e.g., *U.S. Religious Census 2010: Summary Findings*, RELIGIOUS CONGREGATIONS & MEMBERSHIP STUDY, Association of Statisticians of American Religious Bodies, 6 (May 1, 2010), available at [http://www.rcms2010.org/press\\_release/ACP%2020120501.pdf](http://www.rcms2010.org/press_release/ACP%2020120501.pdf) (reporting approximately 344,900 religious congregations in 2010) [hereinafter *U.S. Religious Census 2010*]; *Number of Nonprofit Organizations in the United States, 1999–2009*, NATIONAL CENTER FOR CHARITABLE STATISTICS, <http://nccsdataweb.urban.org/PubApps/profile1.php?state=US> (last visited Aug. 29, 2013) (reporting approximately 385,900 religious congregations in 2009); Amy Blackwood et al., *The Nonprofit Sector in Brief: Facts and Figures From the Nonprofit Almanac 2008*, NATIONAL CENTER FOR CHARITABLE STATISTICS 1 (2008) (reporting approximately 350,000 religious congregations in 2008).

87. See Shawna L. Anderson et. al, *Dearly Departed: How Often Do Congregations Close?*, 47 J. SCI. STUD. RELIGION 321, 325-26 (2008).

88. The precise calculation of these percentages is as follows. Of the 497 religious organizations that filed over the six years of this study, on average 83 filed each year. Thus, 0.0256% of the 320,750 congregations operating each year file under Chapter 11 in any given year. If 1% of the 320,750 congregations close during any given year, on average 3,208 close per year. Thus, 2.59% of the religious organizations that close during a given year file under Chapter 11.

89. The study excludes cases filed outside the fifty United States and the District of Columbia. See *supra* notes 76-77 and accompanying text.

90. 48% of all Chapter 11 cases filed during the study's timeframe came from ten jurisdictions. Four of these jurisdictions are among the jurisdictions from which the majority of religious organizations' cases originated. The overlapping jurisdictions are the Central District of California, Middle District of Florida, Northern District of Georgia, and Northern District of Texas.

91. Where applicable, I report "Ns," the number of cases or debtors in the analysis. In Table 1, N for Religious Organization Debtors is 497, and N for All Chapter 11 Debtors is 61,260. Transferred cases were counted as originating from the jurisdiction to which they were transferred.

92. This may indicate that local legal culture or social networks are influencing bankruptcy filings of faith-based organizations. See, e.g. Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Cultures*, 67 AM. BANKR. L. J. 501 (1993) (noting that consumer bankruptcy law is local in character, with each bankruptcy

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

Jurisdiction	Religious Organization Cases Filed		All Chapter 11 Cases Filed	
	N	%	N	%
N.D. Georgia	53	10.7	1,791	2.9
M.D. Florida	38	7.7	2,879	4.7
W.D. Tennessee	27	5.4	323	0.5
C.D. California	24	4.8	4,791	7.8
N.D. Texas	22	4.4	1,868	3.1
S.D. Texas	21	4.2	1,684	2.8
D. Maryland	18	3.6	1,210	2.0
N.D. Illinois	18	3.6	1,504	2.5
E.D. North Carolina	17	3.4	1,689	2.8
S.D. Florida	16	3.2	697	1.1
Total	254	51.1	18,436	30.1

For each case, I coded financial information such as assets, debts, and the number of secured, priority, and unsecured creditors.<sup>93</sup> I also tracked the instances of filing and disposition of certain motions – such as to lift the automatic stay, to sell certain or all of the debtor’s property, and to dismiss or convert – which provide a chronological history of each case. Additionally, relying on disclosure statements regarding Chapter 11 plans, proposed plans, other case filings, Internet searches, and news stories, I identified the nature,

court and bar having its own practices and legal culture); Teresa Sullivan et al., *The Persistence of Local Legal Culture: Twenty Years of Evidence from the Federal Bankruptcy Courts*, 17 HARV. J.L. & PUB. POL’Y 801 (1994) (describing how practices in bankruptcy courts vary greatly from jurisdiction to jurisdiction); Jay Lawrence Westbrook, *Local Legal Culture and the Fear of Abuse*, 6 AM. BANKR. INST. L. REV. 25 (1998) (noting the existence of local legal culture in the bankruptcy system and arguing that fear of abuse of the system is instrumental in creating this culture); Michelle M. Miller, Working Paper, *Social Networks and Personal Bankruptcy* (June 20, 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2088192](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2088192) (last visited Aug. 29, 2013) (examining the role of social networks in a household’s decision to file for bankruptcy); Barry Scholnick, Working Paper, *Bankruptcy Spillovers Between Close Neighbors* (April 2013), available at [http://www.business.ualberta.ca/BarryScholnick/~media/business/FacultyAndStaff/MBEL/BarryScholnick/Documents/JournalArticles/BK\\_Neighbor\\_14Apr2013.pdf](http://www.business.ualberta.ca/BarryScholnick/~media/business/FacultyAndStaff/MBEL/BarryScholnick/Documents/JournalArticles/BK_Neighbor_14Apr2013.pdf) (examining whether individuals in Canada are influenced to file for bankruptcy based on the prior bankruptcies of their close neighbors) (last visited Aug. 29, 2013).

93. See *infra* note 103 regarding schedules with incomplete information.

operations, and formation year of each organization, the circumstances leading to the debtor's bankruptcy filing, the reasons for the case's disposition, and whether the organization remained in operation post-bankruptcy.<sup>94</sup> Collectively, these data not only provide an overview of the religious organizations and their bankruptcy cases, but also can be analyzed to observe the workings of bankruptcy courts.<sup>95</sup>

### *B. Characteristics of Faith-Based Organization Debtors*

The faith-based organizations that filed under Chapter 11 during the study's timeframe predominately operate places of worship, and occasionally an accompanying daycare, school, food pantry, or halfway house. Their affiliations span religious beliefs and reflect the general religious makeup of the American population.<sup>96</sup> For example, as detailed in Table 2,<sup>97</sup> more than nine out of ten of the debtors are associated with Christian denominations, a statistic comparable with the religious affiliation of the American population and the percentage of religious congregations that are Christian in the United States.<sup>98</sup>

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94. In some instances, this information was difficult to identify. For example, in some cases I relied on the debtor's name to determine denomination or affiliation and operations. I was unable to identify the reason for filing for a quarter of the cases. Likewise, I was unable to identify the debtor's formation year in a fifth of the cases. In addition, because religious organizations are difficult to track even at a time when many maintain an online presence, I only was able to identify reliably the continued operation or closure of about a third of the debtors. Finally, as of November 2012, 63 of the cases remained open. Of those, the court had entered orders in 7 cases that effectively disposed of the case, leaving 56 cases pending. See *infra* note 137. The results of this study should be interpreted with these limitations in mind.

95. Because the cases in the dataset come from 69 of 90 possible jurisdictions and half originate in ten jurisdictions, the results presented in the Article do not reflect a nationwide representative sample of Chapter 11 cases and should be considered with this limitation in mind.

96. See U.S. Religious Landscape Survey, The Pew Forum on Religious & Public Life, available at <http://religions.pewforum.org/affiliations> (last visited Aug. 29, 2013) [hereinafter U.S. Religious Landscape Survey].

97. N = 454. The table includes unique debtors. If an organization filed more than once during the study's timeframe, it is only counted once. Other religions include Buddhist, Hindu, and Islamic affiliated debtors. The "other" place of worship is a non-denominational, non-Christian "center for peace."

98. Removing non-affiliated Americans (such as atheist and agnostic), 94% of the religious American population is Christian of some denomination. See U.S. Religious Landscape Survey, *supra* note 96. Approximately 97% of religious congregations in the United States are Christian. See *U.S. Religious Census 2010*, *supra* note 86. Comparing people affiliated with a religion and congregations is less than ideal. However, because there is little information about the religious makeup of the United States, I include both comparisons.

**Table 2: Main Operation Type of Unique Religious Organization  
Chapter 11 Debtors**

Operation Type	Christian	Jewish	Other Religions	Other
Place of Worship	412	9	6	1
School	11	8	0	0
Community Assistance / Other	1	0	0	6
Total Frequency (Percent)	424 (93.4%)	17 (3.7%)	6 (1.3%)	7 (1.5%)

However, the composition of Christian-affiliated debtors does not mirror the breakdown of Christian congregations by denomination in America.<sup>99</sup> Many of the Christian-affiliated debtors are non-denominational and almost all of those with clear affiliations are Protestant.<sup>100</sup> These congregations likely are not subject to broad governing bodies that may monitor their finances and provide assistance if necessary, potentially motivating their bankruptcy filings. Rather, they often are congregationalist, which in effect leaves them on their own with fewer options when they encounter financial problems.<sup>101</sup>

The religious organization debtors in the study are diverse in size based on total assets and debts, and in how long they operate before seeking bank-

99. See *U.S. Religious Census 2010*, *supra* note 86.

100. Of the 412 debtors operating Christian places of worship, I identified 191 with clear denominations. Of these, 93% are Protestant and 6% are of other denominations. In contrast, 86% of Christian congregations in the United States are Protestant. See *U.S. Religious Census 2010*, *supra* note 86.

101. Congregationalist churches are governed by a structure through which each congregation independently and autonomously runs its own affairs. For instance, Pentecostal churches, which account for 22% of the debtors with clear denominations, are congregationalist. See About Us, United Pentecostal Church International, <http://www.upci.org/about-us/about-us> (last visited Nov. 29, 2012); see also Kent Greenawalt, *Hands Off! Civil Court Involvement in Conflicts over Religious Property*, 98 COLUM. L. REV. 1843, 1849 (1998) (distinguishing between a religious congregation that “is strictly independent of other ecclesiastical associations” and “owes no . . . obligation to any higher authority,” and a congregation holding property that “is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization”); Scott Thumma, *Exploring the Megachurch Phenomenon: Their Characteristics and Cultural Context*, HARTFORD INSTITUTE FOR RELIGIOUS RESEARCH (1996), [http://hirr.hartsem.edu/bookshelf/thumma\\_article2.html](http://hirr.hartsem.edu/bookshelf/thumma_article2.html) (last visited Aug. 29, 2013) (discussing the affiliation structure of megachurches and noting that most churches with denominational ties are associated with “denominations with a congregational polity which gives considerable freedom to individual churches”).

ruptcy protection. Table 3 summarizes the key financial and survival characteristics of the debtors in this study.<sup>102</sup> Of note, in sixty-nine of the 497 cases in the study the debtor did not file complete schedules, and in thirty-eight cases the debtor's case was dismissed for not retaining counsel, both of which are easily met prerequisites for a corporation's Chapter 11 case.<sup>103</sup>

**Table 3: Financial and Other Characteristics of Religious Organization Chapter 11 Debtors**

	Mean	Median
Total Assets, \$	2,819,518	1,309,068
Real Property, \$	2,581,571	1,213,245
Personal Property, \$	253,300	49,414
Total Debts, \$	2,038,008	964,620
Debts Secured by Real Property, \$	1,694,544	810,890
Total Secured Debts, \$	1,760,086	866,667
Priority Debts, \$	31,995	0
Unsecured Debts, \$	260,177	30,019
Total Debts to Total Assets	1.4	0.8
Real Property Secured Debts to Real Property	0.9	0.7
N Secured Creditors	2.8	2.0
N Priority Creditors	1.3	0.0
N Unsecured Creditors	8.7	4.0
Years of Operation	23.0	15.0

102. N for financial figures except real property secured debts to real property is 428. N for real property secured debts to real property is 414. N for years of operation is 365. N of priority creditors excludes one case with over 200 priority creditors. Similarly, N of unsecured creditors excludes three cases with over 200 unsecured creditors. Secured debts include all secured debts (i.e., mortgage debt, automobile debt, and equipment debt).

103. The schedules in 69 cases were missing or reported incomplete information regarding assets, and the schedules in 60 cases were missing or reported incomplete information regarding debts. Courts have held that corporations are artificial entities that must be represented by counsel. *See, e.g., Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381, 1385 (11th Cir. 1985); *see also* 11 U.S.C. § 521(a)(1) (2012) (providing that the debtor must file schedules and certain other documents). That 14% of the religious organizations did not file complete schedules and that 8% did not retain counsel may suggest further that local legal culture or social networks are influencing these filings. *See supra* note 92.

The largest case in the dataset, the case of megachurch Crystal Cathedral Ministries, involved \$73 million in assets and \$58 million in debts,<sup>104</sup> while the smallest involved only \$6,090 in assets and \$157,262 in debts.<sup>105</sup> As evident by Table 3, the total assets and debts of the debtors are skewed, with several debtors with large amounts of assets and debts, thereby making mean assets and debts much larger than median assets and debts. In general, almost two-thirds of the religious organizations arrive in bankruptcy court holding between \$500,000 and \$5 million in assets and owing between \$500,000 and \$5 million in debts. Moreover, 76% of the organizations qualify as small business debtors based on scheduled debts.<sup>106</sup>

A comparison of debts to assets reveals that 72% of the debtors are balance sheet solvent when they file.<sup>107</sup> As with total assets and debts, the debtors' debt-to-asset ratios are highly skewed, with almost 50% of debtors owing between half and the full value of their assets, and less than 10% owing more than twice the value of their assets.

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104. Summary of Schedules, *In re* Crystal Cathedral Ministries, No. 8:10-bk-24771 RK (Bankr. C.D. Cal. Dec. 1, 2010). Unless otherwise indicated, all monetary numbers in this Article are reported in constant December 2011 dollars using the Consumer Price Index (CPI-U) tables as published by the Bureau of Labor Statistics on a monthly basis. See Consumer Price Index, BUREAU OF LABOR STATISTICS, <http://www.bls.gov/cpi/#tables> (last visited Nov. 29, 2012). All monetary numbers are inflated to December 2011 dollars based on the month and year of filing.

