

# 2022 Year in Review

After Record Low First Half, 2022 Ends With Q4 as Busiest Quarter;  
Supply-Side Macroeconomic Factors Permeate Filings



## Major Industry Developments & Highlights



In 2022 there was an 18% increase in filing frequency from the first half to the second half, with December being the busiest month of the year.



From 2021 to 2022, chapter 11 filing frequency dropped 4%; excluding the real estate sector, this decrease was just 1%.



The sector with the biggest increase in cases with more than \$100 million in liabilities was the financials sector, and the sector with the biggest increase in cases with more than \$10 million in liabilities was the consumer staples sector.



Crypto companies became a trend after the midyear, with FTX's free-fall accounting for the largest case, along with smaller filings from Core Scientific, BlockFi, Celsius Network and Voyager Digital.



The financials sector took the largest share of the year's billion-dollar filings, which have historically been led by energy and consumer discretionary filings



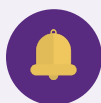
Energy and consumer discretionary filings, which set record highs in 2020, fell steeply in 2021 and were down further to record lows in 2022.



Inflation and supply-chain issues were running themes for 2022's chapter 11 filers.



Noted pockets of increased bankruptcy activity were construction filings, especially in the first half of the year, and New York-based hotels filing toward the end of the year.



The year had an increased prevalence of DIP facilities provided by third parties, as well as DIPs seeking interim approval of rollups

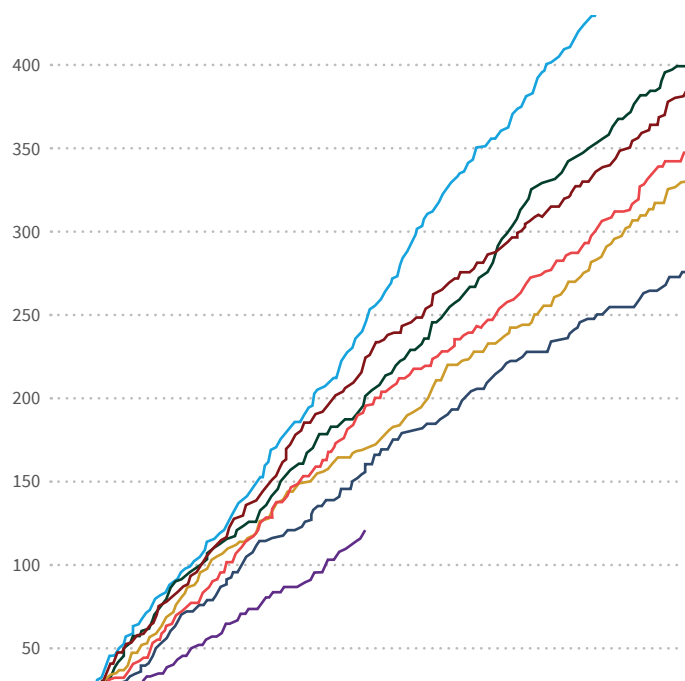
## Introduction

The first half of 2022 set the First Day record for fewest chapter 11 filings over any calendar half-year, but chapter 11s picked up in the second half, with the fourth quarter ending up as the year's busiest quarter and December closing out as its busiest month. Excluding real estate cases, which peaked in 2021, the frequency of chapter 11 cases fell by only 1% in 2022. Despite the waning of the Covid-19 pandemic, companies continue to cite the health crisis as at least part of the reason for their bankruptcy filings. However, during 2022 the reasons attributed for chapter 11 filings moved away from pandemic factors such as work stoppages and lower demand to supply-side macroeconomic factors, including supply-chain issues, labor costs and inflation. Rising interest rates and the collapse of crypto are also becoming prominent features in debtors' explanations for their bankruptcy filings.

The fourth quarter of 2022 was the busiest quarter for chapter 11 filings since the fourth quarter of 2020. After an isolated spike in filings in June, filings began picking up in October, during which the 200th chapter 11 with more than \$10 million in liabilities filed for the year. Although filings in 2022 lagged behind 2021 for the bulk of the year, the gap between 2021 and 2022 filings narrowed from a high of 30% in May down to 25% in July, 12% in October and 4% as of the end of December.

The chart below shows the timeline of the annual chapter 11 filing count for years 2016 through 2022:

**Timeline of Aggregate Chapter 11 Filings**

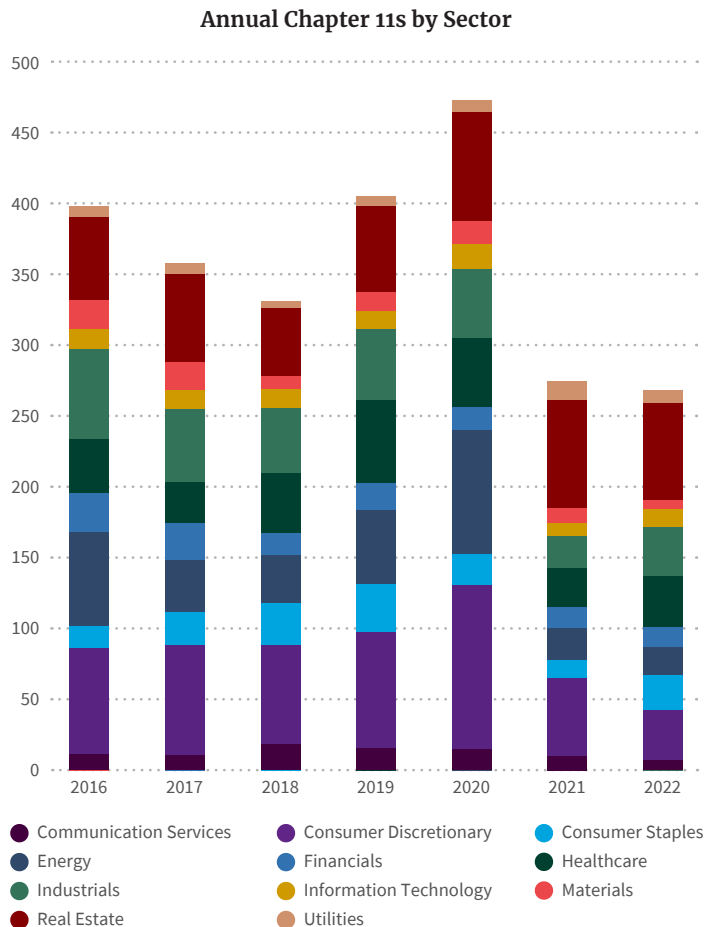


## Sectors

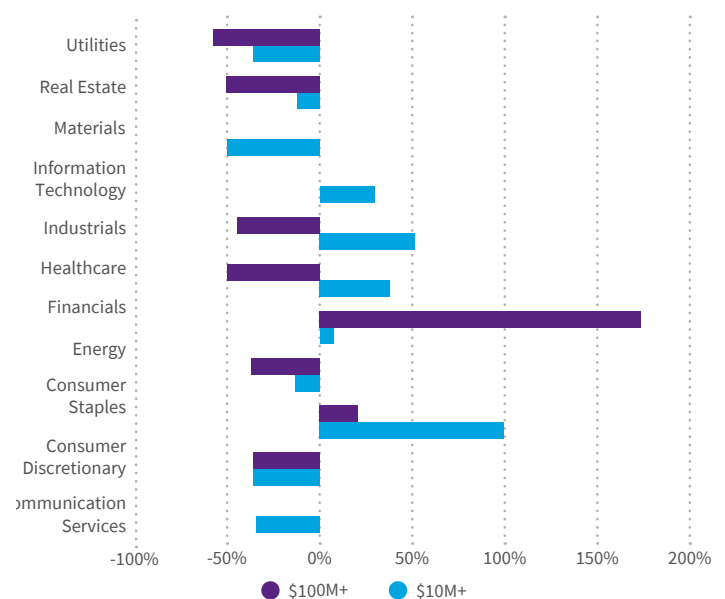
For cases across all First Day liability ranges, filings in the industrials sector increased steeply (approximately 34%) from 2021 levels, healthcare cases rose by 32% (pharmaceuticals chapter 11s in particular jumped by 400% from four cases in 2021 to 12 in 2022), and consumer staples filings doubled their 2021 levels. For cases with over \$100 million of liabilities, filings in the financials sector increased by 175%, with a wave of crypto bankruptcies in the latter part of the year. These sectors and industries had a higher volume of chapter 11s from 2021 to 2022, but the only sector to record a higher number of cases than 2020 levels was the consumer staples sector.

The sectors that fell the most from 2021 were consumer discretionary, which set a record for fewest annual chapter 11 filings in 2022, falling by 35% from 2021 (that year itself already down 53% from 2020), communications, which fell 33%, energy, which fell 15% (after falling by 75% from 2020 to 2021), real estate, which fell 12%, and utilities, which fell 36%.

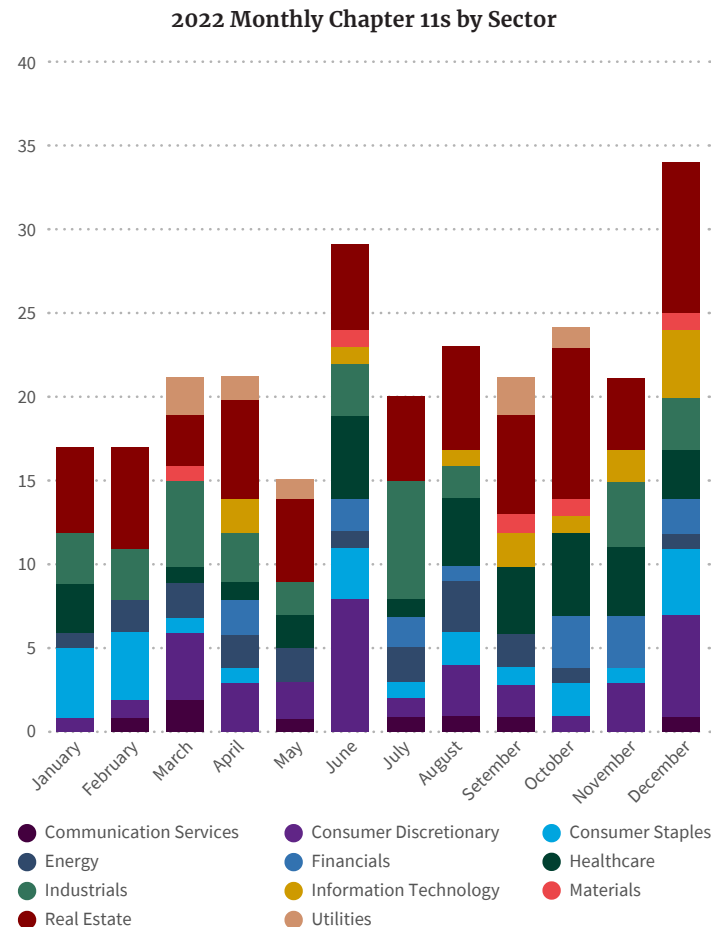
Comparing 2022 with all years since 2016, the sector breakdowns for cases with at least \$10 million in liabilities is below:



**Change in Chapter 11 Filing Frequency by Sector**



The 2022 monthly sector breakdown is shown below:



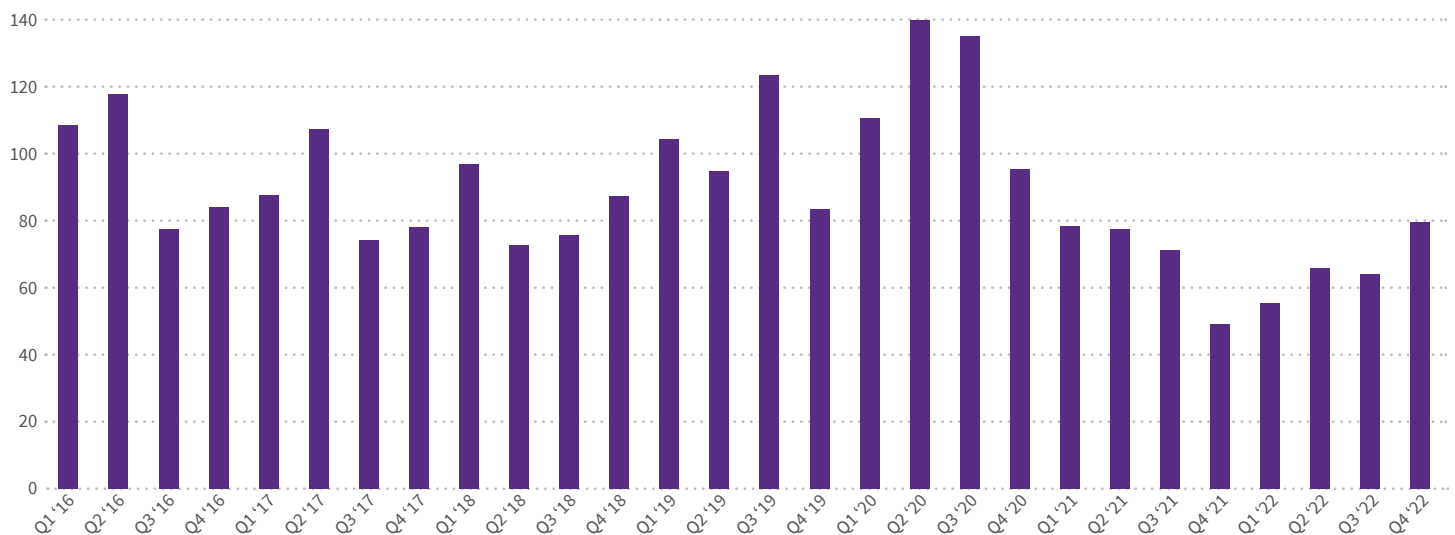
After the second quarter of 2020 recorded the highest number of chapter 11s in any single quarter in the First Day Database (nearly 140 cases in the three-month period), filing frequencies fell for the next six consecutive quarters, falling to their lowest point in the fourth quarter of 2021. Since then, chapter 11 filing frequency rose subtly for two consecutive quarters (the first and second quarters of 2022) before dipping slightly in the third quarter and rising in the fourth quarter of 2022 to their highest levels since the third quarter of 2020.

Chapter 11 filings began heating up approaching the start of summer, with the first 16 days of June accounting for

approximately 17% of 2022's then-total chapter 11 case count. There were five new cases filed on June 1 alone. December had two days with five cases. The record for single-day chapter 11s (with at least \$10 million in liabilities) remains seven cases, which occurred in 2020.

