

Bankruptcy Goes Private

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ABSTRACT

In the 1980s and 1990s, large firms filing bankruptcy were typically publicly traded corporations with well-distributed transparent information about their business operations. Most of these public firm filers emerged from bankruptcy as publicly traded firms. This is no longer so. Firms that are publicly traded when they file bankruptcy increasingly emerge from bankruptcy as privately held firms that do not report financial information. Others emerge as wholly owned subsidiaries of much larger firms; they also do not typically report much about the previously bankrupt business separately from the larger corporate group. Thus, a wide class of large bankrupt firms now emerge without separately traded equity. Here, we document for the first time that bankruptcy is increasingly functioning as a going-private transaction for firms that enter bankruptcy as publicly traded companies. This trend toward going private in bankruptcy combines with the trend for more of the large filers being private when they file to produce a major overall shift: public firm bankruptcies—long a main focus of academic bankruptcy discussion—are disappearing from the bankruptcy process.

The going private trend for bankruptcy has important implications for the information-generating function of the bankruptcy process, for the advantages enjoyed by insiders investing in distressed firms, for the approaches used to resolve distressed firms, and, for political critics, for the perceived legitimacy and openness of the bankruptcy process. Much bankruptcy thinking, doctrine, and practice is adapted to restructuring the bankrupt large public firm, aiming to keep it viable as a public firm. But that no longer describes the large firm chapter 11 restructuring process, one that is increasingly acting on private firms from the get-go and turning the reduced portion of public firm filers into private firms.