105. Voluntary Petition at 18, *In re* God's Fountain of Love Learning Center, Inc., Doc. 1, No. 08-67677 (Bankr. N.D. Ga. April 28, 2008). These figures are adjusted to December 2011 dollars. See *supra* note 104.

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 adjusted effective April 2010). See *supra* note 43. Based on other factors, some of these cases may not have qualified as small business cases. See 11 U.S.C. §§ 101(51C), (51D) (2012). Indeed, "small business debtor" is defined as "a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) . . . ." *Id.* § 101(51D)(A). This definition suggests that the organizations in this study should not be categorized as small business debtors because they are not engaged in business activities. Nonetheless, many of these debtors' cases proceeded as small business cases, and a few were dismissed based on the debtors' failure to comply with the Code's small business provisions.

107. N = 428. The figure is based on the total assets and debts scheduled in each case. Thus, the scheduled assets and debts of an organization that filed under Chapter 11 more than once during the study's timeframe are included as many times as that organization filed and reported assets and debts. A debt-to-asset ratio of 1.0 or lower indicates solvency. The Code similarly defines an entity as insolvent when the sum of its debts is greater than the sum of its assets. 11 U.S.C. § 101(32). Because debtors have an incentive to report inflated asset values on their schedules to overstate their financial condition, this percentage should be considered a high estimate of the portion of solvent debtors in the dataset. See, e.g., Lawless et al., *supra* note 63, at 859.

In addition, the survival of congregations that have existed for decades is on the line when the religious organizations file for bankruptcy protection. The lengths of time the institutions operate before filing also vary, spanning from two years to over 130 years.<sup>108</sup> However, half of the organizations survive between ten and forty years before they file.

Compared to the asset, debt, and solvency characteristics of other Chapter 11 business debtors, the religious organization debtors tend to own much more and owe less, which has implications for how their cases inform theories of business reorganization. For example, nearly 50% of the “small business” Chapter 11 debtors in the Baird-Morrison study arrived in bankruptcy court with less than \$500,000 in assets, and 81% had less than \$1 million.<sup>109</sup> Approximately 70% of the debtors in the same study owed debts less than \$1 million.<sup>110</sup> These results were similar to the asset and debt levels reported in two other studies of Chapter 11 debtors published in the 1990s.<sup>111</sup> In contrast, half of the religious organization debtors in this study scheduled less than the equivalent of \$1 million in assets.<sup>112</sup> Taking inflation into account, the median religious organization in the study holds over six times more assets when it files than the median small business in the Baird-Morrison study.<sup>113</sup> In addition, 62% owe less than the equivalent of \$1 million in debts.

The discrepancy between asset and debt levels is evident in the percentage of solvent debtors in this study versus previous studies. In a study of small business filings in 1994, only 42% of the Chapter 11 debtors in the sample were balance sheet solvent at the time of filing.<sup>114</sup> Similarly, in the Baird-Morrison study, the debtors arrived in bankruptcy court with a median debt-to-asset ratio of 3.3, indicating that the median debtor owed more than

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108. See *supra* note 94 regarding the percentage of debtors with identifiable formation years. The length of operation figures reported in the Article do not account for previous bankruptcy filings. If a religious organization filed more than once during the study’s timeframe or had filed for bankruptcy prior to the study’s timeframe, its reported length of operation is included in the calculation despite its multiple bankruptcy filings.

109. *Bankruptcy Decision Making*, *supra* note 19, at 386. These figures are in 1998 dollars. The Baird-Morrison study removed public companies and businesses using Chapter 11 to sell assets or settle disputes from the dataset. *Id.* at 385. Based on reported debt levels, it included debtors with scheduled debts greater than \$3 million (in 1998 dollars). *Id.* at 386. Overall, the size of the debtors in this study is sufficiently similar to the size of the debtors in the Baird-Morrison study for general comparison.

110. *Id.* at 388 tbl.3 (“68.4 percent of businesses in the [study] had less than \$1 million in debt.”).

111. *Id.* (“[T]he percentages from the [other two studies] are 65.7 percent and 73.4 percent, respectively.”).

112. See *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last visited Nov. 29, 2012).

113. See *id.*; Baird & Morrison, *supra* note 22, at 2324 tbl.2.

114. *Financial Characteristics*, *supra* note 63, at 539.



three times the value of its assets.<sup>115</sup> By comparison, the religious organization debtors owe a median of three-fourths of the value of their assets, and 72% are balance sheet solvent when they file.<sup>116</sup>

Contrasting the percentage of assets and debts related to real property across debtors makes the difference even more apparent. In the Baird-Morrison study, the small business Chapter 11 debtors held a mean of approximately 30% of their assets in land and real property.<sup>117</sup> The faith-based institutions in this study hold three times more of their property as real estate.<sup>118</sup> They also enter bankruptcy with secured debt accounting for a median of 96% of total debt.<sup>119</sup> Conversely, secured debt of the median small business debtor in the Baird-Morrison study accounted for only 44% of its total debt.<sup>120</sup> Overall, as compared to business Chapter 11 debtors, religious organizations own more property and owe a greater percentage of what they own to secured creditors with negotiating power.<sup>121</sup>

The organizations seemingly own more because they have time to accumulate real property based on how long they operate prior to filing. The debtors in this study operated for a significantly longer time before seeking bankruptcy protection than the businesses in other studies. For instance, the small business debtors in the Baird-Morrison study were an average of seven years old at the time of filing,<sup>122</sup> whereas the faith-based entities in this study on average survived twenty-three years before filing.<sup>123</sup> During this time, the religious organizations purchased real property accounting for a median of 90% of their total assets, and incurred debts secured by that real property accounting for a median of 93% of their total debts.<sup>124</sup>

Considered together, these figures indicate that religious organizations, though still relatively small in terms of total assets, exist long enough to accumulate valuable real property, though are unable to pay off most of the debt owing on the property. They thus enter Chapter 11 owing significant portions of the value of that real property, but nonetheless are solvent and hold comfortable equity cushions in their real property.<sup>125</sup> As explored in the follow-

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115. Baird & Morrison, *supra* note 22, at 2324 tbl.2. The mean ratio was a considerably higher 15.2. *Id.*

116. *See supra* note 107 and accompanying text.

117. Baird & Morrison, *supra* note 22, at 2333-34 tbl.6.

118. *See supra* Table 3.

119. N = 428.

120. *See* Baird & Morrison, *supra* note 22, at 2346 tbl.14.

121. *See supra* Table 3.

122. *Bankruptcy Decision Making*, *supra* note 19, at 387 tbl.2.

123. *See supra* Table 3.

124. N for both figures = 428.

125. The term "equity cushion" as used in this Article means the ownership in property above the amount needed to meet debts securing that property. The median religious organization debtor owes 70% of the value of the real property. *See supra* Table 3. Indeed, 78% of the debtors own real property worth more than the secured

ing two Parts, the desire to preserve their congregations in the buildings they worked hard to be able to afford often drives their filings. The circumstances underlying the financial problems that led them to bankruptcy, and the history and outcomes of their cases, offer an avenue to a previously unexplored account of the use and effectiveness of Chapter 11. The following two Parts first trace the history and outcomes of the religious entities' cases, and then tell the stories of the debtors in this study.

### III. EFFICIENCIES AND OUTCOMES

An examination of the procedural history and outcomes of the religious organizations' cases reveals how quickly bankruptcy courts processed their cases as a whole, and what portion of their cases preserved value for the institutions and other interested parties. This investigation more generally provides some evidence of bankruptcy courts' efficiency and efficacy. In assessing Chapter 11 reorganization, scholars and other commentators have leveled two main criticisms: bankruptcy courts allow cases to drag on indefinitely to the detriment of creditors, and successes in Chapter 11 are infrequent because only a small percentage of cases result in confirmed plans.<sup>126</sup> The cases in this study suggest a different picture of bankruptcy courts and reorganization. The results detailed in this Part supplement more recent studies arguing that the Chapter 11 system is not as broken as historically believed, and certainly not so broken that it needs to be scrapped entirely,<sup>127</sup> as some have concluded.<sup>128</sup>

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debt they owe on it (N = 414). Overall, because debtors have an incentive to report inflated asset values on their schedules, the financial figures discussed above should be considered high estimates of the value of religious organizations' assets relative to the debts owed on those assets. See, e.g., Lawless et al., *supra* note 63, at 859 ("The bankruptcy petition is a tool for the debtor's advocate who may paint an overoptimistic picture of the debtor's financial condition and inflate asset values.").

126. See *Success of Chapter 11*, *supra* note 19, 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."); *Bankruptcy Decision Making*, *supra* note 19, at 381-82 (noting that critics argue that "Chapter 11 prevents or retards the reallocation of the assets . . . . Rent-seeking competition among secured and unsecured creditors dominates a process overseen by judges who lack business training and are biased in favor of preserving businesses that should be liquidated").

127. See *Success of Chapter 11*, *supra* note 19, at 605-06 ("These data show that much of the conventional wisdom about key elements of Chapter 11 is simply wrong. Contrary to so many assertions, Chapter 11 has been far more successful than supposed."); *Bankruptcy Decision Making*, *supra* note 19, at 382-83 ("I present evidence that challenges the traditional view as it applies to small-business Chapter 11 cases.").

128. See, e.g., Barry E. Adler, *Bankruptcy and Risk Allocation*, 77 CORNELL L. REV. 439, 463-64 (1992) (arguing that the benefits of bankruptcy cannot outweigh its costs).

The first subpart investigates certain indications of the efficiency of bankruptcy courts by examining how well they separate viable from nonviable cases, how long it takes them to do so, and how much longer viable entities remain in Chapter 11 before plan confirmation. The second subpart focuses on the cases' outcomes to investigate whether they may be considered successful. This subpart also reveals key aspects of the debtors' pre-bankruptcy operations that led them to seek to reorganize under Chapter 11, and begins to outline the stories developed in Part IV.

### *A. Responsive Bankruptcy Courts*

Chapter 11 undoubtedly imposes costs. Filing invokes the automatic stay, which prevents creditors from collecting on their debts, and which may give a debtor the chance to delay its demise or reorganization.<sup>129</sup> This strategic delay is a long-prevailing description of what happens in a typical Chapter 11 case.<sup>130</sup> Conversely, creditors may overrun the process, pushing bankruptcy courts to eject viable organizations from Chapter 11 before those entities have a chance to reorganize, thereby forcing liquidation and destroying value.<sup>131</sup> Additionally, administrative expenses accrue during the Chapter 11 process, decreasing the value available to creditors.<sup>132</sup> The time spent in bankruptcy is also generally thought to lead to a loss of value.<sup>133</sup>

But the process can be beneficial if viable organizations are identified and promptly reorganized. Reorganization generally is thought to preserve going-concern value.<sup>134</sup> In the context of religious organizations, the asset and debt composition detailed above suggests that they file to save the real property in which they hold a substantial equity cushion. Preserving this equity cushion beyond what is achievable outside bankruptcy may be the

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129. See *Success of Chapter 11*, *supra* note 19, at 623.

130. See *id.* at 623-24 ("Scheming debtors and their dilatory counsel sapped all the value out of a business and left it a hollow shell – or so goes the conventional wisdom.").

131. See *Bankruptcy Decision Making*, *supra* note 19, at 392-93 ("The opposite bias could, of course, arise if creditors control the bankruptcy process. Seeking immediate payment, creditors could push the process toward liquidation of viable businesses.").

132. *Id.* at 382.

133. See *Success of Chapter 11*, *supra* note 19, at 625 ("[T]he time spent in bankruptcy itself leads to the loss of value, comprising an indirect cost."); *Bankruptcy Decision Making*, *supra* note 19, at 390 (noting that the longer the Chapter 11 process, "the greater the cost to debtors and creditors"). But see Ralph Brubaker & Kenneth L. Klee, Debate, *Resolved: The 1978 Bankruptcy Code Has Been A Success*, 12 AM. BANKR. INST. L. REV. 273, 276 nn.12-13 (noting studies that challenge the pre-dominate view that the time spent in Chapter 11 leads to a loss of value).

134. See *Success of Chapter 11*, *supra* note 19, at 625 ("[I]t is generally thought that successful reorganization preserves value, especially going-concern value, compared with a liquidation option.").

main benefit of their cases. Even a liquidation plan might preserve value by setting a mechanism for the orderly sale of a business's property, thereby garnering more money to be distributed than what could be achieved by the typical Chapter 7 process or a sale outside bankruptcy.<sup>135</sup> Of course, reorganization may allow a congregation to continue gathering and sending their kids to daycare and school in the same physical space in which they have assembled for years, which may be the congregation's ultimate goal.<sup>136</sup>

The question then is whether bankruptcy courts are striking a positive balance between benefits and costs when handling debtors, creditors, and other interested parties with diverging interests – that is, dismissing cases destined for failure quickly, while providing viable entities an opportunity to reorganize (or complete a going-concern sale) and monitoring their progress to ensure that they do so expeditiously given their individual circumstances. A variety of mechanisms exist to measure bankruptcy courts' efficiency and effectiveness – most notably, procedural history.<sup>137</sup> I explore the procedural history of the cases in the study below, which points toward the conclusion that bankruptcy courts seem to move both more swiftly and carefully than traditionally believed, quickly dismissing the cases of nonviable religious institutions and granting those with reorganization prospects time to work with creditors and to propose confirmable plans.

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135. *But see* Lynn M. LoPucki & Joseph M. Doherty, *Bankruptcy Fire Sales*, 106 MICH. L. REV. 1 (2007) (finding that the recoveries in reorganization cases of large public companies are more than double the recoveries from going concern sales, and attributing the low recoveries in sale cases to continuing market illiquidity).