At the end of the first half of 2022, the aggregate chapter 11 case level began to narrow the gap with 2021. 2022's chapter 11 frequency averaged approximately 0.6 cases per day from Jan. 1 to May 24. From May 25 to July 5, the frequency increased to 0.93 cases per day. The frequency for the year as a whole was 0.73 cases per day, with a monthly peak of 1.1 in December.

Chapter 11 Filings Per Quarter

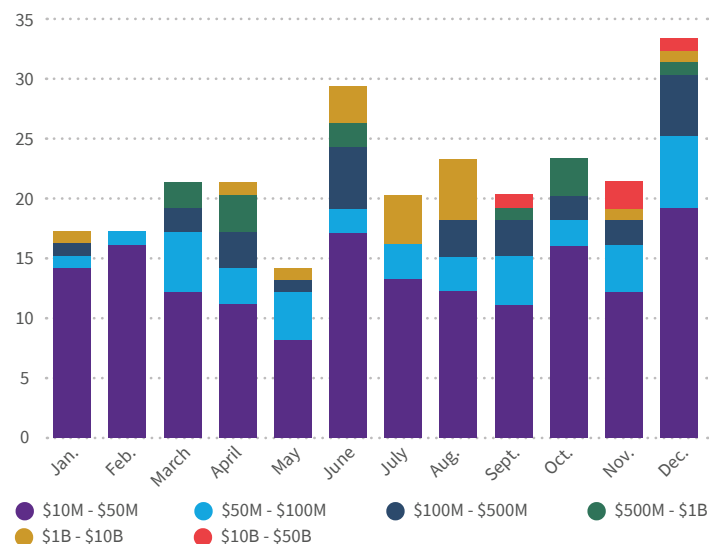


## Case Size

Turning to the size of 2022's cases, the year had 21 billion-dollar chapter 11s, 15 of which filed in the second half. The financials sector - driven by crypto - led these cases, accounting for one third of the total.

The year's breakdown by liabilities for each month of the year is shown to the right:

2022 Monthly Chapter 11s by Liability Range



“ The year had four chapter 11 filings that reported liabilities from \$10 billion to \$50 billion, following zero cases of this size in 2021 and a total of six in 2020. ”

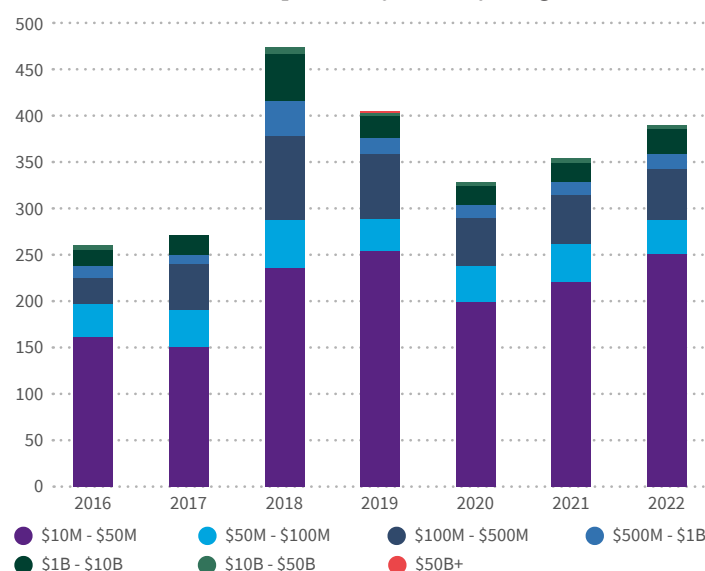


Compared with years 2016 through 2021, the breakdown is shown to the right.

The year had four chapter 11 filings that reported liabilities from \$10 billion to \$50 billion, following zero cases of this size in 2021 and a total of six in 2020. Cineworld Group, the world's second-largest cinema chain operator, filed 2022's first chapter 11 to report more than \$10 billion in liabilities on its petition in September. The week of Cineworld's filing was the seventh consecutive week in which there was a billion-dollar chapter 11 filing. Before Cineworld, the most recent company to report total liabilities in excess of \$10 billion on its petition was Ascena Retail in July 2020. The other cases in this liability range this year were AIG Financial Products Corp., Reverse Mortgage Investment Trust and FTX Trading.

A complete list and summary of the year's largest cases by liability range are shown below:

Annual Chapter 11s by Liability Range



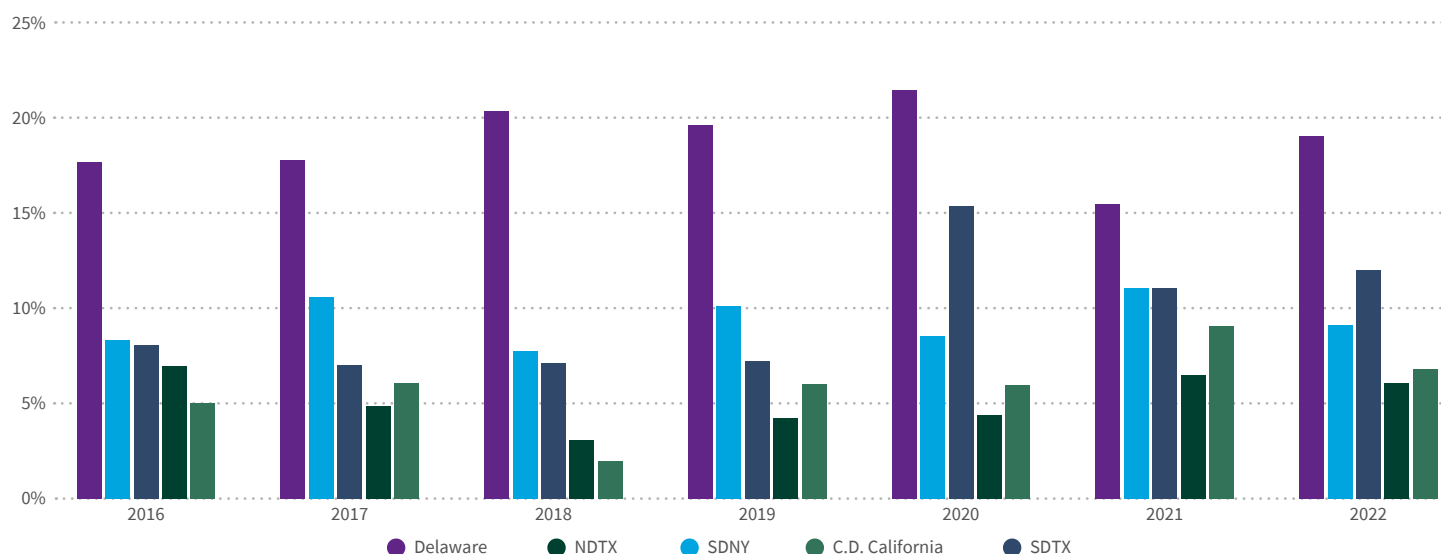
2022 Chapter 11s Reporting More Than \$1 Billion in Liabilities

Company	Petition Date	Industry	Liability Range	Case Type	Funded Debt	Prepack?
<b>Seadrill New Finance Limited</b>	Jan. 11	Energy	\$1B - \$10B	Reorganization	\$611.1M	Prepackaged
<b>GWG Holdings</b>	Apr. 20	Financials	\$1B - \$10B	Reorganization	\$2.1B	Freefall
<b>Talen Energy Group</b>	May 9	Utilities	\$1B - \$10B	Reorganization	\$4.4B	Prenegotiated
<b>TPC Group</b>	June 1	Materials	\$1B - \$10B	Reorganization	\$1.2B	Prenegotiated
<b>Revlon</b>	June 15	Consumer Staples	\$1B - \$10B	Reorganization	\$3.5B	Freefall
<b>LaForta - Gestão e Investimentos, Sociedade Unipessoal</b>	June 16	Energy	\$1B - \$10B	Sale	\$947.0M	Freefall
<b>SAS</b>	July 5	Industrials	\$1B - \$10B	Reorganization	\$1.5B	Freefall
<b>Voyager Digital Holdings</b>	July 5	Financials	\$1B - \$10B	Dual Track	\$1.1B	Prenegotiated
<b>Celcius Network</b>	July 13	Financials	\$1B - \$10B	Dual Track	None	Freefall
<b>Aearo Technologies</b>	July 26	Industrials	\$1B - \$10B	Reorganization	None	Prepackaged
<b>OSG Group Holdings</b>	Aug. 6	Communication Services	\$1B - \$10B	Reorganization	\$824.0M	Prepackaged
<b>Altera Infrastructure</b>	Aug. 12	Energy	\$1B - \$10B	Reorganization	\$1.6B	Prenegotiated
<b>Endo International</b>	Aug. 16	Healthcare	\$1B - \$10B	Sale (Credit Bid)	\$8.1B	Prenegotiated
<b>Carestream Health</b>	Aug. 23	Healthcare	\$1B - \$10B	Reorganization	\$1.0B	Prepackaged
<b>Lumileds Holding</b>	Aug. 29	Industrials	\$1B - \$10B	Reorganization	\$1.7B	Prepackaged
<b>Cineworld</b>	Sept. 7	Communication Services	\$1B - \$50B	Reorganization	\$5.1B	Freefall
<b>FTX Trading</b>	Nov. 11	Financials	\$1B - \$50B	Dual Track	None	Freefall
<b>BlockFi</b>	Nov. 28	Financials	\$1B - \$10B	Dual Track	\$275.0M	Freefall
<b>Reverse mortgage Investment Trust</b>	Nov. 30	Financials	\$1B - \$50B	Liquidation	\$1.4B	Freefall
<b>AIG Financial Products</b>	Dec. 14	Financials	\$1B - \$50B	Dual Track	\$37.7B	Freefall
<b>Core Scientific</b>	Dec. 21	Information Technology	\$1B - \$10B	Reorganization	\$908.0M	Prenegotiated

## Bankruptcy Court Filing Districts

Across all First Day liability ranges, Delaware accounted for just under 20% of cases, followed by Texas' Southern District with 12% and SDNY with 9%:

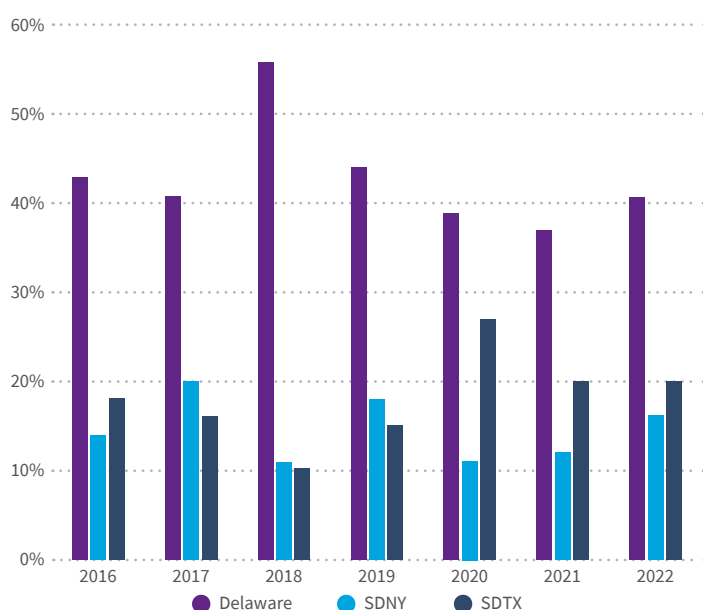
Annual Chapter 11s by Court District



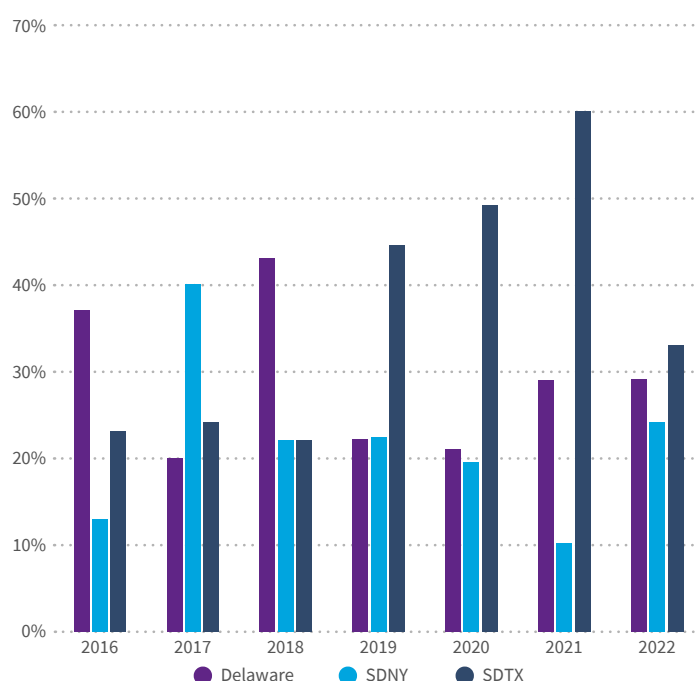
With respect to cases with liabilities in excess of \$100 million, Delaware, S.D. Texas and SDNY made up 77% of the total. While the composition across these districts has varied over the past several years, the combined share of the three has changed much more subtly, with 2017, 2018, 2019, 2020 and 2022 each at 77%, 2016 at 75% and 2021 at 69%. In 2022, Delaware's share of \$100-million-plus liability filings in 2022 more than doubled each of SDNY's and S.D. Texas's. SDNY's share grew from 12% to 16%, and S.D. Texas's share was unchanged at 20%.

Filings across these three top filing districts were more balanced in the \$1 billion-plus liability range than the \$100 million-and-up range, with none making up more than a third. The Southern District of Texas led in this category at 33%, unchanged from its share in 2021, followed closely by Delaware at 29% (also unchanged from 2021) and SDNY at 24% (up from just 10% in 2021).

