

CURRENT TRENDS IN RETAIL BANKRUPTCY

PRESENTED BY ERIC WILSON & JASON ADAMS

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Credit Research
Foundation

Kelley
Drye

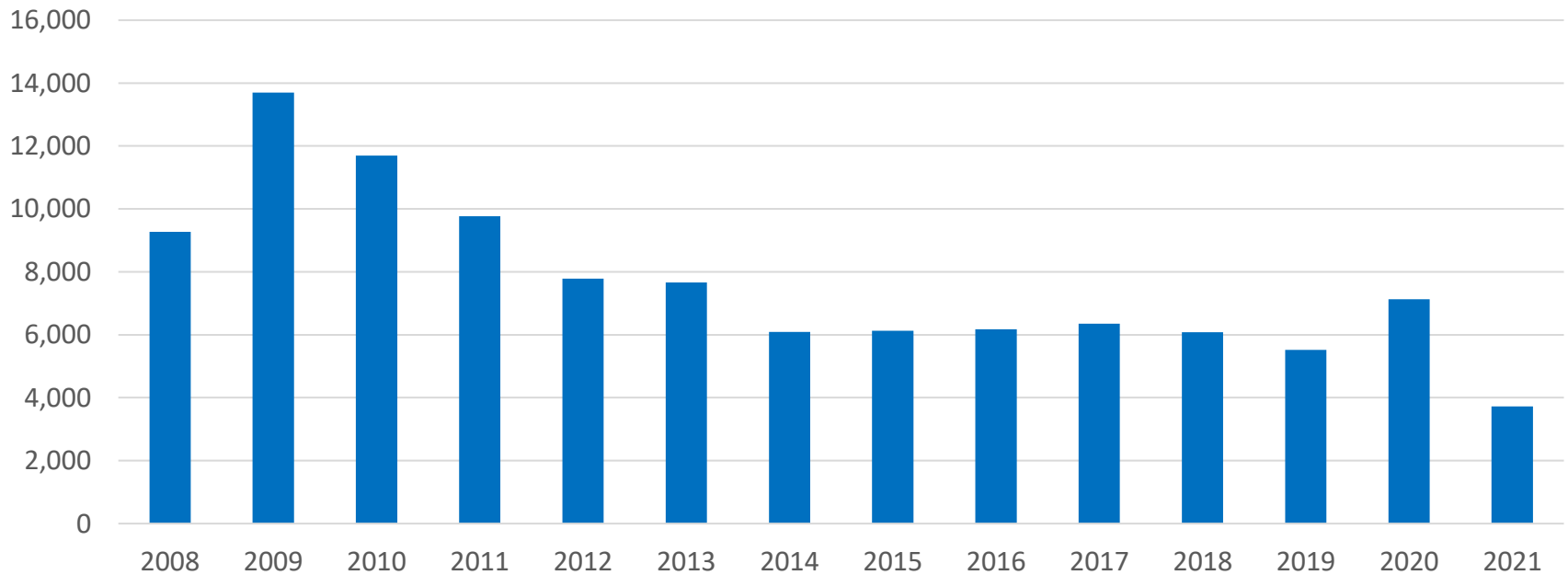
2021 Year In Review

Reversal from 2020

- 2020 – Most filings since 2013
 - More than 7,000 commercial filings
 - 30% increase from 2019
 - COVID accelerated filings from April through September
- 2021 – Least filings since 1980s
 - 3,600 commercial filings (including subchapter V cases)
 - 30% decrease from 2019
 - 47% decrease from 2020
 - Large case filings normalize – \$1BB plus assets

2021 Year in Review

Chapter 11 Commercial Bankruptcies



2021 Year in Review

Impact on large cases

- \$100MM to \$1BB (assets) - 40% decrease
- \$1BB+ - 70% decrease

Impact by sector

- Biggest decreases
 - Energy - 73% decrease
 - Retail - 63% decrease
 - Industrial - 54% decrease