136. *See infra* Part IV; *see also Success of Chapter 11, supra* note 19, at 625 (“A reorganization is also thought to produce substantial positive externalities, such as maintaining employment, preserving the local tax base, and advancing community stability.”); Warren, *supra* note 22, at 787-88 (describing bankruptcy as “an attempt to reckon with a debtor’s multiple defaults and to distribute the consequences among a number of different actors,” including employees, suppliers, and the surrounding community).

137. I use the term “procedural history” in this Article to mean the incidences and timing of filing of motions and other documents in a case and the bankruptcy court’s disposition of those documents. *See Success of Chapter 11, supra* note 19, at 626-34 (assessing bankruptcy courts’ ability to sort cases based on time to dismissal or confirmation); *Bankruptcy Decision Making, supra* note 19, at 393 (assessing continuation bias by examining procedural history). Post-bankruptcy history and bankruptcy courts’ ability to sort economically distressed debtors from financially distressed debtors also has been used to assess bankruptcy courts’ efficiency. However, because of the difficulties in tracking the religious organizations post-bankruptcy and in categorizing debtors as economically or financially distressed pre-bankruptcy, I rely on procedural history. *See supra* note 94.

### 1. Identifying the Doomed to Fail

The Chapter 11 cases in this study ended in one of three main ways – dismissal, confirmation of a plan of reorganization, or confirmation of a plan of liquidation or liquidation by sale.<sup>138</sup> Bankruptcy courts disposed of the cases in the study in a median of 228 days (seven and a half months).<sup>139</sup> Consistent with recent studies that found median case durations of 5.7 months and nine months,<sup>140</sup> this figure alone challenges the notion that the Chapter 11 process is relatively lengthy as compared to reasonable benchmarks, such as the four to nine months business brokerage firms report it takes to sell a busi-

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138. Technically, the finish of a case occurs when the case is closed. However, the true end of a case is when the dispositive motion is granted, such as a motion to dismiss or for confirmation of a plan. The case often remains open for administrative reasons. See *Success of Chapter 11*, *supra* note 19, at 627 n.86 (“When a case is closed may often depend more on the schedule and resources of a clerk’s office than upon anything about the substantive resolution of the case.”); Stephen Lubben, *Business Liquidation*, 81 AM. BANKR. L.J. 65, 81 (2007) (measuring time to resolution in Chapter 11 as the time from case filing to plan confirmation, and not using case closure as the endpoint because cases often remain open for tactical reasons and because the terms of confirmed plans may provide that many Code provisions no longer apply to the debtor); Stephen P. Ferris & Robert M. Lawless, *The Expenses of Financial Distress: The Direct Costs of Chapter 11*, 61 U. PITT. L. REV. 629, 637 (2000) (“Consistent with other studies, we measured time in reorganization as the time from filing through confirmation of the chapter 11 plan.”). Chapter 11 proceedings typically also end in a fourth main way – conversion. See *Success of Chapter 11*, *supra* note 19, at 627. However, section 1112(c) prohibits the conversion of a Chapter 11 case to a Chapter 7 case if the debtor is a “non-moneyed, non-business or non-commercial corporation” and the debtor does not consent to conversion. 11 U.S.C. § 1112(c) (2012). This phrase includes corporations organized as nonprofits. Accordingly, few motions to convert were filed and no cases in the study ended with conversion to Chapter 7.

139. N = 471. 26 cases (5.2%) had not been disposed of by the end of November 2012. Calculated as of December 1, 2012, these cases were pending a median of 500 days. Because these cases have pending longer than those that have been disposed of, once they conclude and are included in the calculation, the median time to resolution will increase slightly. The 26 pending cases are excluded from the remainder of the analysis in this subpart.

140. See *Success of Chapter 11*, *supra* note 19, at 629 (reporting a median time to resolution of about 9 months); *Bankruptcy Decision Making*, *supra* note 19, at 391 tbl. 7 (reporting a median duration of 5.7 months). But see Ferris & Lawless, *supra* note 138, at 637 (reporting a median time to resolution of 395 days).

ness<sup>141</sup> and the median of approximately eight months that similar bankruptcy cases pended under the Bankruptcy Act.<sup>142</sup>

Of note, in sixty-six cases the debtor did not schedule assets or debts and did not file a plan. All of the cases were dismissed. Courts expelled these debtors from Chapter 11 in a median of thirty-nine days (less than six weeks).<sup>143</sup> Likewise, courts dismissed cases based on the debtor's failure to retain counsel in a median of thirty-five days.<sup>144</sup> Bankruptcy courts seem to move swiftly when faced with debtors that do not meet the Code's minimal filing requirements.

Distinguishing between two types of cases bankruptcy courts encounter – those that warrant dismissal, and those that have a chance at confirming a plan (whether reorganization or liquidation) and thus merit keeping in Chapter 11 – based on whether a plan was filed further shows that courts dispose of the cases doomed to fail quickly and hold onto the meritorious cases longer.<sup>145</sup> Courts dismissed cases in which no plan was filed in a median of four and a half months, and disposed of cases in which a plan was filed in a median of eleven months.<sup>146</sup> Indeed, courts dismissed over three-quarters of cases with no plan in nine months or less. In contrast, they dismissed or confirmed plans in less than one-third of the cases with proposed plans during this timeframe. Of the cases that concluded after more than a

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141. In the Baird-Morrison study, Professor Morrison cited this as a reasonable benchmark against which to measure case duration. *Bankruptcy Decision Making*, *supra* note 19, at 391.

142. See Lynn M. LoPucki, *The Trouble With Chapter 11*, 1993 WISC. L. REV. 729, 740 (deriving a time to disposition of a median of eight months based on the data reported in a 1964 study of Chapter XI cases filed in six districts). Professor LoPucki also summarizes studies that measure the length of Chapter 11 cases filed soon after the enactment of the Bankruptcy Code and concludes that for “smaller companies, that were taking a median time of only about eight months to reorganize, the change from Chapter XI to Chapter 11 was a disaster. The time it took these companies to reorganize more than doubled.” *Id.* at 745. Other studies simply state that a median time to resolution of around six to nine months is fast. See, e.g., *Success of Chapter 11*, *supra* note 19, at 631-32 (“[T]he median time for resolution of all cases that were dismissed or converted was about seven months . . . . From the viewpoint of these exit cases, the system's performance was remarkably quick.”).

143. 85% of the cases were dismissed within three months, 94% within six months, and all within a year.

144. N = 38.

145. See *infra* Part III.A.2 for a discussion of whether certain parties influenced bankruptcy courts to dismiss potentially meritorious cases without giving debtors sufficient time to prove their cases' merits. Professors Warren and Westbrook similarly have distinguished between cases in which no plan was filed and cases in which a plan was filed in discussing how the Chapter 11 system sorted cases. *Success of Chapter 11*, *supra* note 19, at 630.

146. N for No Plan Filed is 272; N for Plan Filed is 199.

year had passed, debtors filed a plan in 75% of cases.<sup>147</sup> The data suggest that bankruptcy courts appear to distinguish between those debtors that have a chance of confirming a plan relatively early and continuously throughout the Chapter 11 process.<sup>148</sup>

A similar analysis can be used to assess bankruptcy courts' overall efficiency in evaluating seemingly viable cases.<sup>149</sup> By filing a plan, the debtor signals that its business may be salvageable. But the technical requirements for filing a plan are not onerous.<sup>150</sup> Courts thus must determine which plans are likely to be confirmed and which are infeasible. Of the cases in which the proposed plan was not confirmed, courts dismissed the case in a median of six months after the plan was filed.<sup>151</sup> Conversely, it took courts less time – a median of four months after the plan was filed – to confirm a proposed plan.<sup>152</sup> Table 4 summarizes the time, measured from the petition date, that it took courts to dispose of cases based on the cases' key characteristics.

**Table 4: Months to Disposition of Religious Organization  
Chapter 11 Debtors' Cases**

	Mean	Median
All cases (N = 471)	8.9	7.5
Cases with incomplete schedules (N = 66)	2.0	1.3
Cases without counsel (N = 38)	1.7	1.1
Cases without a proposed plan (N = 272)	6.1	4.5
Cases with a proposed plan (N = 199)	12.9	11.0
Cases with an unconfirmed plan (N = 74)	14.3	13.4
Cases with a confirmed plan (N = 125)	12.0	10.4

As expected, the number of times a debtor amended its plan affected the time in which the bankruptcy court confirmed the plan. On average, debtors amended their plans once, but some amended three or four times. Courts confirmed once-amended plans four months faster than they confirmed plans

147. 114 cases pending for more than a year before disposal. Plans were not filed in 28 of those cases.

148. See *Success of Chapter 11*, *supra* note 19, at 634 (noting that patterns of dismissal in 1994 and 2002 studies indicate that "courts are actively engaging in culling cases that have little prospect of confirming a plan of reorganization").

149. In *Success of Chapter 11*, Professors Warren and Westbrook similarly discussed "giving winners time to win." *Id.* at 632.

150. See *id.* at 618 ("Formally, a debtor needs little more than an explanation of how the business will deal with its creditors and the prospects for continuing the business. A thin plan may not win creditors over, but it signals the debtor's basic idea and can be a basis for initiating negotiations with creditors.").

151. N = 74. Median days to dismissal were 182.

152. N = 125. Median days to confirmation were 122.

amended three or four times, which suggests that courts afforded debtors time to work with their creditors to propose feasible plans.<sup>153</sup> Interestingly, the timing of when a debtor first proposed its plan during the course of the case did not affect how quickly the plan was confirmed.

The data further suggest that bankruptcy courts continued to identify cases with infeasible plans after initial plan proposal. Debtors amended their plans less frequently in the cases in which courts did not confirm plans.<sup>154</sup> Courts dismissed cases without amended plans faster than they disposed of cases with amended plans.<sup>155</sup> Considering these results together, it may be hypothesized that courts are better at identifying and dismissing cases without plan confirmation prospects if the debtor does not file a plan. Once a plan is filed, based on the cases in this study, courts generally confirm plans quickly but allow cases to linger where they involve infeasible plans or other issues that eventually will require their dismissal. Naturally, creditors may influence this process by representing to the court that they are working with the debtor or simply by not objecting to a proposed plan. Courts also may use the filing of, amendments to, and continued non-objection to a proposed plan as a proxy for productive negotiations between a debtor and creditors or to identify a debtor that creditors and other parties believe can reorganize. Indeed, an alternative explanation for some of the findings above is that parties and the condition in which businesses arrive to Chapter 11 drive the results, and not necessarily bankruptcy judges.<sup>156</sup> Likewise, it is difficult to untwine whether in dismissing nonviable debtors because they do not reach certain benchmarks, such as proposing plans, courts simply do not allow debtors to reach these benchmarks – that is, the results become self-fulfilling.<sup>157</sup> Even so,

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153. Courts confirmed once amended plans (N = 52) in a mean of 357 days, and plans amended three or four times (N = 15) in a mean of 476 days.

154. N = 74. Debtors amended their plans an average of 0.56 times.

155. Courts dismissed cases without amended plans (N = 45) after an average of 423 days following the petition date, and those with amended plans (N = 29) after an average of 458 days following the petition date. The timing of when a debtor first proposed its plan did not impact the timing of case dismissal.

156. See, e.g., Jerome R. Kerkman, *The Debtor in Full Control: A Case for Adoption of the Trustee System*, 70 MARQ. L. REV. 159, 182-83 (1987) (concluding, based on a study of Chapter 11 filings in Milwaukee in 1982, that debtors controlled Chapter 11 proceedings); 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, 101 (1983) [hereinafter *Systems Failure Part I*] (concluding that “generally the debtors studied were successful in dictating the terms of reorganization to their creditors”).

157. See, e.g., *Success of Chapter 11*, *supra* note 19, at 630 (“There is a high potential for circular reasoning in describing what happened when cases were forced out of the system quickly: once a case was forced out, it became, by definition, a failure.”). This Part should be assessed with this limitation in mind. Nonetheless, as distinguishing between cases in which no plan was filed and cases in which a plan was filed has been used to assess bankruptcy courts and the Chapter 11 process, the results in this Part, at the very least, add to the results presented in previous work.



overall, this result indicates a need for further research into how bankruptcy courts assess cases once plans are proposed.<sup>158</sup>

## 2. Influence of Debtors, Creditors, and Other Parties

Though bankruptcy courts in general appear to distinguish between potentially nonviable and viable cases, one might be concerned that the demands of particular parties have outsized influence on courts' decision making. An analysis of the motions that led to each case's disposition sheds light on which, if any, parties dominate the Chapter 11 process. Prevailing accounts of Chapter 11 argue that debtors control the process while courts' passivity prevents creditors from exercising desirable influence, leading to the preservation of businesses whose cases actually require dismissal.<sup>159</sup> Alternatively, creditors or the United States Trustee (U.S. Trustee) could drive the process.

The question is whether cases dismissed before plan confirmation actually warranted dismissal, or whether creditors or other parties forced a dismissal too early in the process. A review of the trajectory of the cases' dispositions does not show evidence of control – by debtors, creditors, or the U.S. Trustee. Using which party moved to dismiss the case as a proxy for

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158. Bankruptcy courts' difficulties in distinguishing feasible from infeasible plans may be linked to the difficulties in distinguishing businesses that are economically distressed (and thus doomed), and those that merely are financially distressed and capable of saving. See, e.g., Steven N. Kaplan, *Federated's Acquisition and Bankruptcy: Lessons and Implications*, 72 WASH. U. L.Q. 1103, 1121-22 (1994) (noting that economists have trouble "distinguish[ing] whether poor performance by a firm in financial distress is caused by the financial distress alone or by the same factors that pushed the firm into financial distress in the first place").