Annual \$100M+ Liability Chapter 11s by Court District



Annual \$1B+ Liability Chapter 11s by Court District





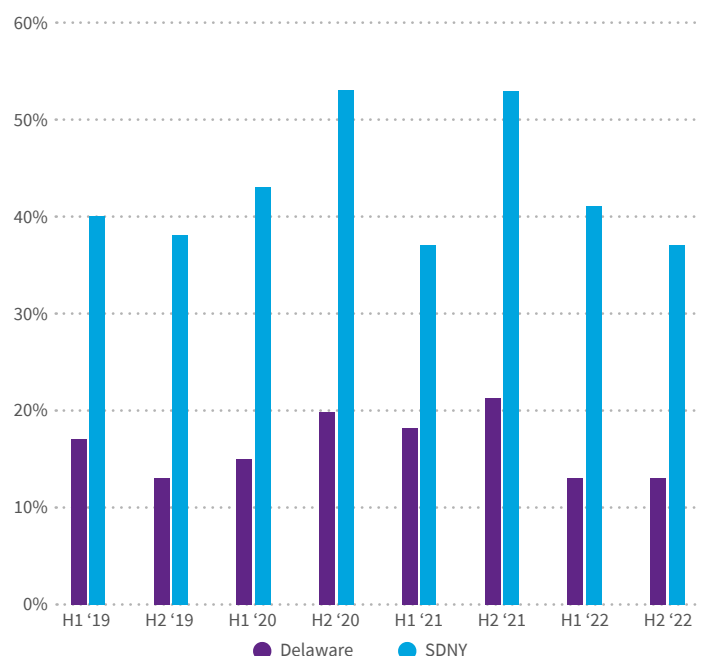
## Prepackaged Plans

Approximately 46% of prepackaged or prenegotiated cases in 2022 fell within the billion-dollar-and-up range. Across all liability ranges and excluding the real estate sector, which consists primarily of single-asset real estate cases, prearranged chapter 11s made up roughly 13% of cases in both halves of the year, which is below recent averages. For cases with over \$100 million in liabilities (still excluding real estate) - the liability range where prearranged cases predominate - the percentage of chapter 11s filed as prearranged cases fell from 53% in 2021's second quarter to 41% in the first half of 2022 and then further to 37% in the second half.

Carestream Health commenced a prepackaged case in August with the support of its existing lenders, exiting 38 days after its petition date. Lumileds, another August billion-dollar filer, ran a 63-day prepackaged confirmation process, which was longer than Cypress Environmental's 45-day prepack, which provided 100% of new equity to prepetition and DIP lender Argonaut Private Equity. Integrated customer communications and engagement services company OSG Group ran an even shorter process, confirmed in 24 days and effective just 25 days after entering bankruptcy.

Sungard Availability Services, a data center services provider, found itself back in bankruptcy after a 24-hour speedy prepack three years earlier. This time around, Sungard pursued a toggle sale/plan process. In 2022 there was a very quick prepack from Seadrill New Finance, which achieved

**Prepack Share of Chapter 11s  
(For Cases with \$10M+ & \$100M+ Liabilities)**



a one-day confirmation (and its effective date nine days after the petition date) for its prepack designed to amend and extend approximately \$622.7 million of senior secured notes and to issue pro forma equity to the senior secured noteholders as part of the broader Seadrill restructuring.

In contrast, the highest-profile true free-falls of the year were undoubtedly FTX and Revlon, discussed further below.

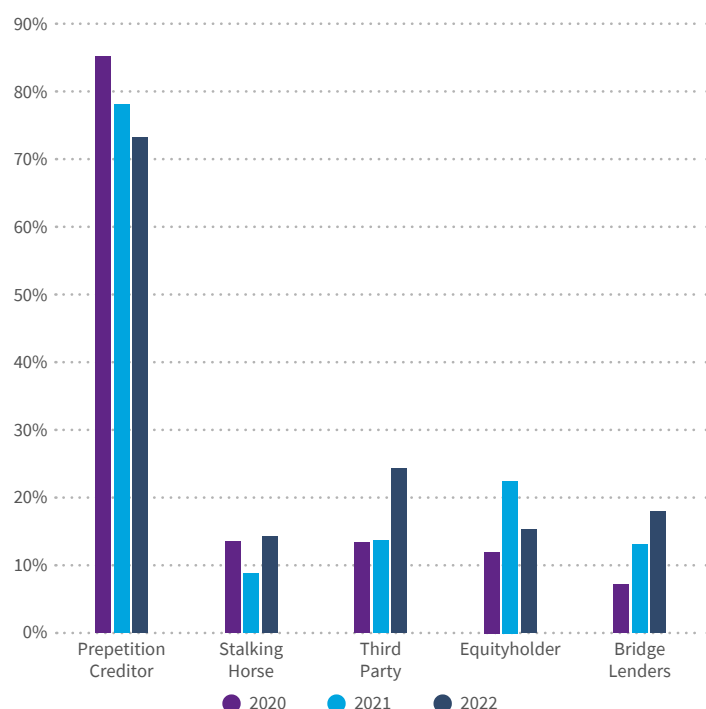


## DIP Financing Trends

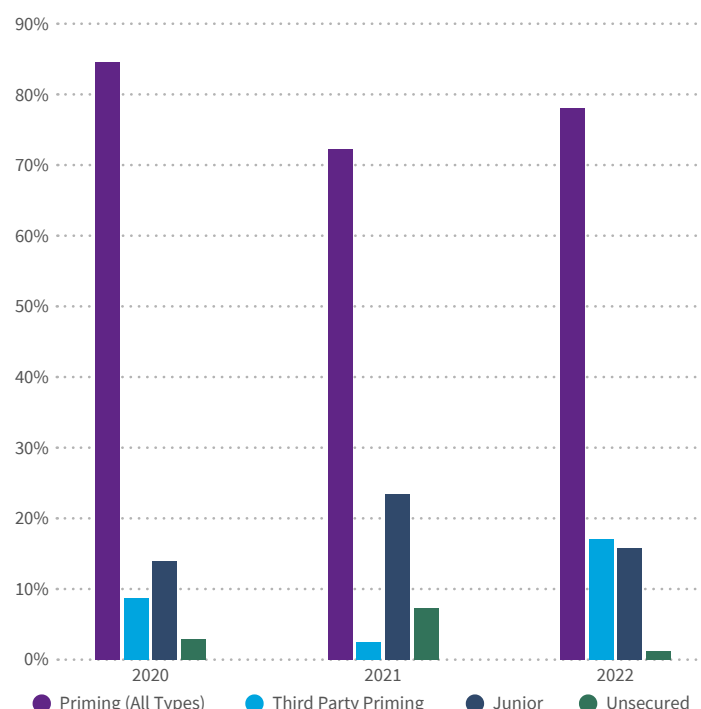
In 2022 we saw a rise in DIP financing provided by third parties, alongside a continuing drop in the share of DIPs provided by prepetition lenders (which nevertheless still account for super-majority of DIPs):

In addition to the increased prevalence of third-party-provided DIP financing facilities from 2021 to 2022, the proportion of DIPs lent by third parties seeking to prime the liens of prepetition secured parties increased significantly:

Share of DIPs by Lender Type



DIP Liens/Security



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## DIP Lenders as Stalking Horses

A number of 2022's debtors ran sale processes with the DIP lender also serving as stalking horse bidder, and in some cases the lender was also the prepetition lender. In almost all of these cases, the stalking horse ultimately prevailed as the successful bidder and purchaser, including in the following cases in which there were no other qualified bids: Gold Standard Baking's credit bid sale to the DIP lender and stalking horse, Pareteum Corp.'s sale to stalking horse bidders Circles MVNE Pte. Ltd. (also serving as DIP lender) and Channel Ventures Group LLC (the former minority holder of the company's first lien debt and agent and lender under an existing junior subordinated secured debt facility), insurance brokerage services provider Vesta Holdings' sale to the stalking horse, an affiliate of existing lenders and DIP lender, NewAge Inc.'s sale to the stalking horse and DIP lender, and Corsicana Bedding's sale to stalking horse, prepetition and DIP agent.

Stimwave Technologies Inc. also achieved a sale of substantially all of its assets to an affiliate of prepetition and DIP lender Kennedy Lewis, but only after a "competitive" auction; the debtors describing this as a "unicorn" sale that would result in full or close to full payment to GUCs, and overcoming an objection from the wife of the debtors' former CEO, who alleged that the sale was based on "insider manipulation."

An exception to the stalking horse prevailing as the purchaser was EYP Group Holdings Inc., in which third-party Page Southerland Page Inc. was ultimately approved as the purchaser, over stalking horse, prepetition and DIP lender Ault Alliance. The auction had been adjourned several times, after the debtors and the official committee of unsecured creditors reached an agreement on the designation of Page's bid as a qualified bid.



Despite eventual approval of nearly all of these sales to DIP lenders and/or existing lenders, the debtors had some roadblocks to approval of bid protections, including Judge J. Kate Stickles' denial of bid protections for the stalking horse in the Gold Standard Baking case in light of objections from the U.S. Trustee and official committee of unsecured creditors, and Judge Lisa G. Beckerman sustaining the UCC's objection to a breakup fee for the stalking horse bidders in Pareteum Corp. Judge Laurie Selber Silverstein ultimately approved Vesta's bid procedures, overcoming concerns that \$1.5 million in expense reimbursement for the stalking horse bidder, a consortium of first lien lenders, was a "disguised breakup fee." Judge Silverstein also approved a breakup fee and expense reimbursement in NewAge Inc., finding that the eventual purchaser - stalking horse and DIP lender - was not an insider on the basis of what was known at the time of the bid procedures hearing.

Certain other debtors proposed bid procedures without a breakup fee or expense reimbursement, including Stimwave, which did not contemplate any breakup fee or expense reimbursement for the stalking horse, which the debtors stressed would not impede overbids. MD Helicopters also did not have any proposed breakup fee or expense reimbursement and achieved an eventual sale to the stalking horse affiliated with Zohar funds (holders of certain of the debtors' equity and first lien obligations). That case ended with a structured dismissal, despite opposition to the sale from the state of the Netherlands, which had its motion for stay pending appeal of the sale denied.

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## DIP Financing Trends

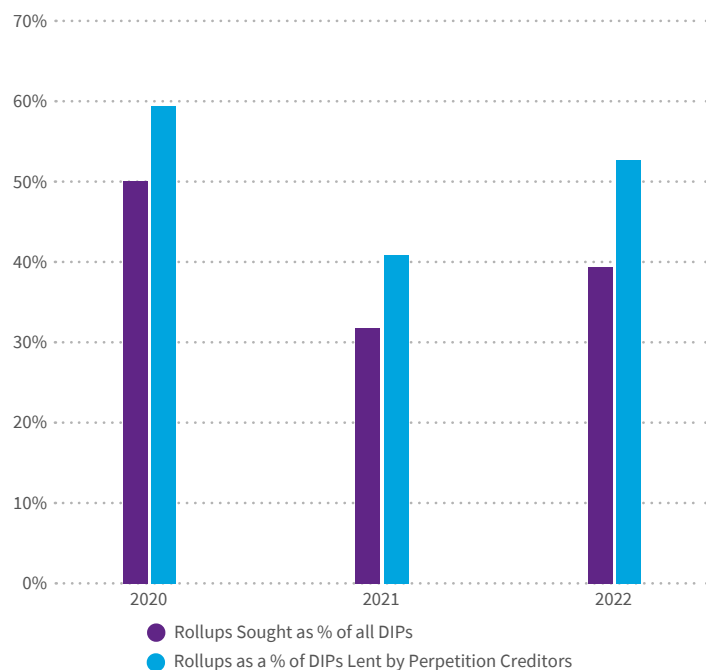
The percentage of DIP motions seeking rollups of prepetition debt in 2022 has rebounded from a marked drop last year.

Of the 20 DIPs in 2022 that sought interim approval of rollups, only one was pushed to the final order for approval (Phoenix Services), while one was rejected altogether (Storcentric),

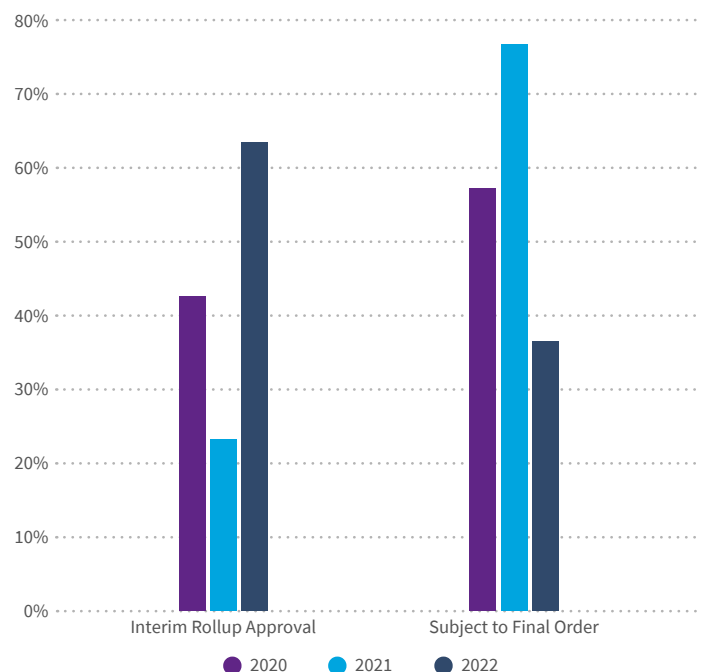
one was axed along with the entire DIP facility (Buyk) and one was terminated in connection with the company's pivot to an alternative DIP facility containing no rollup (Cineworld).

Roughly 20% of 2022's DIPs containing rollups included a creeping rollup component, compared with 12% in 2021.

Percentage of DIPs Seeking Rollups



Rollups Subject to Interim, Final Orders





## No DIP

A series of late-2022 filers also filed intending to run their cases without the use of DIP financing, including Tru Grit, South American Beef, AIG Financial Products, Sears Authorized Hometown Stores, Quanergy Systems and FedNat Holding. Both FedNat and Quanergy have no existing secured debt and would fund their cases through cash on hand.

In addition, crypto exchange services provider BlockFi filed with approximately \$256.5 million in unencumbered cash, saying that it would be “sufficient to fund the costs” of the chapter 11 cases and indicating that it does not intend to seek approval of DIP financing “at this time.” Another crypto filer, Celsius Network, said it was intending to fund postpetition operations using cash on hand, which “will provide ample liquidity to support certain operations during the restructuring process.”

RubrYc Therapeutics, which filed to liquidate after a prepetition sale of its business to iBIO Inc., a publicly traded developer of precision antibody immunotherapies, filed without secured debt and without the need for DIP financing. ExpressJet Airlines filed to liquidate after ceasing operations, without DIP financing but requiring \$1 million in cash monthly to prosecute its liquidating case.

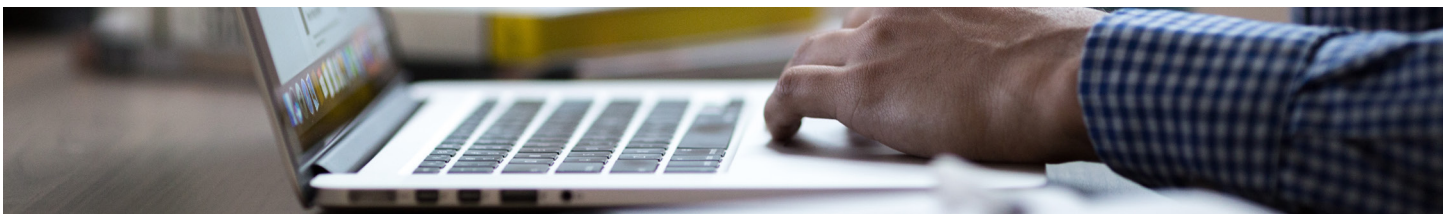
Casual restaurant chain operator Claim Jumper Steakhouse & Bar filed without a request for DIP financing and with no funded secured debt, seeking to run a sale process or restructure through a plan of reorganization. Borrego Community Health Foundation filed to explore restructuring options, without DIP financing and without any existing secured debt and \$5.2 million of cash on hand. Oil and gas exploration and production company Minerva Resources filed in August, without seeking DIP financing or the use of cash collateral.

In addition, an earlier 2022 filer, Ruby Pipeline, which operates a natural gas pipeline, began its case intending to fund with cash on hand without the need for additional financing. Compute North filed to fund its case in the near term with limited unrestricted cash of \$8.7 million.

The end of the year also included a few requests for the use of cash collateral without consent from secured lenders, with three alone in mid-December, from Clovis Oncology, Tru Grit and South American Beef. Clovis’ pursuit of the nonconsensual use of cash collateral, however, was upended by a DIP financing auction with existing lender Sixth Street emerging as the winning bidder (as Sixth Street had withheld consent in connection with an ad hoc group’s financing). 2022 featured companies with existing alternative financing sources - with a number of filers relying on merchant cash advance lenders. Many of these companies entered chapter 11 disputing the validity of the merchant cash advance agreements. Top Line Granite attributed its filing, in part, to short-term lenders engaging in “certain unfair practices” and paid as much as \$30,000 a day under “predatory” merchant cash advance agreements.

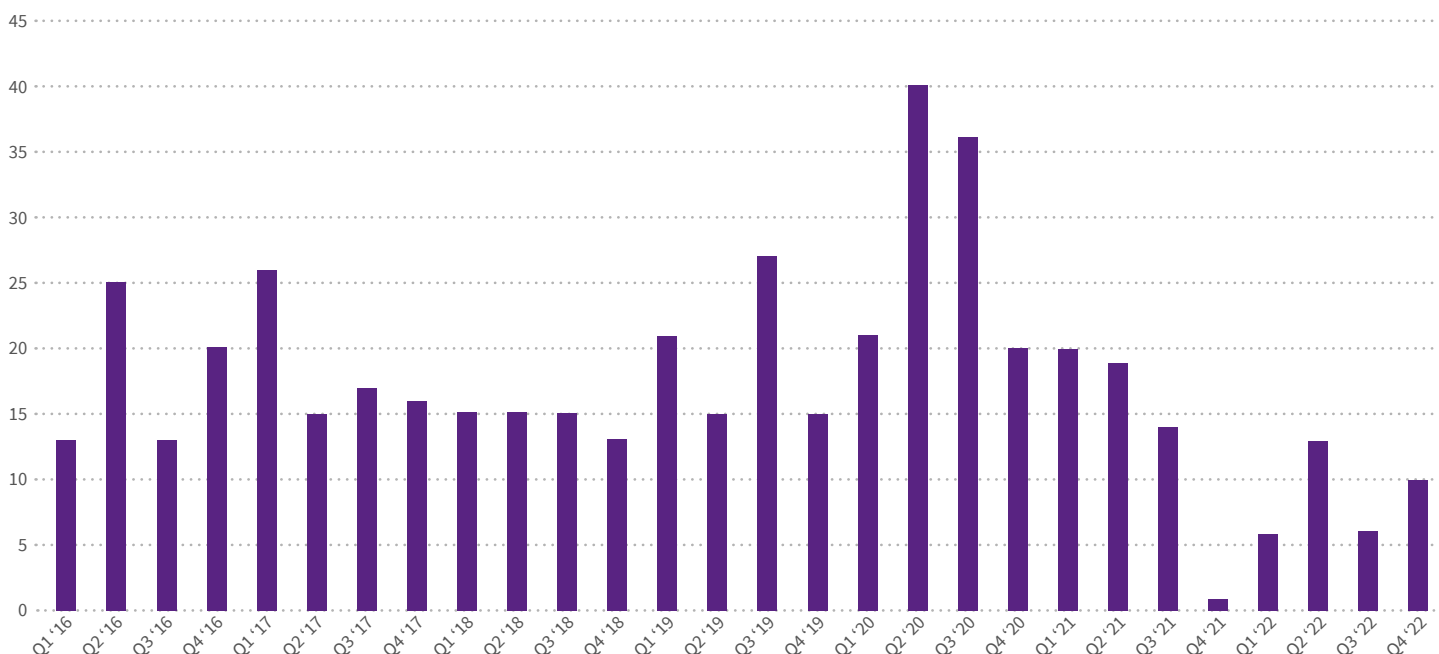
***“ A series of late-2022 filers also filed intending to run their cases without the use of DIP financing, including Tru Grit, South American Beef, AIG Financial Products, and Sears Authorized Hometown Stores. ”***

Construction company Tracer Roofing, in its case, made similar allegations against its merchant cash advance lenders, saying it entered into the agreements in “desperation” and asserting that “many” merchant advance companies “prey upon cash-strapped businesses that cannot readily obtain financing from banks and other traditional lenders.” Grocery store owner Jar 259 Food Corp. entered into numerous merchant cash advance agreements in a “state of desperation.” Among its “cascade of problems” leading to its bankruptcy filing, Orbit Energy & Power, which provides solar power and other services, pointed to borrowing from merchant cash advance lenders. Energy industry services providers RWDY Inc. and Jet Oilfield Services also cast doubt on aspects of merchant cash advance agreements that they entered into prepetition.



## Consumer Discretionary

Consumer Discretionary Filings Per Quarter



In the consumer discretionary sector's slowest year, the sector's filing frequency dropped 35% from 2021 and 69% from a 2020 peak, with an average of just nine cases per quarter in 2022 against a quarterly average of 19 for 2016 through 2021. Consumer discretionary filings in the second quarter more than doubled their count from the first quarter before dipping back down in the third quarter and then jumping up again in the fourth quarter. The first quarter was the second lowest per quarter in our data set, behind only the immediately preceding quarter, the fourth quarter of 2021, which recorded only one such filing.

Fitness equipment companies have suffered after the rise and fall of the "Covid-19 home fitness boom." TRX Holdco filed in June to sell assets and adapt to the post-pandemic environment after a "record-breaking" year in 2020. Tru Grit Fitness, a December filer, was formed to capitalize on the demand for at-home gyms during the Covid-19 pandemic, but sales "slowed significantly" when big-box retailers started their own private-label in-home fitness equipment lines and gyms reopened. Conversely, there have not been many fitness center filings since 2020, which featured a number of high-profile chains in bankruptcy.

Cherry Man Industries, which describes itself as one of the largest nationwide importers and distributors of office furniture, pinned its bankruptcy filing on the Covid-19 pandemic's impact on office-based working, leading to a precipitous drop in office

furniture sales. Nonetheless, in its March filing, Cherry Man described the pandemic as "temporary" and said it believes that "many companies will resume work at corporate offices," with remote work continuing to be offered "but more as a hybrid offering." Cherry Man was counting on a return to offices to support its reorganization. AiBUY Holdco Inc., a "largely pre-revenue" e-commerce company, also filed to reorganize, through a balance sheet restructuring. The company filed a voluntary petition following an involuntary petition that was filed against it.

The energy drink market had a couple of players filing for chapter 11 in 2022 - Vital Pharmaceuticals Inc., which makes Bang Energy drinks, and MusclePharm Corp., which manufactures branded sports nutrition products and energy beverages, both of which filed to reorganize. Vital's case has been dominated by opposition from the official committee of unsecured creditors and the debtors' largest creditor, Monster Energy; however, their DIP objections have been resolved, along with modifications to the debtors' corporate governance as creditors asserted concerns about the debtors' founder, CEO and sole shareholder John Owoc's continuing role given his "reckless and intentional misconduct." MusclePharm blamed the rise in the price of protein used in its products for its bankruptcy, along with an accounting restatement issue, while Vital filed in the wake of an adverse judgment and arbitration award for hundreds of millions of dollars in favor of Monster Energy and Orange Bang.

Filings in 2022 also included other health products companies such as NewAge, which develops, sells and distributes health and nutritional products through a sales network of brand partners; Packable Holdings, a tech-enabled e-commerce company operating as a third-party seller of health, beauty and other consumer products; and nutritional gummy manufacturer Better Nutritionals. NewAge and Packable, both middle-market companies, filed to sell assets. Better Nutritionals, embroiled in litigation with its largest customer, filed seeking to restructure, noting a “global gummy market that is expected to grow significantly over at least the next six years.” Nutritional supplements also came up in the filings of Infowars host Alex Jones’ vehicles Free Speech Systems and InfoW, as the “vast majority” of Free Speech Systems’ revenue comes from the sale of nutritional supplements.

The second-largest cinema chain operator in the world, U.K.-based Cineworld Group, parent of Regal Entertainment, filed in 2022, looking for a comprehensive restructuring that would provide financing to fund go-forward operations, “significantly” reduce debt and rationalize the debtors’ “burdensome” U.S. lease portfolio. The case is being funded by approximately \$2 billion in DIP financing, \$1 billion of which was slated to refinance priming prepetition term loans to be placed into

escrow (that was ultimately released) subject to a challenge after the court raised concerns. The debtors are marketing assets for sale while also planning to restructure the company’s capital structure. The company attributed the bankruptcy filing to the Covid-19 pandemic, which it says “changed everything,” including streaming filling the void of going to the cinema. Although “virtually no industry was spared the effects of COVID-19, the pandemic wreaked particular havoc on cinemas,” said the debtors, which also faced delays in film release and production schedules causing short-term losses and a “multi-year ripple effect.”

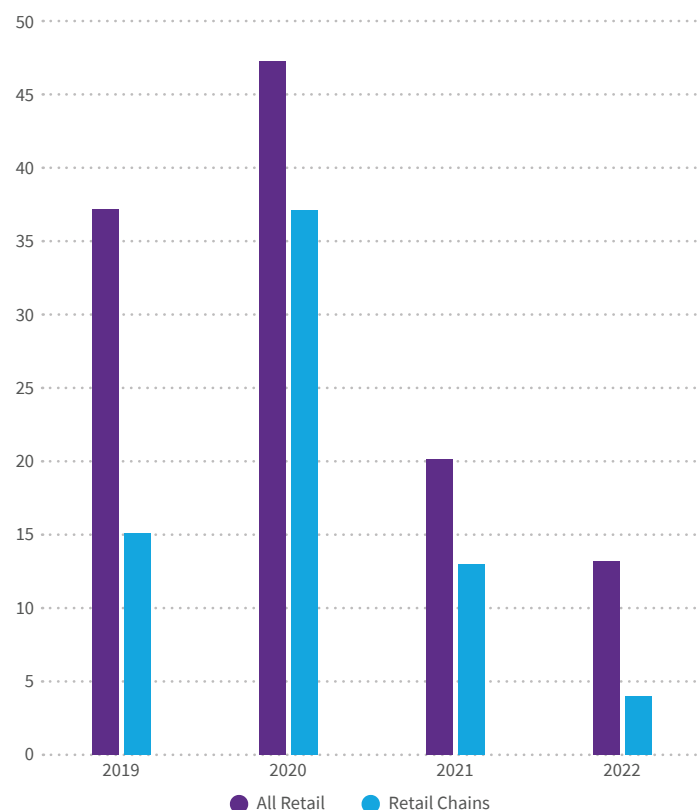
“ *Better Nutritionals, embroiled in litigation with its largest customer, filed seeking to restructure, noting a “global gummy market that is expected to grow significantly over at least the next six years.”* ”

## Retail

Although several major retailers are on the verge of filing at the time of this story, looking back at 2022, there were relatively few retail filings - spanning industries of toys, sporting goods, home improvement and home goods, bedding, mobile technology and wine - with such cases largely falling within the first half of the year. Familiar supply-chain and pandemic issues were cited by Nextsport (which noted a 5x increase in ocean freight costs, as many of its products are manufactured in China) and Enjoy Technology (which pointed to the supply-chain crisis and an inability to retain sufficient personnel, tightening capital markets and “other contributing macroeconomic factors”). Olympia Sports primarily blamed issues capitalizing on its purchase of Shoebuy.com. Corsicana Bedding blamed an “ongoing slump” in the mattress industry, reduced consumer spending and production costs.

Olympia filed to liquidate and close all stores, while Corsicana Bedding, Enjoy Technology and online direct-to-consumer wine company Winc filed to run a going-concern sale process, each with stalking horse agreements in hand. Toy and action sports company Nextsport kept its options open by exploring a “multiprong strategy” of continuing operations, seeking a capital infusion and a potential sale and/or obtaining exit financing.