159. See *supra* note 130 and accompanying text; see also *Systems Failure Part 2*, *supra* note 66, at 272 (concluding that "the debtors studied were able to continue in complete control of their businesses while they were under the jurisdiction of the court. With the . . . exception of secured and priority creditors' ability to negotiate their own treatment under a plan, creditors were effectively excluded from the process of reorganization").

control,<sup>160</sup> as Table 5 details,<sup>161</sup> a party other than the debtor was responsible for 75% of all dismissals.<sup>162</sup>

**Table 5: Party Filing Successful Motion to Dismiss**

	No Plan Filed	Plan Filed	Total	Total %
Debtor	51	17	68	24.8
U.S. Trustee	59	30	89	32.5
Creditors	95	20	115	42.0
Appointed Trustee	1	1	2	0.7
Total	206	68	274	100.0

That creditors and the U.S. Trustee were the most active parties in these cases may cause concern about their influence. However, bankruptcy courts frequently denied creditors' motions to lift the automatic stay, and, likewise, denied U.S. Trustees' motions to dismiss. For instance, in those cases in which a plan was not filed, creditors moved at least once to lift the automatic stay in approximately half of the cases.<sup>163</sup> Courts granted 55% of these motions and denied less than 10%.<sup>164</sup> As to the remainder, the parties generally reached a solution.

Additionally, in cases dismissed on creditors' motions, creditors filed at least one motion to lift the stay in every case, but the bankruptcy court lifted

160. In the Baird-Morrison study, Professor Morrison relied on the proponent of the motion to dismiss to measure which, if any, parties dominated the Chapter 11 process. *Bankruptcy Decision Making*, *supra* note 19, at 393-94.

161. Table 5 does not include cases dismissed by court order, such as for failure to file documents, pay fees, retain counsel, or propose a confirmable plan. It also does not include cases dismissed after plan confirmation. Those motions resulting in dismissal filed by the debtor or the U.S. Trustee after the court lifted the stay on real property based on a creditor's motion are attributed to the creditor. Once the stay was lifted, the debtor or U.S. Trustee had no choice but to move for dismissal, as there was no property left to reorganize. *See id.*

162. This percentage is similar to the results of the Baird-Morrison study, in which debtors were responsible for 17% of cases dismissals. *Id.* But see Kerkman, *supra* note 156, at 182-83 (concluding that debtors predominately controlled Chapter 11 proceedings); *Systems Failure Part 2*, *supra* note 66, at 272 (also concluding that debtors predominately controlled Chapter 11 proceedings).

163. This figure includes motions for relief from the stay filed by creditors secured by personal property, such as automobiles or equipment. Creditors filed at least one motion in 140 of the 286 cases without proposed plans.

164. These percentages are similar to the figures reported in the Baird-Morrison study. *Id.* at 394 (reporting that creditors filed motions that would lead to shutdown in 67.7% of cases ultimately ending with shutdown, but that judges granted them in 42% of the cases).

the stay in the first instance in only a quarter of the cases.<sup>165</sup> As an example, in one case, in the span of seven months, the court denied two motions to dismiss and one motion to lift the stay before eventually dismissing the case on a creditor's motion.<sup>166</sup> Courts appeared to initially give debtors a chance to show that they could reorganize successfully, but dismissed their cases rather swiftly if the debtors did not make good use of that chance.

Bankruptcy courts' ostensible willingness to give debtors an opportunity to reorganize seems further apparent in their denial of creditors' motions to lift the stay in those cases in which a plan was confirmed. Creditors moved to lift the stay in just over half of these cases. Courts granted at least one motion in 45% of the cases, and only about one-third of the total number of motions filed.<sup>167</sup> All but two of these cases culminated in confirmation of a reorganization plan.<sup>168</sup> Taking the cases in this study as a whole, courts appear generally able to identify property that is not necessary to an effective reorganization and provide creditors appropriate relief in these circumstances.

By allowing religious organization debtors to remedy procedural missteps or giving them another chance to negotiate with creditors, courts may have provided the debtors with the necessary time to formulate viable reorganization strategies. Few debtors proposed plans at the beginning of their cases; rather, most filed plans between four and nine months after the petition date. Figure 2 depicts the time from the petition date to plan filing in cases with proposed plans.<sup>169</sup> Overall, debtors proposed plans within a median of about six months after the petition date. As a whole, the history of the religious organizations' Chapter 11 cases suggests that no one party dominated the process.<sup>170</sup>

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165. Courts dismissed 32 cases based on a creditor's motion to dismiss, but only granted the first filed motion to lift the stay in 8 of these cases. In 5 of these 8 cases, the debtor did not file complete schedules.

166. Docket, *In re New Life Holiness Church*, No. 09-22360 (Bankr. W.D. Tenn. Mar. 3, 2009).

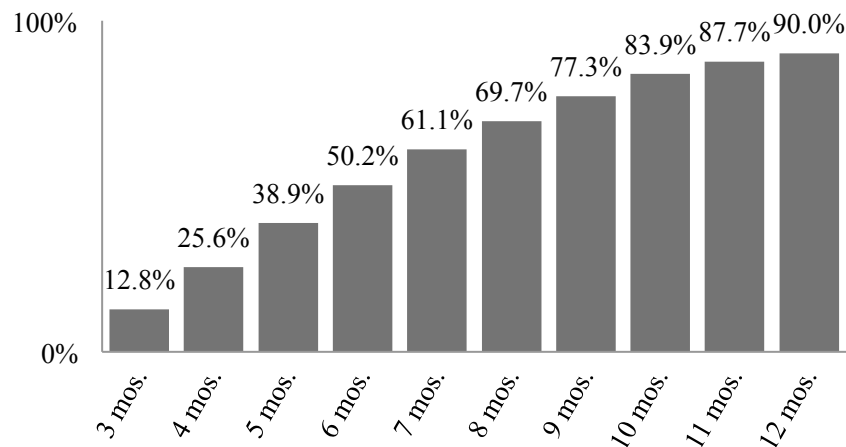
167. Of the 125 cases in which a plan was confirmed, at least one motion to lift the stay was filed in 67 cases. Courts granted at least one of these motions in 30 cases.

168. The court confirmed a liquidating plan in the two other cases.

169. N for Figure 2 is 211. Cases in which plans were filed but which remained pending as of November 2012 are included.

170. This result is consistent with the Baird-Morrison study. *Bankruptcy Decision Making*, *supra* note 19, at 394 ("These statistics strongly suggest that no party with a predictable bias – debtors or creditors – completely dominates the bankruptcy process; to the contrary, bankruptcy judges appear to play an important role in determining when a business should be shut down.").

**Figure 2: Cumulative Time to Filing of Plan,  
Religious Organization Debtors**



### B. Varieties of Outcomes

The outcomes of the Chapter 11 cases in this study include dismissal because the bankruptcy court had lifted the automatic stay, dismissal on the debtor's motion that it had reached an agreement with its creditors, and confirmation of a reorganization or liquidation plan.<sup>171</sup> A portion of these outcomes preserved value for debtors and creditors; thus, those cases may be categorized as ending productively. This subpart explores the outcomes of all the cases in the dataset to pinpoint these successful cases.

Success can be (and has been) reported simply as the percentage of cases in which a plan was confirmed.<sup>172</sup> Of the cases in this study disposed of either by dismissal or plan confirmation as of November 2012, 26.5%

171. See, e.g., Order Granting Motion to Dismiss Bankruptcy Case and Granting Motion for Relief From Automatic Stay, *In re Keys to Life, Inc.*, No. 10-08086 (Bankr. M.D. Fla. Apr. 7, 2010), Doc. 40; Order Approving Joint Motion for Authority to Compromise Controversy, Enter Into a Global Settlement Agreement and Dismiss This Chapter 11 Case, *In re Cornerstone Faith Center*, No. 11-01026 (Bankr. N.D. Iowa May 2, 2011), Doc. 64; *infra* Table 6.

172. See, e.g., *Success of Chapter 11*, *supra* note 19, at 615 (reporting confirmation rate as a "naïve metric" of success); *Systems Failure Part 1*, *supra* note 156, at 106 ("Success' in a chapter 11 proceeding can be an elusive concept. From the viewpoint of the courts or policy makers, confirmation and consummation of a plan are probably both necessary elements of success.").

resulted in confirmed plans.<sup>173</sup> This percentage is higher than the 17% confirmation rate across all Chapter 11 cases reported by the AO in the 1980s that has become the statistic most often quoted when discussing the perceived failure of Chapter 11.<sup>174</sup> It also is consistent with, though slightly lower than, subsequently reported confirmation rates of around 30% in business reorganization cases.<sup>175</sup>

Additionally, 82% of cases with confirmed reorganization plans ended with the courts' issuances of final decrees, suggesting that a majority of debtors consummate their reorganization plans.<sup>176</sup> Excluding pending cases, 19% of the debtors in this study confirmed and consummated reorganization plans.<sup>177</sup> This rate is considerably higher than a previous report of plan consummation at 6.5%.<sup>178</sup>

Previous studies also have reported success as the percentage of cases in which plans were filed and confirmed versus all cases in which plans were filed.<sup>179</sup> Among the religious organization cases, the court confirmed a plan in 63% of the cases that included a proposed plan.<sup>180</sup> This percentage is similar to, though again slightly lower than, confirmation rates of cases with proposed plans reported in other studies of business reorganization.<sup>181</sup>

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173. Of the 497 cases in the dataset, 26 in which a plan had not been filed or confirmed remained pending as of November 2012. These cases (5.2% of the cases) are not included in the analysis because their disposition is unclear. *See supra* note 139.

174. ED FLYNN, ADMINISTRATIVE OFFICE OF THE U.S. COURT, STATISTICAL ANALYSIS OF CHAPTER 11 (1989), at 10-11; *see also Success of Chapter 11, supra* note 19, at 615.

175. *See, e.g., Success of Chapter 11, supra* note 19, at 615 (reporting a 30.3% confirmation rate in 1994 and a 33.4% confirmation rate in 2002); 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).

176. Of the 119 cases in which reorganizations plans were confirmed, 12 remained pending as of November 2012. Of the remaining cases, 88 ended with the issuance of a final decree or similar.

177. Total cases considered are 471, of which 88 ended with a consummated reorganization plan.

178. Susan Jensen-Conklin, *Do Confirmed Chapter 11 Plans Consummate? The Results of a Study and Analysis of the Law*, 97 COM. L. J. 297, 325 (1992) (reporting on a study of Chapter 11 cases filed over a ten year period in Poughkeepsie, New York, and finding that only 6.5% of debtors confirmed and consummated a reorganization plan).

179. *See Success of Chapter 11, supra* note 19, at 617-18.

180. N = 199. This figure does not include the 12 cases in which a plan was filed but which had not been disposed of by November 2012.

181. *See Success of Chapter 11, supra* note 19, at 618 (reporting that plans were confirmed in 65.5% and 71.6% of cases in which a plan was proposed among 1994 and 2002 filings, respectively); Lawton, *supra* note 175, at 1004 (reporting a confirmation rate, once plans were proposed, of 69%).

However, merely measuring success based on plan confirmation does not capture other beneficial outcomes of the Chapter 11 process. A number of factors specific to the religious organizations and the reasons they sought to reorganize may contribute to the slightly lower confirmation rate reported in this study. What value the debtors and their creditors preserved through the Chapter 11 process despite not confirming a plan thus may increase the actual success rate to above 26.5%.<sup>182</sup> Certainly some debtors did not file or confirm plans because they did not have the funds or the organizational skills to propose a feasible plan, or because after a few weeks (or months) of the reorganization process they realized that their churches or schools were doomed.<sup>183</sup> Courts identified and dismissed many of their cases soon after the petition dates, thereby minimizing creditors' losses stemming from the bankruptcy process.<sup>184</sup>

On the other hand, the most apparent successes absent plan confirmation were the cases in which debtors reached an agreement with or otherwise satisfied their creditors. In thirty-eight cases dismissed before plan confirmation, debtors filed motions stating that the cases warranted dismissal because they had reached an agreement with their main creditors, had resolved their debts, or could resolve the issues that prompted their filings outside of bankruptcy.<sup>185</sup> Similarly, the court dismissed two other cases based on representations by other parties in interest that the debtor and its creditors had reached an agreement.<sup>186</sup>

These cases benefitted debtors and creditors who, based on debtors' disclosure statements, had reached a negotiating impasse or faced other obstacles solved by bankruptcy. Debtors' desire to save real property crucial to their operations from foreclosure prompted most of these filings.<sup>187</sup> Chapter 11 provided them an opportunity to negotiate productively with their creditors or find alternate financing, often keeping their church buildings and other property. The religious organizations may not have achieved these outcomes absent bankruptcy protection.

For example, Union for Traditional Judaism filed under Chapter 11 because ongoing litigation with an alleged tenant had prevented it from selling property no longer necessary to its mission.<sup>188</sup> It needed to sell the property

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182. See *supra* note 175 and accompanying text.

183. See *Success of Chapter 11*, *supra* note 19, at 618-19 (discussing why a debtor may not have proposed a plan).

184. See *supra* Table 4.

185. See *supra* note 75.

186. See *supra* note 75.

187. See *supra* note 75.

188. Motion for Entry of Orders Approving Sale Procedures, Broker's Fee and Break Up Fee, In Connection with the Sale of Assets Free and Clear of Liens, Claims, Encumbrances and Interests Pursuant to 11 U.S.C. §§ 105 and 363 and for Related Relief, *In re* Union for Traditional Judaism, No. 10-22958 (Bankr. S.D.N.Y. May 14, 2010), Doc. 19.

to free up a substantial sum of cash to relieve financial pressures and pay its creditors.<sup>189</sup> The court granted its motion to sell approximately six months after the petition date and dismissed its case two months later.<sup>190</sup> Given landlord-tenant laws, it could not have achieved this outcome as quickly outside of bankruptcy.<sup>191</sup> As of February 2013, Union for Traditional Judaism continued to operate.<sup>192</sup>

As another example, Mok Yang Presbyterian Church (Mok Yang) entered Chapter 11 with three creditors – one secured, and two unsecured with claim amounts less than 0.1% of Mok Yang's total indebtedness.<sup>193</sup> The secured creditor held a \$1.8 million claim on property with a scheduled value of \$4.1 million.<sup>194</sup> Within two months of filing, Mok Yang reached a forbearance agreement with its secured creditor, and three months later, the court approved the agreement and dismissed its case.<sup>195</sup> From the perspective of saving viable businesses, these cases were successes. Including these cases, the percentage of cases that ended productively increases to 35%. Table 6 summarizes the outcomes of the cases in the study. As with the above discussion, it does not include cases that remained pending as of November 2012.