Consumer Discretionary – Retail Chapter 11s





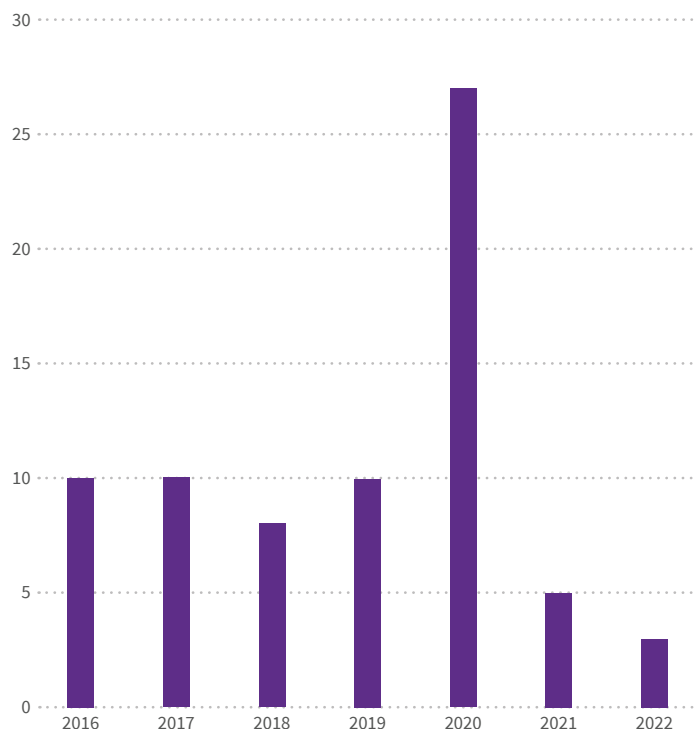
## Restaurants

In December, Bertucci's Restaurants was the third restaurateur to file for chapter 11 protection in 2022, after October's filing by Claim Jumper Steakhouse & Bar and the March filing of BLT Restaurant Group. In 2021 only six restaurant chains filed, significantly down from 2020 when more than 25 filed.

Bertucci's Restaurants, owner and operator of an "Italian-themed" restaurant chain, acquired its 47 Northeast restaurants in the prior Bertucci's chapter 11 case filed in 2018. The company attributed its latest filing to the Covid-19 pandemic and the "impact of inflation." Claim Jumper Steakhouse & Bar, operator of casual restaurant concepts Claim Jumper, Joe's Crab Shack, Brick House Tavern + Tap and Nashville Hot Chicken Shack, filed to run a sale process or restructure. Claim Jumper also acquired its restaurants from a prior bankruptcy - acquiring certain locations from Ignite Restaurant Group. Claim Jumper also attributed its filing to the Covid-19 pandemic, along with "soaring" food costs and a "tight labor market."

These restaurant chapter 11s represent the lowest level on an annual basis in the First Day data set:

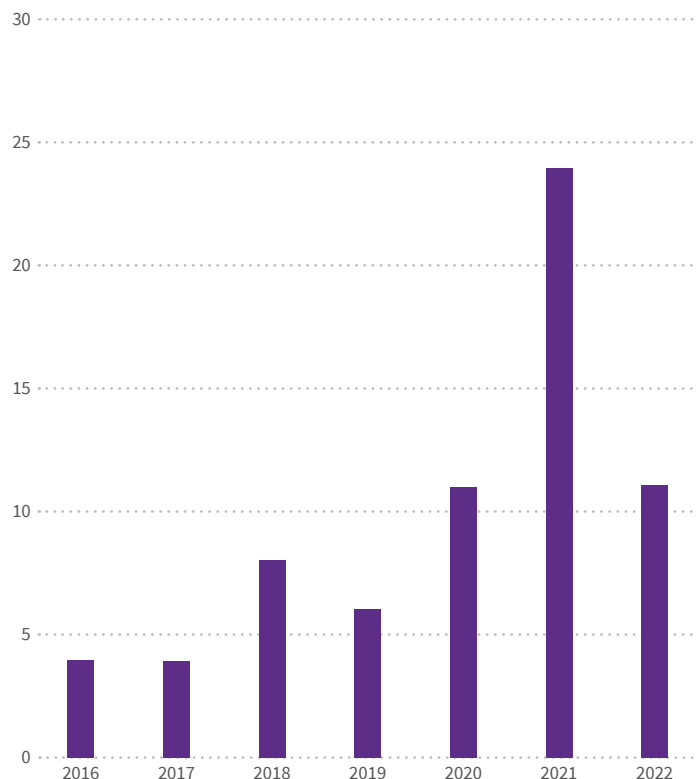
**Annual Restaurant Chain Chapter 11 Filings**



## Hotels

Despite a rebound in travel and leisure as the pandemic wore on in 2022, toward the end of the year there was a minor trend of New York City-based hotels filing for chapter 11 protection. The trend began in October with an involuntary filing against Brooklyn, N.Y.-based Wythe Berry Fee Owner (affiliated with real estate development and management company All Year Holdings and its affiliate Evergreen Gardens Mezz, each of which filed their own prior voluntary proceedings), relating to The William Vale Hotel. Next came a filing in mid-November from Urban Commons 2 West, a real estate developer and hotelier managed by Taylor Woods and Howard Wu, the co-founders of real estate investment vehicle Urban Commons and former directors of Eagle Hospitality Trust, which filed its own chapter 11 in January 2021. Urban Commons' case is focused on the pursuit of repositioning Battery Park City-based The Wagner hotel, which was rebranded from a Ritz Carlton prior to the debtors' acquisition. At the end of November, Golden Seahorse, operator of the Holiday Inn Manhattan Financial District, filed as a result of a dispute with its secured lenders. As the year came to a close, in late December, the owner and operator of Crowne Plaza Times Square Manhattan Hotel in New York City, Times Square JV LLC, also filed, seeking to reject its license agreement with the licensing arm of InterContinental Hotels Group Resources Inc.

**Hotel Chapter 11 Cases**



While 2022 hotel filings were somewhat tepid relative to 2021, they remained above pre-pandemic levels and increased in frequency in the fourth quarter, which accounted for half of the year's hotel filings.

Golden Seahorse asserts that despite the Covid-19 pandemic, which caused a default under its secured loan, management has “successfully steered the Debtor to profitability” with a 90% occupancy rate and is pursuing a potential sale of the hotel. Times Square JV's hotel officially reopened in November this year after being closed for more than two and a half years. However, the hotel also points to problems pre-dating the pandemic, namely, a “burdensome affiliate” with the Crowne Plaza brand. Times Square JV is facing opposition from the licensor of the Crowne Plaza Hotel brand to the debtor's proposed rejection of the license agreement.

Filings in 2022 also featured smaller hotels in other parts of

the country, such as the owner and operator of a luxury hotel in the Dallas Galleria under the Marriott brand, NB Dallas Hotels, which is seeking to reorganize after “having suffered through 2 years of the COVID pandemic,” with revenue just starting to come back. Rider Hotel, owner of The Iron Horse Hotel, an upscale boutique hotel in Milwaukee, also filed for chapter 11 protection facing a foreclosure action from its secured lender following “financial devastation” from the Covid-19 pandemic. In all, 2022 featured 10 hotel filings, a drop from 24 hotel operators/owners filing chapter 11 in 2021, which was the busiest year for hotel filings on First Day record.

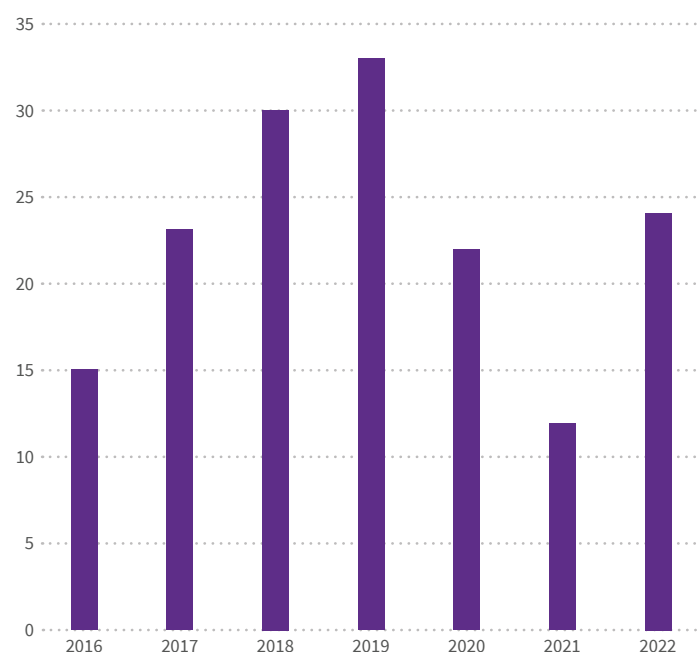
“ While 2022 hotel filings were somewhat tepid relative to 2021, they remained above pre-pandemic levels. ”

## Consumer Staples

The first quarter of 2022 was the first quarter to record more consumer staples cases than consumer discretionary ones. Since the Covid-19 pandemic, these filings had slowed but started to climb again during 2022's first half with 13 filings, which was nearly matched in 2022's second half with 11 filings. In 2021 and 2020, these filings were led by the agricultural products category, while 2019's food products filings were mostly regarding packaged foods. 2022's consumer staples filings were largely concentrated in food (including beef) and agricultural products, followed by a small percentage of personal and household products (including Revlon's blockbuster freetail filing) and an insignificant number of food retailers.

Two of the largest filers, with liabilities ranging from \$100 million to \$500 million, were food-based companies - industrial baked goods manufacturer Gold Standard Baking and Spring Mountain Vineyard. Gold Standard filed its case because of a disruption to its workforce and its impact on liquidity and consistent maintenance and repair issues, as well as increasing labor and material costs, and filed to run a sale process. The case was ultimately dismissed after the company sold substantially all of its assets. Napa Valley-based Spring Mountain Vineyard filed to delay foreclosure from sole secured lender MGG California, which ultimately agreed to provide DIP financing subject to various sale process milestones after multiple cash collateral extensions. The vineyard generally attributed its filing to the Covid-19 pandemic and the 2020 Glass Fire in Northern California.

Annual Consumer Staples Chapter 11 Filings



Grocery store filings remain elusive since the onset of the pandemic, with the only entry this year of a small filing from Jar 259 Food Corp., which owns a grocery store in Glen Oaks, N.Y., that until recently was operated by Key Food. Foodservice companies, though, have faced troubles this year, including Better 4 You Breakfast, which prepares and delivers prepackaged meals to institutional clients, and Miami-based foodservice distribution companies Frozen Wheels and Hardin Trucking Co.

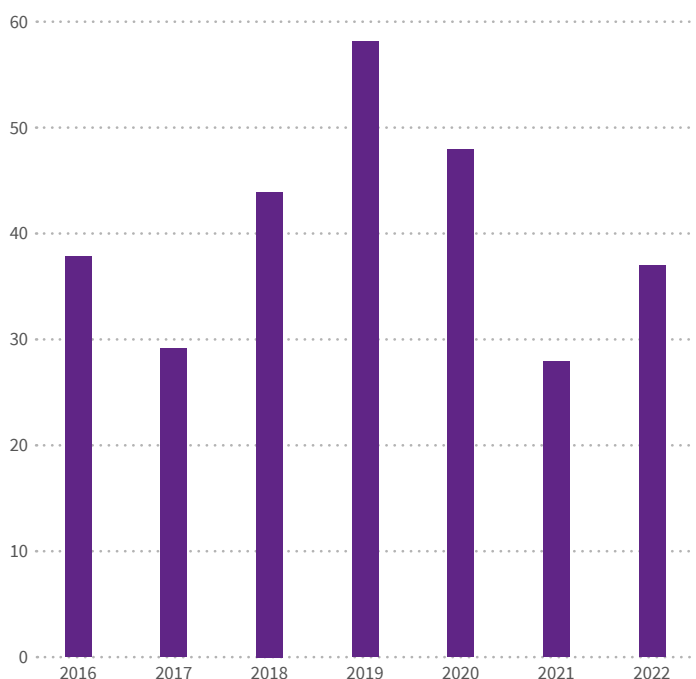
## Healthcare

Healthcare chapter 11s rose from 2021 to 2022, up to 36 from 27. The pace of healthcare chapter 11s picked up in the second half of the year (with four apiece in August, September and November and six in October), increasing 57% in filing frequency from the first half. Pharmaceutical and biotechnology filings made up a larger portion of the sector's filings in the second half when compared with the first half of 2022. After a spike of biopharmaceutical and biotechnology companies filing in 2019, 2020 had slightly less than 2019, and 2021 - a slow year across the board for chapter 11s - continued this decline. In 2022, however, filings by biopharmaceutical and biotechnology companies climbed, with 2022's numbers about equal with 2019's. Healthcare service providers - including a series of continuing care retirement communities and skilled nursing facilities - were, in contrast, concentrated largely in the first half of the year.

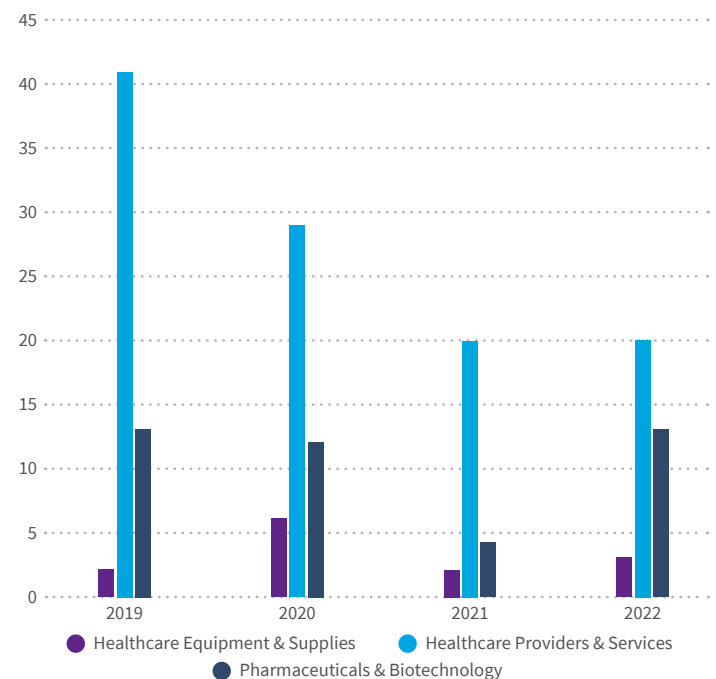
The count of healthcare chapter 11s per year and filings over recent years by category are broken down in the charts below.

The senior living industry has been plagued by lower census along with higher expenses and labor issues, with the Covid-19 pandemic "hit[ting] assisted living facilities hard," in the words of debtor Advantage Management Beaver Dam, operator of the Prairie Ridge Assisted Living facilities in Wisconsin. Fairport Baptist Homes, which is a nonprofit operator of nursing homes and adult care facilities, noted that state-mandated pandemic measures led to "drastic" increases in expenses and reduced census. Christian Care Centers also attributed its filing to a decline in residents, increased care requirements and increased labor costs and fewer donations as a result of the pandemic. Senior Care Living said that when the Covid-19 pandemic hit, it was unable to cover operating expenses and debt service. Mariner Health Central, operator of a skilled nursing facility in Hayward, Calif., and part of the larger Mariner Health enterprise including nondebtors operating 20 skilled nursing facilities, was managing the "headwinds" of a "significant" census decline but was hit with an adverse litigation judgment.

**Annual Healthcare Chapter 11s**



**Healthcare Chapter 11s by Category**



Members of Reorg's Americas Municipals coverage team discussed recent credit trends in continuing care retirement communities, or CCRCs, as the industry has seen a wide range of outcomes.

[Click here to watch the webinar on-demand now.](#)



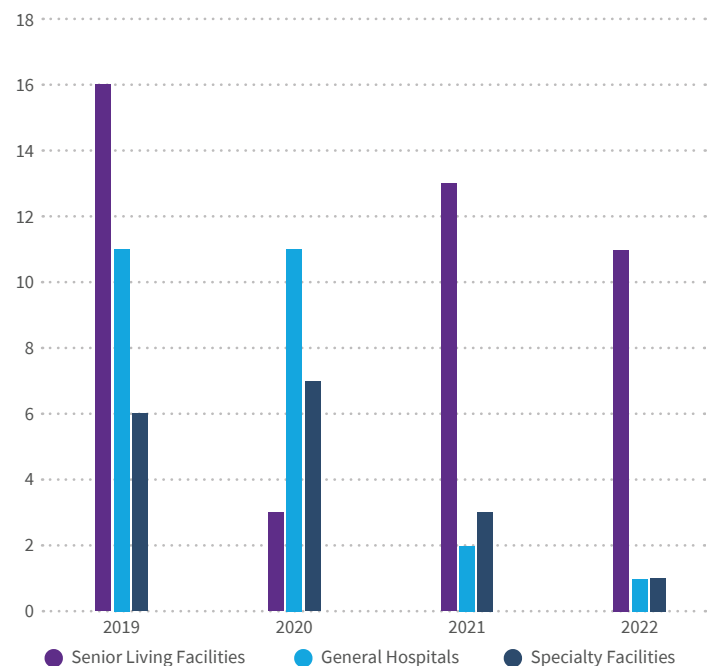
Certain of the senior care facilities funded their cases with financing or the use of cash collateral from bondholders, including Leading Life Senior Living, which has DIP financing from Berkeley Alternative Income Fund I LLC, the largest known holder of the debtor's bonds, and Christian Care Centers, which obtained DIP financing from bond trustee UMB Bank. However, others entered their cases in confrontation with their secured lenders, such as Senior Care Living, whose bond trustee objected to the use of its cash collateral, asserting that the Texas assisted living facility owner was "entirely insolvent" and blaming the bankruptcy for chilling an ongoing receiver sale process. Fairport Baptist Homes filed to run a sale process with a local senior care operator Rochester Friendly Home as stalking horse. Christian Care Centers, another nonprofit operator, owns three senior living facilities in the Dallas/Fort Worth area and also filed to run a sale process with a third-party stalking horse - North Texas Benevolent Holdings (affiliated with Boncrest Resource Group). The sale ultimately closed to the stalking horse, which was followed by a liquidating plan. Leading Life Senior Living also filed to sell its assets, with a stalking horse bid from bondholder Berkeley.

The number of healthcare provider bankruptcies was, as a percentage, smaller, with just a handful of cases including from rural home health services provider STAT Home Health-West and two California-based providers - Los Angeles-based healthcare network Pipeline Health Systems and nonprofit federally qualified health center Borrego Community Health Foundation. The largest of these, Pipeline Health, reporting up to \$1 billion in liabilities, was only eclipsed by medical imaging and testing products company Carestream Health and specialty pharmaceutical company Endo International, each of which reported up to \$10 billion in liabilities.

Carestream filed a prepack premised on an RSA with holders of first lien claims, second lien claims and majority equityholder Onex designed to slash \$470 million of funded debt out of the company's \$1 billion prepetition debt load. Carestream's smooth case achieved confirmation just 45 days after execution of the RSA. Pipeline had mixed results in its sale process, selling its Illinois assets but failing to receive bids for its California and Texas assets. About half of 2022's healthcare filers pursued sales, almost all of which had stalking horse bidders.

Senior living and skilled nursing facility operators made up around 85% of the year's healthcare facility operator filings:

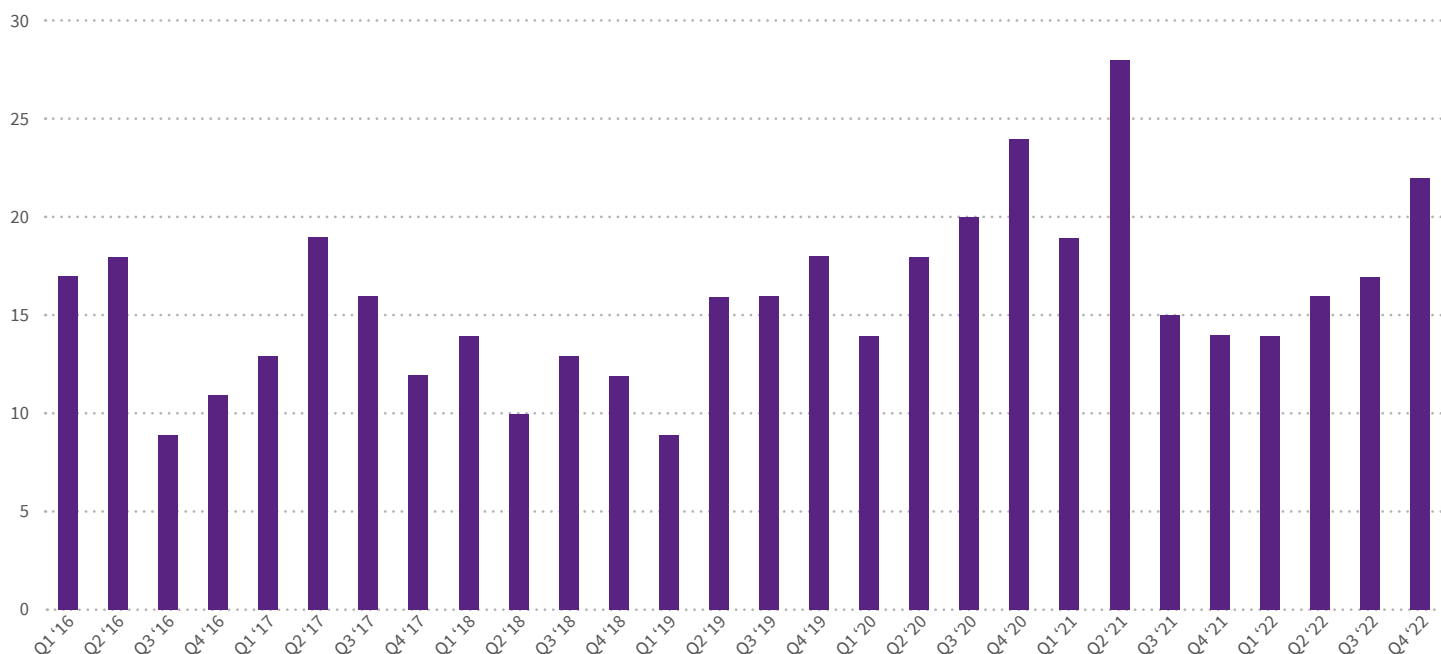
**Healthcare Facility Operator Chapter 11s by Category**



## Real Estate

Real estate cases remain elevated above their pre-pandemic levels and have accounted for the largest share of bankruptcies by sector since the beginning of 2021. These filings increased consistently each quarter, peaking at 22 cases in the fourth quarter - the first to reach 20 real estate cases since the second quarter of 2021, which set the record for the First Day data set.

**Real Estate Chapter 11s**

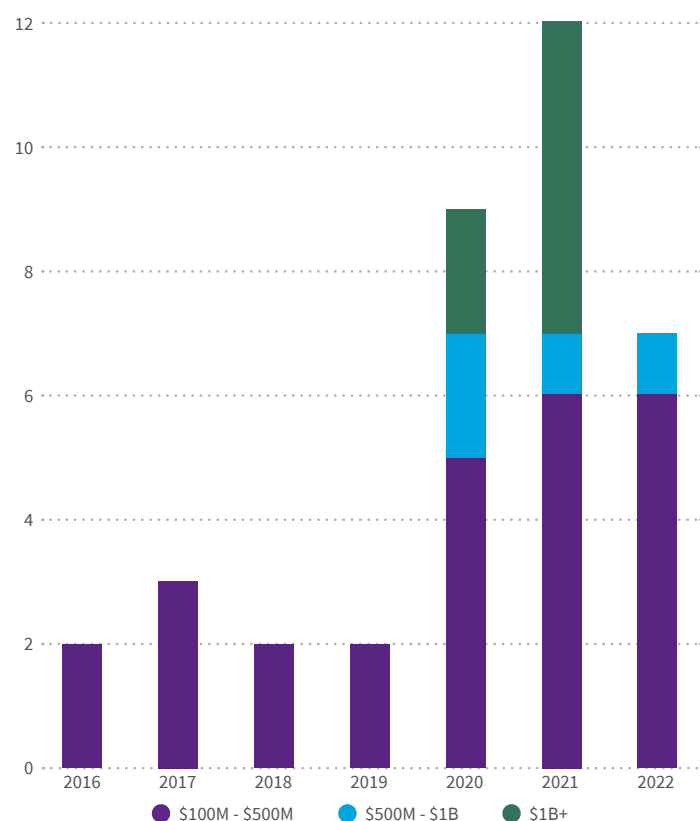


The pandemic spurred a significant increase in real estate chapter 11s with liabilities above \$100 million, which elevated further in 2021. While these numbers dropped in 2022, they remained well above the levels of prior years.

The year's precipitous rise in interest rates caused the filing of mortgage origination and lending company First Guaranty Mortgage Corp., which commenced a free-fall case, citing a mortgage market collapse. The company filed to explore options in the face of losses and cash flow issues attributable to "unforeseen adverse market conditions for the mortgage lending industry, including unanticipated market volatility." The debtors ceased all their origination activity and terminated nearly 80% of their workforce before the petition date, after failing to procure additional financing to ease their liquidity crisis.

GT Real Estate Holdings ultimately reached a global resolution of its case after a dispute over a mixed-use venue that was slated to include a new headquarters and practice facility for the Carolina Panthers NFL team. The project of the debtor, which is ultimately controlled by Carolina Panthers owner and Appaloosa founder David Tepper, was thwarted because of an inability to issue a construction bonds prepetition.

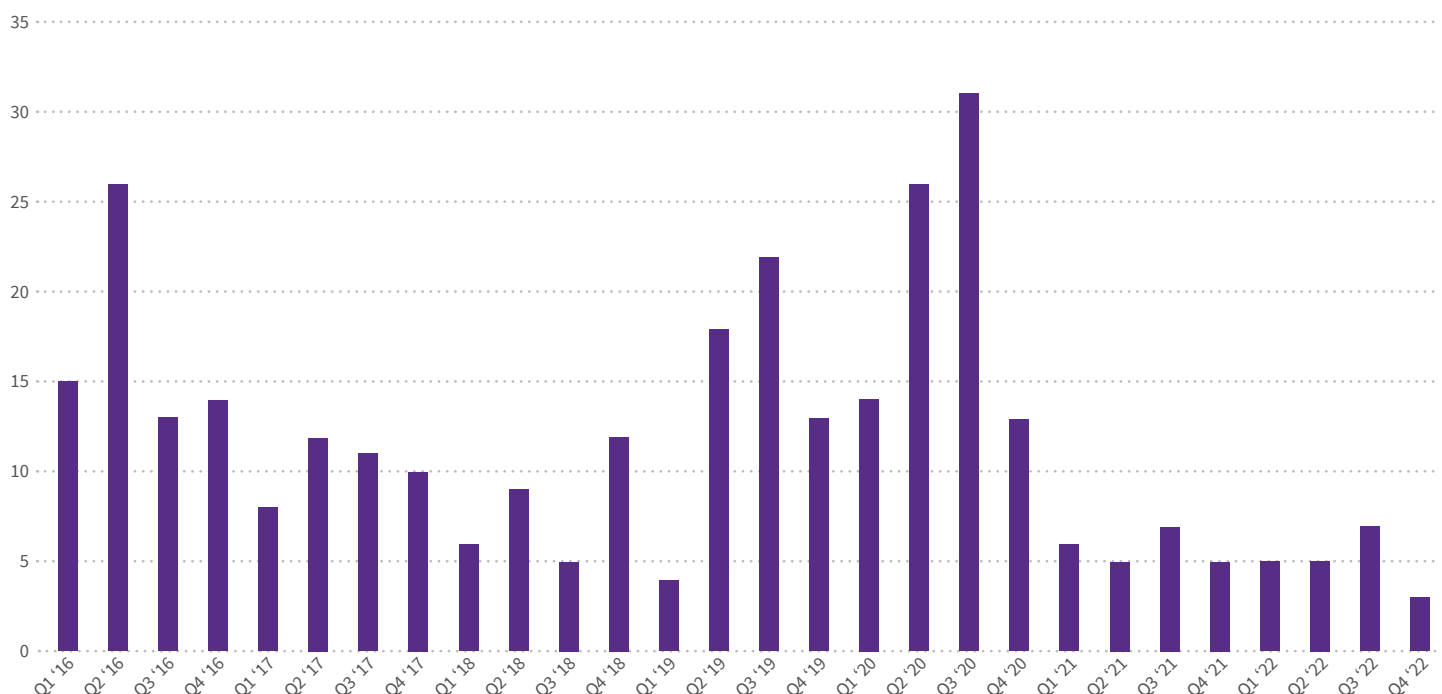
**\$100M+ Liability Real Estate Chapter 11s**



## Energy

Always a volatile industry - and one that's rife with bankruptcy filings - the energy sector has reached sustained lows in filing frequency since the first quarter of 2021, averaging 20 cases per quarter from 2016 to 2020, falling to just five per quarter in 2021 and 2022:

Quarterly Energy Filings



Energy cases were split evenly between the first and second half of the year. However, the larger cases were concentrated in the first half of the year, as the second half consisted almost entirely of cases falling within the \$10 million to \$50 million range (or 80%, as compared with 40% for the first half of the year). The breakdown of energy producers as compared with service providers was also evenly split for the year.