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189. *Id.*

190. Order (i) Approving Contract of Sale With Netivot Shalom, Inc. and (ii) Authorizing Sale of Assets Free and Clear of Liens, Claims, Encumbrances and Interests, *Union for Traditional Judaism*, No. 10-22958 at Doc. 82; Order Signed on 1/14/2011 Granting Motion for Structured Dismissal of the Debtors' Chapter 11 Cases, *Union for Traditional Judaism*, No. 10-22958, at Doc. 99.

191. The debtor's sale of the property under 11 U.S.C. § 363 allowed it to dispose of the property free and clear of the purported tenant's claims.

192. See Union for Traditional Judaism, <http://www.utj.org/> (last visited Feb. 17, 2013).

193. Motion for Order (i) Approving Loan Forbearance Agreement and (ii) Approving Voluntary Dismissal of Debtor's Bankruptcy Case, *In re Mokyang Presbyterian Church*, No. 11-18599 (Bankr. E.D. Va. Dec. 1, 2011) [hereinafter *Mokyang*], Doc. 26.

194. *Id.*; Amended Schedules, *Mokyang*, No. 11-18599, at Doc. 20.

195. Order Granting Motion for Approval of Agreement and Dismissing Case, *Mokyang*, No. 11-18599, at Doc. 32.

**Table 6: Outcomes of Religious Organization Debtors' Cases**

	N	%
Reorganization Plan Proposed, Confirmed	119	25.3
Reorganization Plan Proposed, Not Confirmed, Other Success	6	1.3
Reorganization Plan Proposed, Not Confirmed, No Other Success	68	14.4
Liquidation Plan Proposed, Confirmed	6	1.3
Liquidation Plan Proposed, Not Confirmed	0	0.0
No Plan Proposed, Dismissed, Other Success	34	7.2
No Plan Proposed, Dismissed, No Other Success	238	50.5
Total	471	100.0

The additional cases that ended productively highlight a constant across most of the religious organizations in this study: issues with real property prompted their filings. They had fallen behind on mortgage payments and wanted to save their property from foreclosure. Of the cases for which I could identify a reason for the filing, concerns about real property induced more than 75%.<sup>196</sup> This result is not surprising considering that the median faith-based institution arrived in bankruptcy holding 96% of the value of its assets in real property, that the median organization claimed that it had an equity cushion of 30% of the real property's value, and that 78% of the organizations asserted that their real property was worth more than what they owed on it.<sup>197</sup>

Religious organizations' motivation to reorganize to save encumbered property, however, is merely a symptom of underlying problems. As explored in the next Part, two main sets of circumstances lead to the financial crises that make Chapter 11 attractive to them. First, some faith-based institutions can no longer remain current on their mortgage payments and other debts because their members' offerings decreased dramatically during the Great Recession.<sup>198</sup> Second, a sizable portion of the membership either loses faith in or abandons the organization in reaction to changes and failure in leadership.<sup>199</sup> The consequence of both circumstances is financially struggling congregations.

Crucially, almost all of the ensuing financial problems implicate millions of dollars of real property. Therefore, religious organizations' use of Chapter 11 may provide leaders and congregations a valuable opportunity to negotiate with their creditors and hold onto their real estate. This distinguishes their cases from those of most other small businesses, and also evi-

196. I could not identify the reason for filing in 126 (25%) of the cases in the study. See *supra* note 75.

197. N = 428. See *supra* Table 3.

198. See *infra* Part IV.A.

199. See *infra* Part IV.B.



dences a use of reorganization in between the traditional view of reorganization as preserving going-concern value and the more recent account of Chapter 11 as a labor-market intervention. To explore these differences, after detailing the two main explanations for religious organizations' road to bankruptcy, Part IV examines what benefits Chapter 11 brought to these institutions and whether bankruptcy was an effective solution to their problems.

#### IV. KEEPING THE FAITH

The majority of the religious organizations in this study entered Chapter 11 to save their churches, school buildings, and other real estate from foreclosure.<sup>200</sup> Drawing on the events precipitating their filings outlined in the disclosure statements accompanying proposed plans, Table 7 summarizes the primary problems faced by these institutions.<sup>201</sup> Some debtors stated more than one precipitator. Table 7 includes all major reasons a debtor provided when discussing why it filed. It shows that the two primary precipitators of filings were declines in revenue because of the economic downturn and issues with leadership. In addition to the departure, sickness, or death of a religious leader, attrition in membership (often because of disagreements with practices), careless administration of the organization, and over-expansion generally were attributed to religious leaders.<sup>202</sup> Pastors and other leaders also usually had a hand in problems with construction (mainly delays) and failed negotiations with lenders. The "other" category is varied, though damage from disasters, such as Hurricane Katrina, was mentioned by at least half a dozen debtors, and others blamed their financial declines on the loss of government licenses or the closing of programs like Head Start. Those debtors with unclear statements regarding the reasons for their arrival in bankruptcy largely appear to have filed in reaction to problems paying mortgages.<sup>203</sup>

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200. See *supra* note 196 and accompanying text.

201. Except for issues negotiating with lenders, Table 7 does not include debtors' overriding concern about problems with real property. Almost all of the debtors cited impending foreclosure as a precipitating event. See *supra* note 196 and accompanying text. Because the debtor must discuss the history of its business and the events precipitating its Chapter 11 filing in the disclosure statement accompanying its plan, including only those debtors that filed plans provides a more accurate, albeit selective, summary of their difficulties. See *In re Malek*, 35 B.R. 443 (Bankr. E.D. Mich. 1983) (discussing what information must be included in a disclosure statement). I sought only to categorize events that were clearly stated in the debtors' filings. The rather large "unclear" category reflects this conservatism in categorizing events. See also *supra* note 167.

202. For example, lax running includes incurring debts the congregation cannot service, not paying taxes, and hiring employees that do not perform satisfactorily.

203. Most debtors that filed a plan also filed a disclosure statement, either separately or as part of the plan. The limited number of debtors that only filed a plan is reflected in the "unclear" frequency because plans alone do not discuss the events

**Table 7: Main Precipitators of Filing, Religious Organization Debtors' Cases with Plans**

	N	Plan Confirmed	Plan Pending
Decline In Revenue Due To Economy	52	28	3
Problems with Construction	29	14	1
Unclear	29	14	1
Failed Negotiations with Lender	27	14	1
Other	24	14	1
Litigation	22	15	2
Lax Running	19	12	3
Other Decline in Membership	16	8	1
Religious Leader Left, Sick, or Died	14	9	1
Loss of Faith in Leader/Leader Impropriety	14	13	0
Sell Real Property	8	2	1
Over-expanded	6	5	0

As evident from the stories of Crystal Cathedral Ministries and Ark of Safety described in Part I, many religious organizations experience a confluence of these precipitators before they file for bankruptcy. The following subparts detail a selection of these institutions' cases as representative examples of exactly when and why religious organizations are drawn to Chapter 11 and whether bankruptcy offers a productive solution to their financial problems.

#### *A. Coping During the Great Recession*

The economic downturn exacerbated both Crystal Cathedral Ministries' and Ark of Safety's difficulties. The Great Recession alone affected many of the religious organizations in this study so significantly that they believed their only option was to seek bankruptcy protection to save their buildings and other property. For some, the convergence of declining member contributions, plummeting real property values, and a tightened lending market rendered their congregations unsalvageable. For others, Chapter 11 offered an opportunity to negotiate with secured creditors without the threat of an impending foreclosure sale, and gave breathing space to formulate a plan to remain current on restructured mortgage payments going forward.

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precipitating filing. In addition, a few debtors filed disclosure statements containing very little, if any discussion of the events leading to their filings.

Cornerstone Baptist of Macon's (Cornerstone Baptist) case provides a typical example of the former. Cornerstone Baptist, which owned and operated a church built in 1981 and situated on 19.4 acres, filed under Chapter 11 in 2011.<sup>204</sup> Offerings were its primary source of income.<sup>205</sup> The economic downturn caused offerings to decline to the point where the church could no longer service its debts.<sup>206</sup> Additionally, the value of the church property had decreased significantly in recent years, and when Cornerstone Baptist arrived at the courthouse, it owed \$750,000 on a church worth less than \$475,000.<sup>207</sup> Otherwise, it owned personal property with a \$10,000 liquidation value.<sup>208</sup> Soon after the petition date, the bankruptcy court lifted the automatic stay on the church property based on a lack of adequate protection.<sup>209</sup> Once the stay was lifted and foreclosure ensued, the court had no real option but to dismiss Cornerstone Baptist's case.<sup>210</sup>

Other religious organizations affected by the economic downturn arrived in bankruptcy court with better prospects. Omega Ministries of Tyler (Omega Ministries) first encountered problems with its otherwise prosperous and growing ministry when the recession hit.<sup>211</sup> It completed construction on its first church building in 2004.<sup>212</sup> At that time, the ministry had 100 members.<sup>213</sup> When it filed under Chapter 11 in October 2010, it boasted nearly 250 members.<sup>214</sup> To accommodate its growing membership between the initial church dedication and its bankruptcy filing, Omega Ministries used financing to construct a new building.<sup>215</sup> Unfortunately, beginning in the fall of 2008 many of its members no longer could contribute to the church.<sup>216</sup> When the construction loan matured, the bank would not extend the financing.<sup>217</sup> Omega Ministries could not find another lender and filed for bank-

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204. Debtor's Disclosure Statement Regarding Debtor's Plan of Reorganization Dated December 5, 2011, *In re* Cornerstone Baptist Church of Macon, Inc., No. 11-51573 (Bankr. M.D. Ga. May 17, 2011), Doc. 49.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. Consent Order Granting Motion For Relief From Stay, *Cornerstone Baptist*, No. 11-51573, at Doc. 76.

210. Order Granting Motion to Dismiss Case, *Cornerstone Baptist*, No. 11-51573, at Doc. 83.

211. First Amended Disclosure Statement Dated March 30, 2011, *In re* Omega Ministries of Tyler, Inc., No. 10-61086 (Bankr. E.D. Tex. Oct. 4, 2010), Doc. 68.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

ruptcy soon after receiving a notice of foreclosure.<sup>218</sup> However, unlike Cornerstone Baptist, Omega Ministries owed less than 55% of its real estate's market value to secured creditors.<sup>219</sup> It proposed a plan that restructured its secured debt payments and paid its unsecured creditors 100% of their claims over six years.<sup>220</sup> The bankruptcy court confirmed its plan, and about a year later issued a final decree.<sup>221</sup> As of February 2013, Omega Ministries seemed to have weathered its financial difficulties and was operating in its new, larger building.<sup>222</sup>

Omega Ministries' story of a combined decrease in contributions from members, problems negotiating with a major secured creditor, and inopportunistically timed expansion echoes that of many religious organizations severely affected by the economic downturn. Particularly salient are difficulties with mortgage holders.<sup>223</sup> Among troublesome secured lenders, Evangelical Christian Credit Union (ECCU) features prominently. ECCU provides banking and other financial services to nearly 2,000 evangelical ministries,<sup>224</sup> including offering construction loans that do not require personal guarantees.<sup>225</sup> Reflecting Omega Ministries' and other religious organizations' progressions from renting space to buying land and constructing churches or to upgrading previously purchased buildings, ECCU's website includes a document that details how a ministry may determine whether it is a financially sound time to transition from renter to owner.<sup>226</sup> Almost all of these transitions are done in the name of the religious organization as a nonprofit, and rarely do leaders and congregants co-sign or guarantee loans.<sup>227</sup>

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218. *Id.*

219. *Id.*

220. *Id.*

221. Order Confirming Debtor's Fourth Amended Plan of Reorganization Dated August 15, 2011, As Modified, *Omega Ministries*, No. 10-61086, at Doc. 104; Final Decree, *Omega Ministries*, No. 10-61086, at Doc. 159.

222. See OMEGA MINISTRIES INTERNATIONAL, <http://www.omegaministries-international.com/omega/welcome> (last visited Sep. 2, 2013).

223. See *supra* note 196 and accompanying text.

224. *Banking From A Distance*, ECCU, <https://www.eccu.org/about/bankingfrom-a-distance> (last visited Sep. 2, 2013); *Membership*, ECCU, <https://www.eccu.org/about/membership> (last visited Sep. 2, 2013).

225. *Ministry First Construction Loan*, ECCU, <https://www.eccu.org/financial-services/financing/churchconstructionloan> (last visited Sep. 2, 2013).

226. *Renting versus buying your church's facility*, ECCU, available at [https://www.eccu.org/assets/white\\_paper\\_pages/9/pdfs.pdf](https://www.eccu.org/assets/white_paper_pages/9/pdfs.pdf).