Service providers generally blamed macroeconomic conditions for their bankruptcy filings, for example Principle Enterprises, a provider of water transfer and trucking services, which pointed to “macro issues primarily arising from the COVID-19 pandemic and the related declines in the industries in which the Debtor operates.” Texas drilling rigs and services company Coastal Drilling Land Co. similarly attributed its need for chapter 11 relief to the “prolonged downturn and historic crash in prices resulting from the COVID-19 pandemic.” Alterra Infrastructure (fka Teekay Offshore), a U.K.-based international oil and gas midstream services provider, was unable to “capture” the upside presented by recent increases in energy prices and is constrained by the terms of its existing contracts and the capital expenditures required to re-contract its most significant assets.

Despite a rebound of crude prices above pre-pandemic levels, ION Geophysical says that the offshore seismic market remained challenging through 2021 as “energy companies’ capital discipline persisted,” with ongoing crude oil production limits from members of OPEC and partner countries. In a similar vein, Wyoming-to-Oregon natural gas pipeline Ruby Pipeline noted that although “the market outlook for natural gas is improving and the future looks promising, in the near term,” including “recent global turbulence” resulting in “a renewed interest in energy independence for the United States” and increases in European demand for U.S.-sourced natural gas as reasons for optimism, it needed more time to negotiate with its creditors.

Some of the early 2022 chapter 11 filers pointed back to low-2020 oil and gas prices, with Activa Resources stating that record-low oil and gas prices in 2020 during the pandemic created challenges for the debtors in 2021, with production dropping and liquidity and production growth curtailed by significantly reduced oil and gas prices. Likewise, natural gas exploration and production company Tilden Marcellus, in its February filing, also pointed back to the “prolonged dip in gas prices” in 2019 and 2020, curbing its ability to drill additional wells and failing to meet minimum volume commitments.



## Industrials / Construction

Industrials sector cases in 2022 nearly doubled their 2021 levels, with an emphasis on construction and building products companies, particularly in the first half of the year, which accounted for 11 of the year's 14 cases in these categories. All but two of these filers reported liabilities of \$10 million to \$50 million. Construction and building products companies cited delays and uncertainty caused by the Covid-19 pandemic, broader supply-chain issues and increased labor and material costs.

## Airlines / Aerospace

The airline industry and the aerospace and defense industry together made up approximately 18% of industrials sector cases in 2022. Georgia-based regional airline ExpressJet Airlines filed after ceasing all air charter and scheduled flight services. ExpressJet had operated as a regional airline contracting with Continental, JetBlue, American and United, but ExpressJet stopped United Express flying operations in 2020 and, despite restarting commercial operations in 2021, the company faced issues related to airline industry consolidation. Scandinavian airline SAS, the largest filer in this category regarding liabilities with \$1.5 billion of funded debt, filed in the wake of a pilots' union strike and an inability to obtain concessions from aircraft lessors. SAS also attributes the bankruptcy filing to the Covid-19 pandemic, which has "battered" the airline industry, leading to a 56% reduction of revenue in fiscal year 2020 and a 70% reduction in fiscal year 2021, as compared with 2019, while ExpressJet pinned its filing on difficulty in scaling operations and the effects of the Covid-19 pandemic on travel and inflation - including a 50% to 100% increase in fuel costs. SAS ultimately settled its union strike, which had threatened its restructuring, in December, and its June passenger numbers were up 217% year over year.

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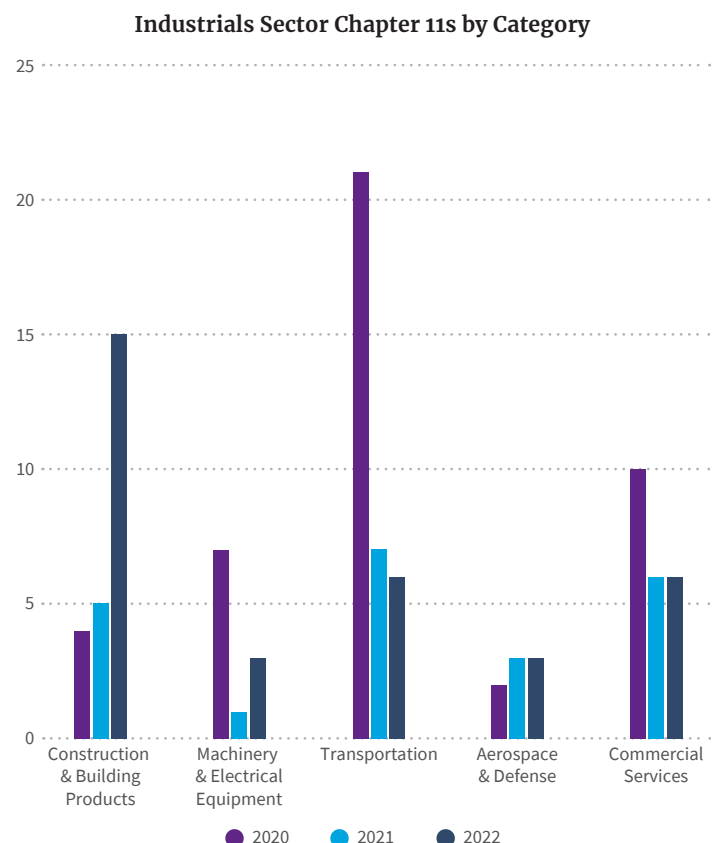
*Scandinavian airline SAS, the largest filer in this category regarding liabilities with \$1.5 billion of funded debt, filed in the wake of pilots' union strike and an inability to obtain concessions from aircraft lessors.*

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In the aerospace corner of the industrials sector, MD Helicopters, a Mesa, Ariz.-based Zohar portfolio company and manufacturer of commercial, military, law enforcement and air-rescue helicopters, led in liabilities with \$420 million in first and second lien debt. The company attributed the filing to headwinds related to the U.S. military's withdrawal from Afghanistan, along with supply-chain issues stemming from Covid-19.

The chart below splits up industrials sector chapter 11s by category for the past three years:



## Utilities

Footprint Power Salem Harbor Development, which filed in late March, was 2022's first utilities sector chapter 11, after 2021 set the First Day Database record for utilities filings. The glut of 2021 filings in this sector stemmed primarily from the effects of Winter Storm Uri on the Texas power generation industry. Turning to 2022, utility sector chapter 11s had an uptick in September, with filings from water delivery company Basic Water Co. and biomass-fueled renewable energy plant operator Stored Solar Enterprises Series LLC. In one of the only cases with a company noting the effects of global warming, Basic Water attributes the chapter 11 filing to the surface level of Lake Mead reaching a failure elevation on July 1, "below which the intake is unable to draw in sufficient water to satisfy the Debtors' water delivery obligations."

Footprint Power, along with Talen Energy Supply and Ector County Energy Center, constitute some of 2022's largest chapter 11s, with Footprint Power and Ector County reporting up to \$1 billion in liabilities, and Talen Energy filing with \$1 billion to \$10 billion in liabilities. Talen Energy attributed its chapter 11 "in large part" to "immediate and significant liquidity concerns" traced back to the "sudden and sustained rise of natural gas prices in late 2021."

Alternative energy source providers also filed in 2022, with forest biomass power plant developer North Fork Community Power's October filing, Stored Solar Enterprises Series LLC, operator of biomass-fueled renewable energy facilities for the New England power grid's September filing, and the mid-year filing from Jasper Pellets, which until recently operated a wood pellet biomass manufacturing facility in South Carolina to supply European markets with fuel.

“ In one of the only cases with a company noting the effects of global warming, Basic Water attributes the chapter 11 filing to the surface level of Lake Mead reaching a failure elevation on July 1, “below which the intake is unable to draw in sufficient water. ”



## Financials

Financial sector bankruptcy cases in 2022 all featured companies with liabilities of more than \$100 million, and most were concentrated in the billions, with nearly 40% of these being crypto companies. These larger filings also included financial services firm GWG Holdings' free-fall, AIG Inc. subsidiary AIG Financial Products Corp.'s wind-down

stemming from the 2008-2009 financial crisis, Paycheck Protection Program loan servicer Kabbage's prenegotiated case and regional insurance company FedNat Holding Co.'s chapter 11 designed to explore options while negotiating with a potential buyer.

## Crypto / Cyber

The well-documented wave of 2022 cryptocurrency bankruptcies began in July with the chapter 15 filing of defunct cryptocurrency hedge fund Three Arrows Capital and a chapter 11 filing from Voyager Digital. Voyager, which filed after issuing a default on its outstanding \$650 million equivalent loan to Three Arrows, pinned its filing on a “short-term ‘run on the bank’” from the downturn in the cryptocurrency industry generally and the default of a significant loan made to a third party. Voyager asserted it was not filing a “‘free-fall’ filing without direction,” but rather filed with a plan of reorganization. Nonetheless, Voyager’s plan, the debtors said, “effectively functions as a ‘stalking horse’ proposal,” and Voyager would continue efforts to engage third parties to act as a plan sponsor or to otherwise provide financing in exchange for partial or full ownership of the reorganized company. Voyager initially sought a sale to FTX, but after FTX’s collapse, the debtors switched gears to a bid from Binance.US.

FTX Group filed for chapter 11 in November 2022 after former CEO Sam Bankman-Fried resigned amid a scandal that prompted a run on the company, leaving it in a severe liquidity crisis. Successor CEO John Ray III, who “supervised” the Enron chapter 11 cases, says FTX exhibited a “complete failure of corporate controls and ... [an] absence of trustworthy financial information.” FTX began to encounter difficulties after CoinDesk’s reporting on the leak of Alameda Research’s balance sheet on Nov. 2, which showed that approximately \$5.8 billion of \$14.6 billion of assets reported consisted of FTX’s proprietary FTT token, with the bulk of the rest in Solana tokens. Fellow crypto exchange Binance announced its plans to liquidate a substantial amount of FTT on Nov. 6. On Nov. 8, Binance announced a proposed distressed acquisition of FTX.com, which Binance abandoned the next day after the diligence process uncovered a liability gap on FTX’s balance sheet, reports of mishandled customer funds and U.S. agency investigations. FTX is pursuing a sale process and is also facing the U.S. Trustee’s request for an examiner, which a group of bipartisan senators have also endorsed in a letter to Judge John Dorsey.

Celsius Network joined the crypto filers later in July, without a plan or restructuring agreement but with the intention to try to build consensus around a reorganization. Celsius revealed connections to other cryptocurrency firms, disclosing a \$40.6 million claim against Three Arrows Capital, and Alameda Ventures Ltd., Bankman-Fried’s cryptocurrency fund, as one of Celsius’ largest unsecured creditors. Crypto exchange services

provider BlockFi filed at the end of November, tracing its filing to the crypto “contagion” and “unprecedented” FTX collapse. BlockFi filed to pursue a sale in parallel with a reorganization.

Each of these crypto companies filed with billions of liabilities, but smaller companies within the industry also filed, such as blockchain and cryptocurrency mining data center company Compute North, which ultimately filed a plan of liquidation after determining that a going-concern sale was “not likely,” and blockchain tech company Symbiont. Information technology companies such as Compute North make up just 5% of 2022 chapter 11s.

The sector also had filings from cybersecurity software developer Storcentric and from mobile communications security technology company Hoyos Integrity Corp. Some of 2022’s filers faced cyber attack-related business disruptions: OSG, which lamented “crippling” malware attacks leading to a \$30 million revenue drop from projections because of a loss of customers, and Gissing North America, which was victim of two cyber attacks in late 2021.

In a sign of the times before the “crypto winter,” April’s single asset real estate filer Mora House One - a Los Altos, Calif., single-family home - was accepting cryptocurrency offers as well as cash for its property.

### Reorg Webinar Series: Hot Topics in Crypto Winter

Reorg’s expert team provided an overview of the state of the crypto industry, reviewed the trajectory of the ongoing reorganizations of cryptocurrency exchanges Voyager Digital and Celsius Network, and discussed legal issues related to the valuation and ownership of cryptocurrency assets.

[Click here to watch the webinar on-demand now.](#)



## Continuing Shocks From Covid-19 Pandemic

The lingering pandemic has continued to cause reverberations for companies needing to file for chapter 11. Sears Authorized Hometown Stores, with 121 “Sears Hometown Stores,” which was spun off from Sears Holdings in 2021 prior to that company’s chapter 11 filing, attributed its filing to “declining sales, rising costs and the ‘hangover’ from the COVID-19 pandemic.” Similarly, home bedding products supplier Elite Home Products blamed rising costs of raw materials and freight plus other logistical challenges since the onset of the Covid-19 pandemic, looking for a parallel liquidation of inventory and going-concern sale process. Cosmetic company BH Cosmetics also said that the pandemic has reshaped the cosmetics market entirely because of a change in consumers’ daily routines and the reasons for wearing cosmetics. Beauty brand Revlon likewise blamed the pandemic, but in more general terms, focusing on supply-chain disruptions, inflation and volatility in the capital markets.

The proliferation of sanitizing products also affected two companies in 2022 - 4e Brands North America, which ramped up production of hand sanitizers in response to heightened demand, but after a sourcing of raw ingredients from “opportunistic” suppliers, methanol found its way into the manufacturing process instead of ethanol, and GPMI Co., which attributed its filing to Covid-19’s effect on the U.S. wet wipes market, which the debtor says was “flooded” by foreign manufacturers with “inferior products at lower price point.”

OSG Group Holdings, which provides integrated customer communications and engagement services, filed a quick prepack, noting that though the Covid-19 pandemic did not have “as drastic of a day-one impact” as it did on brick-and-mortar businesses, its revenue declined because of an expedited transition from print to digital.

## Broader Macroeconomic Factors

After 2020’s rise in chapter 11s stemming from the Covid-19 pandemic and subsequent fall in 2021 with society beginning to return to normal, 2022 was hit with macroeconomic issues including rising inflation and supply-chain and labor issues. Inflationary pressures was a common refrain from debtors in 2022, with auto supplier Gissing pointing to macroeconomic “volatility,” “significant” price increases for material, labor and transportation, along with a “profound shortage” of labor and inflationary and “political headwinds” causing increases in fuel and freight costs. Gissing’s case was ultimately converted after the sale of certain assets, with the case starting out with an accommodation agreement with customers Tesla, GM, Toyota and BMW. Rocket and spacecraft company Masten Space Systems likewise filed because of various costs stemming from the Covid-19 pandemic and supply-chain problems.