227. Not all religious organizations purchased real property solely in their names. For example, Greater Mount Zion Christian Church purchased its real estate in the name of Greater Mount Zion and its appointed reverend as tenants in common, and some of its initial members co-signed the loan. Disclosure Statement of July 27, 2007, *In re Greater Mount Zion Christian Church*, No. 07-00925 (Bankr. E.D. N.C. Mar. 14, 2007) at Doc. 45 [hereinafter Disclosure Statement of July 27, 2007]. However, these stories seem to be outliers; co-signing and tenancy in common were not mentioned in

For example, ECCU provided a loan to Christian Love Fellowship Ministries (Christian Love), which was organized in 1981 under the leadership of Pastor Hill, who conducted the first services at an activity center on the University of Michigan's campus.<sup>228</sup> Christian Love did not own any real property until 1994, when it, as a nonprofit corporation, purchased the land on which it continues to operate.<sup>229</sup> Over the years, it improved and expanded the buildings on the land.<sup>230</sup> In 2007, it dedicated its 30,000 square foot facility, which can seat 1,500 people and contains administrative offices, a nursery, and a library.<sup>231</sup> Christian Love filed solely because it was unable to meet the monthly payments on its building's mortgage when its 600 congregants' donations declined sharply during the economic downturn.<sup>232</sup> It previously had entered into a forbearance agreement with ECCU, but the expanded building decreased in value and ECCU was unwilling to renew the agreement.<sup>233</sup> Christian Love's filing halted ECCU's pre-bankruptcy negotiating tactics. The court confirmed its proposed reorganization plan that restructured the mortgage, including leaving ECCU with an unsecured deficiency claim larger than its secured claim, and paid its unsecured creditors 7% on their claims.<sup>234</sup> As of February 2013, Christian Love continued to hold services in the same building that led it to bankruptcy.<sup>235</sup>

ECCU refused to negotiate with a number of other churches in this study, at least according to the debtors.<sup>236</sup> As with Cornerstone Baptist, some of these congregations arrived with prospects so dire that bankruptcy's temporary halt of collection activities and altering of negotiating dynamics could

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other disclosure statements. See, e.g., Third Amended Combined Plan and Disclosure Statement of Christian Love Fellowship Ministries, International, *In re Christian Love Fellowship Ministries International*, No. 10-74467 (Bankr. E.D. Mich. Nov. 12, 2010) [hereinafter *Christian Love*], Doc. 88; Disclosure Statement of July 27, 2007, *Greater Mount Zion*, No. 07-00925, at Doc. 45.

228. Third Amended Combined Plan and Disclosure Statement of Christian Love Fellowship Ministries, International, *Christian Love*, No. 10-74467, at Doc. 88.

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*; Order Confirming Third Amended Combined Plan and Disclosure Statement of Christian Love Fellowship Ministries, International, *Christian Love*, No. 10-74467, at Doc. 98.

235. See CHRISTIAN LOVE FELLOWSHIP INT'L, <http://www.clfmi.org/> (last visited Sep. 2, 2013).

236. This may have been a sound tactic. Other finance companies catering to churches have not fared as well as ECCU in the face of the economic downturn. For example, Church Mortgage and Loan Corporation, a nonprofit corporation that issued mortgages to faith-based institutions, filed under Chapter 11 in 2008, sold some of its assets, and then obtained confirmation of its liquidation plan. See generally *Church Mortgage*, *supra* note 81.

not save them.<sup>237</sup> Like Christian Love, others succeeded in preventing their property from being foreclosed on by ECCU.

Still other faith-based institutions weathered the economic downturn by using bankruptcy to sell property hindering their post-recession financial prospects. These debtors entered Chapter 11 with the goals of controlling the sale of their property, and then reorganizing as smaller, more efficient institutions. Overall, when faced with the fallout of the economic downturn, religious organizations predominately use the Chapter 11 process to renegotiate their secured debt, find refinancing, or sell property otherwise subject to foreclosure. They ostensibly hope that they will be able to keep up with restructured or new mortgage payments going forward, and that contributions from members will increase as the economy improves. If their operations are stable, it appears they should be able to pull through.

### *B. Resuscitating a Failing Congregation*

Most striking about the cases filed in reaction to the economic downturn is the crucial involvement of a singular leader. Though debtors told tales of decreased contributions from members, failed negotiations with their lenders, and plummeting real property values, weaved throughout their narratives were references to the importance of the religious leader in keeping the institution running, even when a board of directors also oversaw the organization's operations. The congregation was formed under the direction of the pastor.<sup>238</sup> It thrived and grew under the pastor's supervision.<sup>239</sup> The pastor

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237. A more colorful example of a persistent debtor is Christ the Rock International, which filed twice during this study's timeframe. Its 2009 case was dismissed for failure to retain counsel. *In re Christ the Rock International, Inc.*, No. 09-47788 (Bankr. E.D.N.Y. Sept. 9, 2009). It managed to retain counsel before it filed its 2011 case, but the bankruptcy court dismissed that case on the U.S. Trustee's motion that Christ the Rock had no hope of reorganizing. Order Dismissing Case with Notice of Dismissal, *In re Christ the Rock International, Inc.*, No. 11-49093 (Bankr. E.D.N.Y. Oct. 27, 2011), Doc. 31. Christ the Rock stated that it filed to prevent foreclosure of its property by ECCU. Application to Retain Dahiya Law Office, LLC As Counsel to the Debtor, *Christ the Rock*, No. 11-49093, at Doc. 25. However, the U.S. Trustee's motion reveals a complicated history of improper deeding of property and incomplete disclosures of assets and debts. Motion to Dismiss Case, *Christ the Rock*, No. 11-49093, at Doc. 29. Perhaps unsurprisingly, Christ the Rock filed for a third time in 2012. *In re Christ the Rock International, Inc.*, No. 12-44393 (Bankr. E.D.N.Y. June 14, 2012).

238. See, e.g., Disclosure Statement of July 27, 2007, *supra* note 227 (describing how the church was formed); *Christian Love*, *supra* note 227 (detailing the importance of the pastor and his wife).

239. See, e.g., Disclosure Statement of July 27, 2007, *supra* note 227 (describing how the church was successful for many years); *Christian Love*, *supra* note 227 (detailing the church's operations for thirty years).

negotiated, albeit unsuccessfully, with the organization's lenders.<sup>240</sup> And the pastor made sacrifices to ensure that the ministry would continue despite the financial circumstances.<sup>241</sup> These organizations' websites feature the pastor (or similar leader) and often his spouse, highlighting how they brought their vision to their ministry, what they believe, their personal histories, and the "brand" they envision.<sup>242</sup> Unsurprisingly, many of the ministries are non-denominational, evangelical (like the churches with which ECCU does business), or otherwise congregationalist.<sup>243</sup> Financially, they effectively are on their own.<sup>244</sup>

Based on their general independence, these organizations may be viewed as small businesses, albeit in the profession of religious ministry. Dave Ramsey, the well-known financial advisor who encourages people to get out of debt, seems to view them as such.<sup>245</sup> He offers a seminar called Momentum, which teaches church leaders how to "build[] the Kingdom debt free."<sup>246</sup> Momentum purports to "transform the way your church views money and giving," to teach pastors and other leaders how to convince members to give to the church, and to provide a path "to intentionally disciple your church about finances."<sup>247</sup> Testimonials emphasize the value to church leaders: "Pastors and church leaders are always trying to figure out how to get people to give 10 percent. Momentum is the first program I've seen to answer that question."<sup>248</sup> Ramsey's website also includes a "Pastor's Resource Newsletter."<sup>249</sup> As he appears to understand implicitly, like other small businesses, these organizations' survival depends on the leadership of their religious visionaries.<sup>250</sup> The debtors explored in the previous subpart may be able to weather the economic downturn once they use Chapter 11 to restruc-

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240. See *Christian Love*, *supra* note 227 (detailing failed negotiations with ECCU).

241. See Disclosure Statement of July 27, 2007, *supra* note 227 (describing how the reverend would forego his salary if necessary).

242. See, e.g., OMEGA MINISTRIES INTERNATIONAL, *supra* note 222; see also Thumma, *supra* note 101 (noting that a "congregation's identity . . . is shaped around [its pastor's] vision," and that megachurches often are "the product of one highly gifted spiritual leader").

243. See *supra* note 101 and accompanying text.

244. See *supra* note 101 and accompanying text.

245. See *About Dave*, DAVERAMSEY.COM, <http://www.daveramsey.com/company/about-dave/> (last visited Nov. 29, 2012).

246. *Momentum: Training*, DAVERAMSEY.COM, <http://www.daveramsey.com/momentum/home/> (last visited Sep. 2, 2013).

247. *Id.*

248. *Momentum: Success Stories*, DAVERAMSEY.COM, <http://www.daveramsey.com/momentum/success-stories/> (last visited Sep. 2, 2013).

249. *Church Leaders*, DAVERAMSEY.COM, <http://www.daveramsey.com/homepage/church/> (last visited Sep. 2, 2013).

250. *Momentum: Our Approach*, DAVERAMSEY.COM, <http://www.daveramsey.com/momentum/our-approach/> (last visited Sep. 2, 2013).

ture their loans, but they likely will survive only if their members continue to have faith in their leaders and only if those leaders do not make unsound business decisions.<sup>251</sup>

The stories of what drives the remaining majority of religious institution debtors to file for bankruptcy confirm that the organizations' survival is tied to certain people. When these people falter, move away, or die, the organizations suffer, sometimes to the point of having to close their doors.<sup>252</sup> One of the more frequent narratives is that of a beloved pastor leaving the congregation, either to pursue a new opportunity or because of a (often untimely) death. For example, Johnson Chapel Community Church (Johnson Chapel) purchased its current church building in 2007 after a fire destroyed its previous building.<sup>253</sup> A subsequent decline in its financial condition that led to its inability to service the loan on the new property primarily precipitated its Chapter 11 filing.<sup>254</sup> The lead minister separating from the church caused this decline, which in turn resulted in a substantial reduction in its congregation's size.<sup>255</sup> Johnson Chapel filed shortly after the property was scheduled for foreclosure sale.<sup>256</sup>

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251. Nonetheless, particularly during economic downturns, even if a congregation is strong, a church possibly may fail because of its leader's effectiveness. A charismatic leader may foster increased attendance, but a church's "business" model does not mean that increased participation necessarily will lead to increased contributions. Indeed, the pastor and congregation may view part of the church's purpose as providing a welcoming community for people in need, including during difficult financial times. Thereby, a church may open its doors to new members who do not have the resources to tithe, increasing the church's operating costs during a time when its financial resources already are strained. A pastor's charisma could be the downfall of the church.

252. See, e.g., Christian Life Church's Combined Plan and Disclosure Statement, Dated May 1, 2012, *In re* Christian Life Church, No. 11-04192 (Bankr. S.D. Iowa Oct. 27, 2011), Doc. 81 (noting how the pastor's death led to a decline in membership); Original Disclosure Statement Describing Original Chapter 11 Plan, *In re* Lighthouse Baptist Church of Columbia, No. 11-01626 (Bankr. M.D. Tenn. Feb. 21, 2011), Doc. 24 (explaining how a pastor left the congregation, leading to a decrease in membership); Second Amended Disclosure Statement, *In re* Prince of Peace Baptist Church, No. 08-53352 (Bankr. N.D. Ohio Sept. 17, 2008), Doc. 98 (discussing how the congregation's relationship with a pastor soured, leading to the pastor's departure and a membership decline); First Amended Disclosure Statement in Connection with Jennis Bowen & Brundage, P.L.'s First Amended Chapter 11 Plan of Liquidation for Continuing Care, Inc., *In re* Continuing Care, Inc., No. 06-3838 (July 28, 2006), Doc. 221 (detailing the debtor's financial and operational decline and describing the plan of liquidation).

253. Disclosure Statement, Under 11 U.S.C. § 1125 In Support of Debtor's Plan of Reorganization, *In re* Johnson Chapel Community Church, Inc., No. 08-34462 (Bankr. N.D. Tex. Sept. 2, 2008), Doc. 62.

254. *Id.*

255. *Id.*

256. *Id.*



During its case, Johnson Chapel sold a vacant lot near the site of its previous church building. Interestingly, it marketed the lot to other churches and community organizations, and ultimately sold it to another church.<sup>257</sup> Johnson Chapel used the proceeds of the sale to pay administrative expenses and fund its reorganization plan.<sup>258</sup> Its case culminated with the confirmation of its plan, which primarily restructured the loan on its current property,<sup>259</sup> where it continued to operate as of February 2013.<sup>260</sup> Key to its continued operation was the addition of a new pastor to lead the ministry, which revitalized the church and brought a significant number of new members.<sup>261</sup>

There is a distinct possibility that Johnson Chapel's new pastor left a not-so-fortunate church in his wake. Though some churches similarly confirm reorganization plans or negotiate successfully with creditors after suffering a key pastor's departure or death, other ministries that lost their leaders were unable to recover.<sup>262</sup> Like Johnson Chapel, churches that remain operative seem to survive because another leader revives the congregation.<sup>263</sup>

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257. Motion for Authority to Sell Property of the Estate (Vacant, Unencumbered Lot) Free and Clear of All Liens, Claims, and Encumbrances and for Related Relief, *Johnson Chapel*, No. 08-34462, at Doc. 39.

258. Disclosure Statement, Under 11 U.S.C. § 1125 In Support of Debtor's Plan of Reorganization, *supra* note 253.

259. Order Confirming Debtor's Chapter 11 Plan, *Johnson Chapel*, No. 08-34462, at Doc. 95. The court issued a final decree approximately 8 months later. Final Decree, *Johnson Chapel*, No. 08-34462, at Doc. 140.

260. See *Johnson Chapel Community*, STREAMING FAITH <http://www.streamingfaith.com/Johnson-Chapel-Community/> (last visited Oct. 22, 2013).