Lumileds, manufacturer of automotive and LED lighting, filed a prepackaged case aiming to cut \$1.3 billion in funded debt from the company’s balance sheet, attributing the bankruptcy filing to geopolitical and macroeconomic headwinds that rendered the company’s capital structure “unsustainable.” Also subject to geopolitical issues, grocery delivery app Buyk’s March filing was the first chapter 11 filer driven into bankruptcy by Russia’s invasion of Ukraine. Buyk filed in pursuit of a sale process and liquidation after funding sources ran dry upon Russia’s invasion of Ukraine, but ultimately its case was converted to chapter 7. Reverse Mortgage Funding,

in its early December filing designed to wind down, also pointed to geopolitical issues including Russia’s invasion of Ukraine, along with energy costs and the Covid-19 pandemic. Primarily, however, Reverse Mortgage blamed adverse trends in the reverse mortgage industry caused by an increasing interest environment and the reduction of the Federal Reserve’s holdings of mortgage-backed securities. Cryptocurrency finance platform and lender Celsius Network also pointed to “unanticipated global events,” including the “lingering effects” of the Covid-19 pandemic, inflation and the war in Ukraine, leading to “extreme” crypto market volatility. Another crypto company, Voyager Digital, also noted that the cryptocurrency markets were not immune to the “massive sell-off in traditional assets caused by macroeconomic events in the Covid-19 pandemic, the war in Ukraine and ‘rampant’” inflation.

Sports nutrition and energy drink maker MusclePharm attributed its mid-December filing seeking a reorganization to a rise in the price of protein to \$5.50 from \$2.50 pre-pandemic, on which the debtor’s products are largely based. Inflation also affected the assisted living industry, with Fairport Baptist Homes blaming an inability to operate profitably in New York’s regulatory environment, including inflation outpacing reimbursement rates for Medicaid and Medicare. Fairport filed to run a sale process with Rochester Friendly Home, a senior care owner-operator, as stalking horse. Likewise, Mariner Health Central attributed its filing, in part, to a “significant” census decline because of the Covid-19 pandemic.

Another healthcare company, Monarch PCM, which develops pharmaceutical products, noted “challenging regulatory and economic conditions facing pharmaceutical companies, which was exacerbated during the COVID-19 pandemic.” Monarch also said that “[w]idespread” inflation has hurt its “already thin” profit margins, and has also been harmed by supplier distress, raw material shortages and delayed delivery times leading to cancellation of orders or late-paying of invoices. Another pharmaceutical company, Clarus Therapeutics Holdings, specifically blamed the Covid-19 pandemic’s effect on in-person marketing. Clarus filed to run a sale process for its sole commercial assets, oral testosterone replacement Jatenzo, which it ultimately sold to the winning bidder at auction, Tolmar Inc., as there was no stalking horse.

The Bridgemoor at Plano, another senior living case, attributed its filing not on the pandemic’s effect on the census or operation of the facility, but rather on delays in construction exacerbated by the pandemic, which it says caused “extraordinary supply chain issues and shortages in construction materials and supplies, as well as available labor.”

The oil and gas industry also suffered from the same issues - as an example, Principle Enterprises, a service provider for oil and gas exploration and production companies, noted “macro issues primarily arising from the COVID-19 pandemic and the related declines in the industries in which the Debtor operates.” Coastal Drilling Land Co., a drilling rig service provider, also blamed the pandemic for a “prolonged downturn and historic crash in prices,” plus supply-chain issues. Tangentially, chemical producer TPC Group attributed its June filing to the “2020 oil and gas market crash” and the pandemic, and its chapter 11 case was designed to resolve a liability from a plant explosion and to restructure more than \$950 million in secured debt. TPC’s plan went effective in mid-December, after which it faced an objection from plaintiffs asserting personal injury and property damage claims arising from the explosion over sponsor liability despite a settlement resolving the claims against the debtors.

Madison Square Boys & Girls Club, one of only a few nonprofit filings in 2022, filed in the wake of Child Victims Act claims, but also noted that it operated at a reduced capacity during the 2021-’21 academic year because of the Covid-19 pandemic.

## Busted SPACs

A number of companies filed in 2022 in the wake of unsuccessful acquisitions by a special-purpose acquisition company, or SPAC. Two of these were crypto-related companies, which industry had its own general implosion as the year wore on (discussed above) - bitcoin miner and mining service provider Core Scientific is the product of a merger with a SPAC in December 2021, followed by a de-SPAC transaction in January 2022, and blockchain software provider Symbiont.io LLC filed after a failed SPAC that it accuses its secured lender of using to “wrest control” of the debtor’s assets for a “considerable discount.” Storcentric was another SPAC that failed to come to fruition, as despite several SPACs approaching the cybersecurity software company as an alternative solution to access the public markets, none materialized.

Another software company, Quanergy Systems, which makes LiDAR sensors and smart 3D software, filed its case to run a sale process after a “precipitous” drop in stock prices following a SPAC transaction. Cloud manufacturing and digital supply-chain company Fast Radius Inc., which was formed through a de-SPAC transaction, also filed for chapter 11 to run a sale process. Enjoy Technology, which IPO’d in 2021 through a SPAC process, also filed to sell its assets, with existing bridge lender Asurion serving as stalking horse and DIP lender.

Carlyle-backed e-commerce company and third-party seller of health and beauty products Packable Holdings filed to liquidate after a terminated SPAC merger. Similarly, once-promising electric vehicle SPAC Electric Last Mile Solutions filed to liquidate in chapter 7.



## Torts

The most controversial development in bankruptcy practice recently - the “Texas two-step” process for shedding tort liabilities - was a prominent feature in 2021. Interestingly, in 2022, various 2022 debtors filed for the sole purpose of addressing tort liabilities, but none of the year’s filers used the precise “two-step” mechanic. Aearo Technologies LLC, a wholly owned subsidiary of 3M Co., filed seeking a global chapter 11 resolution of more than 200,000 tort claims against it and 3M related to Combat Arms earplugs manufactured and sold by Aearo, which 3M acquired in 2008. However, Aearo’s case has been met with extreme headwinds both in the bankruptcy court - which refused to extend the automatic stay to 3M - and in multidistrict litigation - where the judge sanctioned 3M for trying to change litigation tactics after the Aearo bankruptcy. TPC Group also filed to resolve tort liabilities arising from its Port Neches facility explosion, filing in the midst

of ongoing discussions with a steering committee of law firms representation-related claimants. Hess Corp. subsidiary Honx Inc., for its part, filed to address asbestos liabilities, having been named as defendant in approximately 580 cases alleging exposure to asbestos and other “toxic” substances at an oil refinery in St. Croix, U.S. Virgin Islands.

Free Speech Systems, whose equity is held 100% by InfoWars host Alex Jones, filed for chapter 11 in July after dismissal of the chapter 11 case of affiliate InfoWars upon stipulation with the U.S. Trustee, which challenged the case as being filed in bad faith to shield Jones, the right-wing radio host, and Free Speech Systems from defamation claims brought by victims of the Sandy Hook Elementary School shooting. Dublin-based pharmaceutical manufacturer Endo International plc’s filing was largely driven as well by opioid litigation and other suits.

## Fraud

Fraud stood out as a contributing factor to many of 2022’s bankruptcy filings, featuring alleged wrongdoing by leadership and various accounting issues. Better 4 You Breakfast, a Los Angeles-based food service company that prepares and delivers prepackaged meals to institutional clients in California and Las Vegas, for example, attributed its filing to the “personal problems” and actions of a former CFO that “manifested themselves in accounting irregularities and cash flow issues” and triggered covenant defaults under Better 4 You Breakfast’s financing agreements with its largest secured creditor, Bank Leumi. Borrego Community Health Foundation filed to explore restructuring options after suing insiders and others for alleged fraud, including selling “useless” assets to Borrego at inflated prices, hiring friends and family at above-market salaries, and attempting to use the company to purchase a country club.

The case of Medly Health, a digital pharmacy, was precipitated by a loss of anticipated financing and the discovery of certain accounting irregularities by the company’s founders. The company filed to run a going-concern sale process, with the official committee of unsecured creditors recently taking issue with the sale of potential fraud and breach of fiduciary duty claims against the debtor’s founders.

National Realty Investment Advisors, a real estate development firm that solicited investments through dedicated funds, filed its chapter 11 embroiled in investigations surrounding its investment practices. Stimwave Technologies, a Pompano Beach, Fla.-based medical device manufacturer and provider

of permanently implanted neurostimulation products for chronic pain, was also the subject of an investigation, with mismanagement leading to a Department of Justice investigation pursuant to the False Claims Act and a parallel criminal investigation that “materially” harmed operations, among other things, including litigation expenses, including those involving its former founder and other parties that were unpaid by prior management. Wealth and retirement advisory services company American Equity Advisory Group filed after the “fallout” and effect on American Equity’s customers from the “implosion of” Future Income Payments LLC, which was the subject of a \$500 million judgment obtained by the Bureau of Consumer Financial Protection.

**“ Fraud stood out as a contributing factor to many of 2022s bankruptcy filings, featuring alleged wrongdoing by leadership and accounting issues. ”**

The federal government also investigated lab testing facility Ammon Analytical Laboratories, which filed to reorganize after a 2018 investigation by the DOJ on Medicare billings and services. PPP loan servicer Kabbage Inc. dba KServicing also filed for chapter 11 subject to various government investigations related to the PPP loan program. Firearms training company Front Sight Management LLC, in its May chapter 11 filings, asserts fraud by lenders held out as “pro-gun patriots.”

## Meet the First Day by Reorg Team



**Jessica Steinhagen** is Deputy Managing Editor and the head of the First Day team. She has extensive experience working in the restructuring and bankruptcy group at Otterbourg, where she represented stakeholders in all aspects of reorganizations, liquidations and distressed situations.



**Ian Howland** is a Research and Data Analyst and manages all data projects for First Day. He has extensive experience working as a researcher for the Advisory Committee on Investor Responsibility at The New School and as an editor for The New School's economics journal.



**Johanna Schaaper** supports Jessica and Ian by providing legal analysis of bankruptcy filing data for cases with \$10 million in liabilities or more for First Day. Johanna has experience as a data analyst at The Environmental Finance Center at the University of North Carolina.

## About First Day by Reorg

First Day provides in-depth analysis of new chapter 11 cases and comprehensive data on bankruptcies across the United States. First Day alerts clients every time a chapter 11 case with more than \$10 million in liabilities files and features searchable databases of cases filed since 2012 including detailed DIP information, advisor fees and 363 sales. First Day can be purchased as part of Reorg's packaged solutions including **Americas Edge**, **Americas Edge Plus**, **Global Edge** and **Global Edge Plus**. Learn more at [reorg.com/solutions](https://reorg.com/solutions).

**First Day Webinar: February 13 — 12 p.m. ET**

## A Review of Chapter 11 Filings in 2022



**John Hartgen**  
ABI  
Moderator



**Ian Howland**  
First Day by Reorg



**Jessica Steinhagen**  
First Day by Reorg



**Joshua A. Sussberg**  
Kirkland & Ellis LLP

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## Faculty: First Day by Reorg: A Review of Chapter 11 Filings in 2022

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**John E. Hartgen** is the public affairs officer for the American Bankruptcy Institute in Alexandria, Va. Since joining ABI's staff in 2006, he has been the point person for fielding requests and questions from the media, public and government officials on ABI statistics, studies, events and general information about bankruptcy. He also directs ABI's social media efforts and organizes informative online programs on key bankruptcy issues, including media webinars and podcasts. Prior to joining ABI, Mr. Hartgen worked for six years in a variety of government affairs roles for companies and associations in the Washington, D.C., area, and as a reporter for a local Northern Virginia newspaper. He received dual undergraduate degrees in history and journalism in 1999 from Penn State University.

**Ian Howland** is a research and data analyst at First Day by Reorg in New York, where he covers the early stages of chapter 11 restructurings and maintains a database of filings for First Day. Prior to joining Reorg, he was a researcher for the Advisory Committee on Investor Responsibility at the New School, where he conducted research on the university's endowment and on the efficacy of fossil fuel divestment. Mr. Howland received his B.S. in economics from Suffolk University and his M.A. in economics from the New School for Social Research.

**Jessica Steinhagen** is the deputy managing editor at First Day by Reorg in New York, where she manages coverage of in-court and out-of-court restructurings and distressed situations for First Day. Prior to joining Reorg, she was an associate in the restructuring and bankruptcy group at Otterbourg, where she represented stakeholders in all aspects of reorganizations, liquidations and distressed situations. Ms. Steinhagen received her B.A. from the University of Pennsylvania and her J.D. from Fordham University.

**Joshua A. Sussberg** is a partner in the Restructuring Practice Group of Kirkland & Ellis LLP in New York, where he represents debtors, creditors, equityholders and

investors in all aspects of restructuring distressed companies. He also is a member of the firm's Executive Committee and has a broad range of transactional and litigation experience across a number of industries, including retail, energy, manufacturing, media and transportation. He has also represented clients in multi-jurisdictional and cross-border matters. Mr. Sussberg is consistently recognized as one of the country's leading restructuring lawyers and was recently ranked Band 1 both in New York and Nationwide by Chambers USA: America's Leading Lawyers for Business 2022. In addition, he was named one of the top 100 Restructuring Professionals for "Distinction in Dealmaking" by the Global M&A Network, and was recognized as a "Market Leader" in the 2022 and 2021 IFLR 1000. In August 2022, Mr. Sussberg was recognized by Business Insider as one of the top 16 bankruptcy lawyers in the country, by The Deal as the 2021 Debtor Counsel of the Year (Large Cap), and as a Law360 2021 MVP. He also was named an Outstanding Restructuring Lawyer by Turnarounds & Workouts in December 2018, and The Deal recognized him as the 2018 Consumer/Retail Lawyer of the Year following representations of companies including Toys 'R Us, BCBG, Gymboree, Mood Media and Charming Charlie. Mr. Sussberg was selected to ABI's inaugural "40 Under 40" class in 2017, and he is a Fellow of the American College of Bankruptcy. In May 2019, he was awarded the first ever Young Leadership Award by UJA-Federation of New York Bankruptcy and Reorganization Group. Mr. Sussberg received his B.S. magna cum laude from Syracuse University S.I. Newhouse School of Public Communications in 2000 and his J.D. cum laude in 2003 from the Benjamin N. Cardozo School of Law, where he was symposia editor of the Benjamin N. Cardozo Law Review.