261. Disclosure Statement, Under 11 U.S.C. § 1125 In Support of Debtor's Plan of Reorganization, *supra* note 253.

262. For example, Pastor Watson started Abundant Life Ministries in 1984 with ten people meeting in a friend's basement. In 2004, he passed away unexpectedly. Though his wife tried to continue his ministry, the church no longer brought in enough money to service its mortgage, and Abundant Life filed to prevent foreclosure of its worship center. It proposed a reorganization plan, but could not keep up with adequate protection payments to its lender during its case. The court lifted the stay, and Abundant Life sold its worship center, after which the court dismissed its case. See generally *In re Abundant Life Ministries*, No. 08-5315 (Bankr. N.D. Ill. Mar. 6, 2008).

263. See, e.g., Vision for Soul Outreach Center Church, Inc.'s Second Amended Disclosure Statement, *In re Vision for Soul Outreach Ctr. Church, Inc.*, No. 09-67626 (Bankr. N.D. Ga. Mar. 25, 2009), Doc. 77 (detailing how a pastor founded and built the church, and how a popular assistant pastor left the church, leading to a loss of membership that the remaining lead pastor was working to redress); Plan of Reorganization with Combined Disclosure Statement for the Church of Omaha, a United Pentecostal Church, Inc., *In re The Church Of Omaha, A United Pentecostal Church, Inc.*, No. 11-83138 (Bankr. D. Neb. Dec. 29, 2011), Doc. 18 (stating that the church "suffered an acute and extremely detrimental financial impact when the immediate prior Pastor abruptly left the Church taking approximately fifty members from the congregation . . . . Pastor Myron Powell [the new pastor] had the duty of rebuilding

As prominent among the narratives of religious organizations' financial deterioration is congregants' reactions to key leaders' decisions and, often, improprieties. Springfield Missionary Baptist Church's (Springfield Missionary) bishop of ten years incurred debts that the church could not service, and purportedly expropriated funds for non-church purposes.<sup>264</sup> He also failed to maintain liability insurance on the church's property.<sup>265</sup> When a congregant who allegedly sustained injuries on the property filed a lawsuit and obtained a default judgment, the church could not pay and the congregant threatened to enforce her judgment lien.<sup>266</sup> Springfield Missionary forthrightly confessed that it could not recover from the bishop, as he was incarcerated.<sup>267</sup> Its best option was to propose a plan that called for the sale of property to satisfy the lien.<sup>268</sup> The court confirmed the plan and issued a final decree.<sup>269</sup> It is unclear whether Springfield Missionary survived, but it lost its building.<sup>270</sup>

Even if they have their congregants' support, some leaders basically run the organization into the ground. Like any other business, churches need cash inflow greater than current expenses to survive, which requires not only contributing members, but also not being bogged down by ancillary activities that may have seemed interesting and harmless during better times. As a final example, Christian Life Missionary Baptist Church was formed in 1979.<sup>271</sup> As the years passed, it opened a restaurant, a car wash, and a snow cone stand, and made various real estate investments.<sup>272</sup> It also entered into leases for computers and other equipment beyond its needs.<sup>273</sup> Then – further reflecting debtors' reliance on their leaders – its pastor's wife died, causing “turmoil” in the congregation.<sup>274</sup> After it filed for bankruptcy, it abandoned

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the congregation and thereby rebuilding sources of income through tithing during tough economic times”).

264. Disclosure Statement for the Plan of Reorganization Proposed By Debtor at 3, *In re Springfield Missionary Baptist Church, Inc.*, No. 11-10474 (Bankr. S.D.N.Y. Feb. 7, 2011) Doc. 85.

265. *Id.*

266. *Id.*

267. *Id.*

268. *Id.*

269. Order of Final Decree, *Springfield Missionary*, No. 11-10474, at Doc. 74.

270. Order Confirming Chapter 11 Plan, *Springfield Missionary*, No. 11-10474, at Doc. 57; Order of Final Decree, *supra* note 269.

271. Disclosure Statement of Christian Life Missionary Baptist Church, *In re Christian Life Missionary Baptist Church*, No. 06-12115 (Bankr. W.D. Ok. Aug. 24, 2006), Doc. 85.

272. *Id.*

273. *Id.*

274. *Id.*

or sold all of those outside businesses, and a year later confirmed a plan that paid its unsecured creditors 100% on their claims.<sup>275</sup>

Following the loss of a leader or a leader's poor decisions, the remaining members must revitalize the congregation. They search for a new pastor or work with the existing pastor to restructure the organization so that it can generate sufficient revenue to cover expenses – most importantly, mortgage payments restructured in reorganization plans. Like congregations recovering from the economic downturn, the actions (and sometimes sacrifices) of a key pastor or reverend are crucial. If members find a new leader, or if the existing leader can restore his members' confidence, the organization may survive. Nonetheless, despite the centrality of a pastor or other leader, the continuation of the congregation in a particular space itself often appears to motivate the religious organization's Chapter 11 filing.

### C. Benefits of Chapter 11

Across both sets of examples, and apparent in almost all of the cases in this study, the end goal is to keep a long-lasting congregation alive and to allow members to worship and attend daycare and school in the same space that they have gathered in for years. In some instances, this allows the pastor to retain the ministry he founded or built. As evident in their stories, many of these organizations operate for decades before filing.<sup>276</sup> During that time, the lives of their members seem to become intertwined with the institutions' buildings. Similar to the reason people want to remain in their homes,<sup>277</sup> or the reason some college students have trouble coping with their parents' sales of their childhood homes,<sup>278</sup> congregants' memories and feelings of safety and stability are tied to the physical space of their churches.<sup>279</sup> And like con-

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275. *Id.*; Order Confirming Plan, *Christian Life*, No. 06-12115, at Doc. 100.

276. See *supra* Table 3.

277. See Elizabeth Warren, *The Economics of Race: When Making it to the Middle Is Not Enough*, 61 WASH. & LEE L. REV. 1777, 1787 (2004) ("For most middle class Americans, both social and economic life center around the home. . . . Over time, homes become repositories of the families' collective memories, serving as a silent reminder of the children who grew up and the adults who aged in these rooms.").

278. See Daniel M. Warner, *No Place of Grace: Recognizing Damages for Loss of Home-Place*, 8 WIS. ENVTL. L.J. 3, 41 (2002) ("[I]t can be traumatizing for a young person to see his parents suddenly decide to sell the family home. It's almost impossible to explain the emotional significance of home. . . . Home has a resonance that is so strong with people. Home is heart and safety and love and warmth. . . . Why is it so traumatic? Because the family home is a symbol of stability for young people going through their own 'rite of passage.'").

279. In the context of eminent domain, the values of residential homes and church buildings have been likened to one another. See, e.g., *Kelo v. City of New London*, 545 U.S. 469, 500-01 (2005) (O'Connor, J., dissenting) ("[A]ny single-family home . . . might be razed to make way for an apartment building, or any church . . . might be

sumer debtors who file bankruptcy under Chapter 13 in an attempt to preserve cherished family homes,<sup>280</sup> religious organizations foremost seem to file to hold onto the “spiritual homes” to which they are psychologically attached.

If they lose their real property, whether the congregants will reassemble in a different building in a location in the same community is unclear.<sup>281</sup> Regardless, religious organizations’ descriptions of the effort they invest in creating their “spiritual homes” evince that, at the moment they file for bankruptcy, they are fighting to keep the buildings they currently have. This struggle transcends merely retaining real property to preserve the organizations’ equity cushions.<sup>282</sup> Though Chapter 11 affords faith-based institutions breathing space from creditors’ collection efforts while the institutions assess their operations or find a new pastor,<sup>283</sup> perhaps most importantly it changes negotiating dynamics with their secured creditors.

Indeed, because the institutions emphasize keeping real property safe from one or two foreclosing secured creditors to whom they owe a majority of their debts,<sup>284</sup> their cases resemble single-asset real estate (SARE) cases. Religious organization debtors have a median of two secured creditors, which includes creditors with consensual liens on automobiles, have a median of only four unsecured creditors, and on average owe 83% of their debts to cred-

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replaced with a retail store.”); see also Rita M. Hammer, *The Lived Experience of Being at Home: A Phenomenological Investigation*, 25 J. OF GERONTOLOGICAL NURSING 10, 14 (1999) (“Home involves a sense of place, a lived space that has significance for an individual as an essential aspect of human experience. . . . It implies profound psychosocial involvement. . . . Individuals’ sense of personal and cultural identity is entwined intimately with their sense of place identity; thus, loss of home or losing one’s place is a crisis involving identity.”); Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1128 (2009) (referencing conceptions of “the affective meaning of home as social belonging, nurturance, and biography” and noting that legal literature often views the home as “psychologically sacrosanct”).

280. See Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. 103, 111-12 (2011) (“The data show that participating families had two major goals in filing Chapter 13: to keep their homes, and to reduce personal and family stress by gaining control over their financial circumstances.”).

281. See Hammer, *supra* note 279, at 14.

282. This difference may implicate how the “theory of the firm” may apply to religious organizations, further indicating that extending the results of this study to theories regarding the organization of religious institution and nonprofits is an area ripe for future work. See *supra* note 45.

283. See *supra* notes 66 and 69.

284. See *supra* Table 3 (reporting that the religious organization debtors in this study have a median of two secured creditors, which includes creditors with consensual liens on automobiles, and that the organizations on average owe 83% of their debts to creditors secured by real property).

itors secured by real property.<sup>285</sup> Faith-based institutions conduct “substantial business” in their real property – that is, the “business” of ministering – other than operating the property, and thus technically they are not SAREs.<sup>286</sup> Nonetheless, as with SARE cases, allowing these religious organizations to file under Chapter 11 may be criticized as counter-productive because their effectively two-party disputes should be handled outside of bankruptcy through state foreclosure processes.<sup>287</sup> The “common pool problem” typically associated with the benefits of reorganization is not present.<sup>288</sup> Rather, resolving the organizations’ disputes with their one or two secured creditors in bankruptcy may impose costs and delays on these creditors, resulting in higher interest rates and fewer mortgage loan approvals in the future.<sup>289</sup>

However, the faith-based institutions’ reorganizations appear to serve a purpose and create a public benefit. Their reorganizations produce many of the same benefits that the reorganizations of SAREs are argued to create.<sup>290</sup> Permitting SAREs to reorganize under the Bankruptcy Code is thought to smooth market inefficiencies and turbulence, particularly during economic downturns, thereby stymying the downward spiral in real property values

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285. See *supra* Table 3.

286. The Code defines a “single asset real estate” case as a case involving “real property constituting a single property or project . . . which generates substantially all of the gross income of a debtor who is not a family farmer, and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental hereto.” 11 U.S.C. § 101(51B) (2012). BAPCPA revised and added provisions affecting SARE cases. See Richard Levin and Alesia Ranney-Marinelli, *The Creeping Repeal of Chapter 11: The Significant Business of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 603, 641-42 (2005) (summarizing BAPCPA’s provisions affecting SARE cases).

287. See Kenneth N. Klee, *One Size Fits Some: Single Asset Real Estate Bankruptcy Cases*, 87 CORNELL L. REV. 1285, 1296 (2002) (summarizing arguments against allowing SARE cases to reorganize under Chapter 11); Hon. Roger M. Whelan and William W. Senft, *The Legislative Response to Single Asset Real Estate Bankruptcies: Critical Analysis and Some Suggestions*, 1 AM. BANKR. INST. L. REV. 157, 160 (1993) (“Much of the frustration created by single asset real estate bankruptcy cases arises from the secured creditor’s perception that the debtor can use Chapter 11 to significantly delay foreclosure proceedings without offering any compensation for the use of collateral pending such delay.”).

288. Thereby, the Chapter 11 cases of religious organizations also implicate the creditors’ bargain theory of bankruptcy, which broadly argues that bankruptcy law should deal only with resolving financial common pool problems and maximizing creditors’ collective welfare. See Thomas H. Jackson & Robert E. Scott, *On the Nature of Bankruptcy: An Essay on Bankruptcy Sharing and the Creditors’ Bargain*, 75 VA. L. REV. 155 (1989) (creating an “expanded creditors’ bargain model”); Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors’ Bargain*, 91 YALE L. J. 857 (1982) (setting forth the “simple creditors’ bargain model”).

289. See Klee, *supra* note 287, at 1296.

290. *Id.* at 1297.

that can result from placing large amounts of foreclosed property on the market at the same time and preventing undue concentrations of real estate ownership in the hands of a few financial institutions.<sup>291</sup> Allowing SAREs to file under Chapter 11 also has been supported on the basis that it protects ownership investments in real estate, especially when SARE cases involve numerous owners who have invested in real estate.<sup>292</sup> Others have argued for SAREs' access to reorganization on the basis that bankruptcy courts may make allowances for equitable, community, and other considerations in assessing their cases.<sup>293</sup>

The successful reorganizations of the faith-based institutions in this study exhibit these benefits. As detailed in Table 7, debtors citing the loss of faith in a pastor, the pastor's impropriety or departure, lax management, or over-expansion as precipitating their filings succeeded in confirming a plan in more than two-thirds of cases with proposed plans. Like Johnson Chapel and Christian Life, these debtors found a new leader, restored the remaining members' confidence in the current leader, fostered new membership, or remedied past business mistakes.<sup>294</sup> Across the successful cases, these achievements preserved the congregation and provided the institution with sufficient revenues going forward to save real estate threatened with foreclosure, protecting the congregation's investment, preventing the real estate from being sold at a fire-sale price, and, perhaps most important to the members, allowing the congregants to continue gathering in the same building.<sup>295</sup>

Similarly, about half of the debtors suffering from the economic downturn and struggling with uncooperative secured lenders confirmed reorganization plans. As demonstrated by the cases of Omega Ministries and Christian Love,<sup>296</sup> these plans prevented foreclosure, protecting the congregation and its cherished buildings. In some instances the congregation was not savable,

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291. See *id.* at 1297-1300; see also Richard M. Hynes, *Reorganization as Redemption*, 6 VA. L. & BUS. REV. 183, 234-35 (2011) (noting that if debtors are unable to quickly refinance or sell assets at their actual values because of imperfect markets or information asymmetries, this could lead to reduced creditor recovery and excessive liquidation).

292. See Klee, *supra* note 287, at 1299-1300.

293. See *id.* at 1300-01; see also John D. Ayer, *Symposium on Bankruptcy: Chapter 11 Issues: Bankruptcy as an Essentially Contested Concept: The Case of the One-Asset Case*, 44 S.C. L. REV. 863, 868-90 (1993) (presenting arguments for and against single asset real estate chapter 11 cases).

294. See *supra* notes 257-261, 274-275, and accompanying text.

295. See *supra* Parts IV.A, B. In addition, the prevention of foreclosure may in turn prevent value decreases in neighboring residential property. See Thomas M. Carroll, Terrance M. Clauretje & Jeff Jensen, *Living Next to Godliness: Residential Property Values and Churches*, 12 J. REAL EST. FIN. & ECON. 319 (1996) (finding that the value of residential property increases based on its proximity to a church and on the size of the church, with larger churches tending to have a greater positive impact on residential property values).

296. See *supra* notes 220-222, 233-235, and accompanying text.

such as in Cornerstone Baptist's case.<sup>297</sup> But even in cases in which the debtor sold property, such as Springfield Missionary's, often the debtor at the very least achieved its goal of preserving a well-established congregation.<sup>298</sup>

## V. IMPLICATIONS FOR CHAPTER 11

The standard account of the usefulness of Chapter 11 is that it preserves going-concern value of a financially distressed business. The account focuses on the deployment of assets apart from who owns them.<sup>299</sup> Whether this explanation applies to the typical small business recently has been questioned.<sup>300</sup> The results of the Baird-Morrison study suggest that most small businesses hold few assets, particularly assets idiosyncratic to their operations or operations of businesses in their industry that are difficult to sell or more valuable when sold or kept together.<sup>301</sup> Their primary asset is the human capital of their founders. These entrepreneurs likely file for bankruptcy when their skill sets do not match their ventures' current business models, causing the businesses to fail.<sup>302</sup> They use Chapter 11 to gain temporary liquidity or bargaining power over creditors, to renegotiate personally guaranteed debts, or for some "breathing space."<sup>303</sup> Though their cases probably will succeed if their human capital matches their core business models (for example, they shed extraneous operations through their cases), spending time in bankruptcy has the potential to tie other entrepreneurs to failing businesses when those owner-operators simply should transition to new ventures.<sup>304</sup> Most importantly, this account shifts the focus from the failing business to the failing entrepreneur.<sup>305</sup>

The stories of the religious organization debtors detailed above straddle the two accounts. Even those organizations that file in reaction to the economic downturn are dependent on the overarching management of a pastor who negotiates with secured creditors, works with tenants to ensure rent is paid, and encourages members to give to the church despite the

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297. See *supra* notes 208-210 and accompanying text.

298. See *supra* notes 268-270 and accompanying text.

299. See Baird & Morrison, *supra* note 22, at 2312-14 (summarizing the standard account).

300. See *id.* at 2314; *Systems Failure Part 2*, *supra* note 66, at 263-65 (noting that many small business reorganizations are dependent on owner-managers).

301. Baird & Morrison, *supra* note 22, at 2315.

302. *Id.*

303. *Id.* at 2315-16.

304. *Id.* at 2316-18; see also David S. Evans & Linda S. Leighton, *Some Empirical Aspects of Entrepreneurship*, 79 AM. ECON. REV. 519, 525 (1989) (explaining that entrepreneurs with failed businesses are likely to start new businesses).

305. Baird & Morrison, *supra* note 22, at 2318; see also *Systems Failure Part 2*, *supra* note 66, at 256 ("Many of the businesses studied were small enough that their survival depended on the continued involvement of an owner-manager . . .").

desperate economic situation. Otherwise, the institutions generally rise or fall with leaders who connect with their congregations. If an instrumental leader leaves or dies, the remaining members have to find a suitable replacement if the congregation is to survive. Likewise, if a pastor makes business or life mistakes and stays with his congregation, his actions going forward to restore members' confidence and create a workable business model are most instrumental to the institution's continued existence. Given that these institutions exhibit many of the hallmarks and financial structures of small businesses, it is unsurprising that an individual or small group of individuals drive their success. And, as detailed in Part IV, the stories of why they seek bankruptcy protection mirror some of the reasons small businesses file under Chapter 11.<sup>306</sup>

However, the religious organizations differ from the typical small business debtor in three important and interrelated respects. First, they have operated on average three times longer than the average small business debtor.<sup>307</sup> Second, they own assets of considerable value apart from their leaders' ability to energize a congregation. In particular, they own real property worth millions of dollars.<sup>308</sup> Basically, they own large buildings or campuses.<sup>309</sup> These buildings often are constructed for the needs of the congregation. Like Christian Love's expanded building, they include administrative offices, sanctuaries, libraries, nurseries, daycare and school areas, and other worship-related build-outs.<sup>310</sup> Essentially, they look like churches. As evidenced by Johnson Chapel's case, limited buyers for these buildings may exist.<sup>311</sup> Accordingly, the market for their real property most likely is tighter than the market for other real estate, such as residential real property. The buildings likely are best marketed to other religious and community-based organizations. Moreover, at least according to their representations, debtors often hold an equity cushion in their real estate.<sup>312</sup> This equity cushion becomes important when their secured creditors threaten to sell the property via foreclosure because the debtors may lose their financial investments if the buildings and land are sold for less than market prices. Of course, if the real estate is sold, congregations also will lose property of great emotional value.<sup>313</sup>

Third, the nonprofit corporation owns those assets, and the corporation is the sole obligor on any secured debt encumbering the assets.<sup>314</sup> Leaders

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306. See *supra* notes 69-70 and accompanying text.

307. See *supra* Table 3, notes 122-123, and accompanying text.

308. See *supra* Table 3.

309. See *supra* Table 3.

310. See *supra* note 231 and accompanying text.

311. See *supra* note 257 and accompanying text.

312. See *supra* Figure 2. But see *supra* note 107 regarding debtors' incentive to inflate the reported values of their assets.

313. See *supra* notes 277-281 and accompanying text.

314. See *supra* note 76 regarding evidence in debtors' disclosure statements as to personal guarantees.



and key members at one point may have held a financial stake in the organization or served as guarantors, but by the time they acquire their land and construct their church, the real property is generally solely in the name of the church.<sup>315</sup>

Considered together, religious organizations enter Chapter 11 in different financial and bargaining circumstances than the typical small business debtor. Chapter 11 provides them with a venue to work with their secured creditors to save property that is both financially and emotionally valuable to them and perhaps difficult to sell. True, like an entrepreneur, the pastor (or congregants) could shut down the ministry and try again, starting from scratch and gathering in rented space in a community center or a building owned by a different church. Such a transition may be beneficial. It may allow for shifts in leadership, relieve internal strife, or remedy over-expansion or lax management. But the years of work it took to build an organization capable of purchasing and servicing a building, the specificity of that property to religious and community organizations, and the congregation's desire to remain in a particular building, make their Chapter 11 cases more of an effort to save going-concern value than typical small business debtors' cases.

In this context, the effort seems worthwhile, even when balancing the costs of bankruptcy to creditors and to the pastors and congregations that perhaps should start over. Assuming the market for their property is illiquid, particularly given the recent recession, that property is more valuable to the debtor or other businesses in the religious and community services industries. As to the debtor, this is especially true if it holds equity in the property. A foreclosure sale will generate less money, possibly not enough to return any of that equity to the religious organization. Secured creditors also should have an incentive to negotiate a restructured loan for similar reasons, such as wanting to avoid the frustration and value loss of the foreclosure process. In light of this, it is unclear why lenders like ECCU employ negotiating tactics that push religious organizations to declare bankruptcy. Perhaps the debtors in this study are outliers that refused to yield to ECCU's demands. Regardless, bankruptcy provides an avenue to remedy whatever is preventing the faith-based institution and its secured creditors from being successful at the bargaining table.<sup>316</sup>

In fact, religious organizations seem to be sorting themselves into Chapter 11 when it makes most sense. Only 3% (fifteen) of debtors in the study own \$100,000 or less in assets.<sup>317</sup> These debtors may enter Chapter 11 in similar positions as the typical small business debtor, and thus may be encouraged by the bankruptcy process to continue operating their organizations

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315. See *supra* note 225 and accompanying text.

316. As an example, Chapter 11 may allow a lender to confirm the value of the organization's assets. See Baird & Morrison, *supra* note 22, at 2316.

317. See *supra* note 75.

longer than is economically efficient.<sup>318</sup> However, considering that only 4% of the debtors that proposed plans did not own any real property, the chances of a bankruptcy court encountering a faith-based institution debtor with the potential to reorganize but without real property is slim.<sup>319</sup> Rather, courts primarily see solvent religious organizations with a median of \$1.2 million in real property.<sup>320</sup> There is value to be saved beyond leaders' relationships with members.

The results of this study demonstrate that religious organizations, viewed as a group, enter Chapter 11 with specific assets and reorganization prospects that can make the process valuable to them and their creditors. These effectively small businesses exhibit similar organizational focus on a single leader or group of leaders as other small entrepreneurships. However, by the time they arrive in bankruptcy court they have operated longer and have accumulated more assets that are more specific to their operations than the typical small business debtor. As with other small business debtors, bankruptcy courts need to focus their attention on the leader's ability to marshal his organization through the turmoil that led it to bankruptcy when assessing the debtor's ability to reorganize, possibly more so than they need to in regard to the operators of large companies that file under Chapter 11. Nonetheless, also focusing on the deployment and value of the assets owned by the corporate entity is crucial. Moreover, the members of the religious organization themselves have the ability to revitalize a failing congregation, provided that they can find an acceptable leader or renew each other's faith in the pastor. Thus where an entrepreneur may fail for lack of a workable business model or customers, a religious organization may succeed with the help of reorganization essentially because of its customers – that is, its members – and their commitment to sustaining their religious community in the building in which the congregation has gathered for many years.

Religious institution debtors present a variation of the story of the usual small business debtor, one in which the leader has an opportunity to preserve value owned by the corporate entity and threatened by secured creditors. The organization, as a distinct entity, is important, but so is an understanding of the leader beyond his role as a manager and the vision of the organization's members. In these instances, a modified view of Chapter 11 is necessary. Both the leaders and the value housed in the corporate entity must be considered in combination to identify those faith-based institutions for which Chapter 11 reorganization is a value-adding process. Once bankruptcy courts identify these organizations, the results of this study suggest that courts generally will dismiss the remaining nonviable cases relatively quickly.<sup>321</sup>

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318. *See supra* notes 71 and 74.

319. *See supra* note 75.

320. *See supra* Figure 2 and Table 3.

321. *See supra* Part III.A.

## VI. CONCLUSION

Debates about Chapter 11 have focused on the efficiency of bankruptcy courts in processing cases and dealing with parties with diverging interests, and its effect on particular businesses and entrepreneurs. This study confirms previous findings suggesting that courts process cases quickly while moderating among interested parties, and shows that a greater percentage of debtors may confirm and consummate plans than historically assumed. The results further indicate a need for additional research into how bankruptcy courts assess proposed plans.

Turning to Chapter 11's effect on businesses and entrepreneurs, the cases of the religious organization debtors investigated in this study reveal an intertwining of corporate entity and leadership distinct from that of large companies and typical small business debtors. The faith-based institutions have hallmarks of asset specificity<sup>322</sup> and entrepreneurial-like leadership that require focusing on both deployment of assets and the leadership's ability to restore the financial stability of a congregation when assessing Chapter 11's benefits and costs. In some situations, allowing a leader who is mismatched with his members to remain with his ministry, or allowing a congregation to stay together and worship in the same building it has owned for years while it works to revive the congregation, may be productive in the long-term. Given that religious organizations generally arrive in bankruptcy court with valuable real property that they are intent on retaining, despite short-term delays in more economical deployment of its leader's and congregants' resources, Chapter 11 may produce greater overall benefits than costs.

In other situations, the leader's failures or the inability of the remaining members to rebuild a shattered congregation absent a crucial leader may render the costs of Chapter 11 higher than the benefits of reorganization.<sup>323</sup> Indeed, the costs may be higher even if the religious institution owns property of significant value and possibly even if the organization asserts that it only filed because of the effects of the economic downturn. Across all religious organization debtors, the valuable real property the organization owns, the leadership, and the congregants must be considered in assessing its Chapter 11 case.

The differences between religious organization debtors and typical small business debtors discovered in this study may be unique to the faith-based institutions that seek to reorganize. However, there may be other industries with small businesses that survive long enough to accumulate real property and other illiquid assets. Once identified, these cases should be approached with a similar dual assessment of whether the entrepreneur's skill set matches

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322. Assets are termed specific when they are idiosyncratic to the needs of a certain business or businesses in a particular industry. *See* Baird & Morrison, *supra* note 22, at 2330-31 (discussing asset specificity and its relation to theories of Chapter 11).

323. *See supra* note 64 and accompanying text.

the organization's business plan and whether it is economically feasible to preserve the value of the assets amassed by the entrepreneur on behalf of the business through reorganization.

The cases in this study support the validity of recent challenges to the traditional focal point of business reorganization on preserving going-concern value. But they also confirm a continued need to focus on the assets owned by the debtor in some small business reorganizations, even if only in the cases of religious institutions. As evidenced by the successful reorganizations and continued operations of some of the debtors in this study, Chapter 11 can provide religious institutions with a productive means to revive their congregations following economic downturns, transitions and failures in leadership, and problems negotiating with secured creditors, thereby allowing their members to continue worshiping in the same space they have gathered in for decades.