2021 Year in Review

Retail

- 15 filings of \$10MM+ of assets in 2021 vs. 40 in 2020 (63% decrease)
- Less than 4,000 store closures in 2021
 - More than 12,000 in 2020
 - Lowest since 2016

Restaurants

- Only 6 filings in 2021 vs. 20 in 2020 (70% decrease)

2021 Year in Review

Reasons for decrease:

- Most troubled companies filed in 2020
- \$4 trillion of COVID-related stimulus funding
- Vaccine rollouts and reopenings
- Easy access to liquidity, debt forbearance, and low interest rates
- Sky-high company valuations

2021 Year in Review

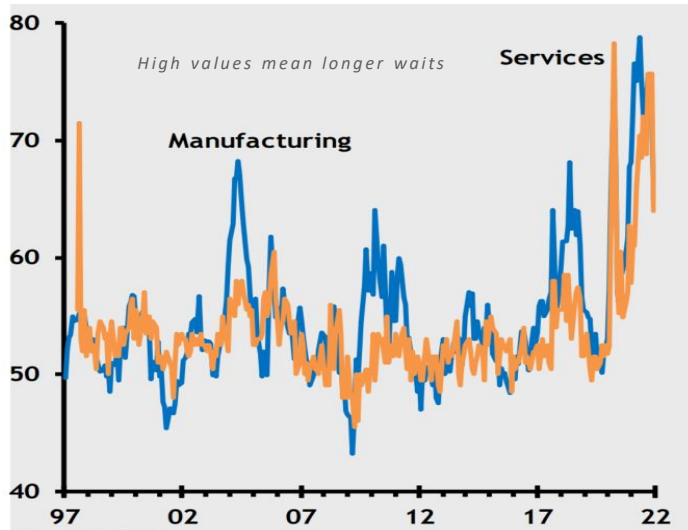
Retail & e-commerce expansion

- COVID accelerated e-commerce expansion
 - Increased from 16% of sales in 2019 to 35% in 2020
- Focus on the customer, ease of platform, and lowering returns
- Plateaued in 2021 but could have been greater
 - Supply chain issues
 - Increased shipping costs
 - Carrier disruption
 - Labor shortages
- Retailers selling low-priority assets to fund investments in technology and e-commerce

2021 Year in Review

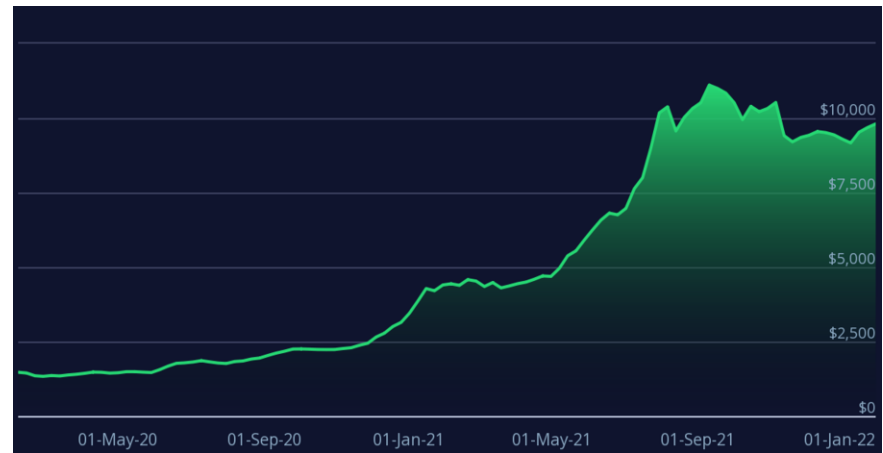
Macro Environment – Supply Chain Disruption and Rising Costs

ISM SUPPLIER DELIVERY TIMES



Source: ISM, J.P. Morgan Economic Research

FREIGHTOS BALTIC INDEX (FBX)



Source: Freightos

2021 Year in Review

Supply chain litigation

- Supply chain delays and inability to fulfill orders has led to increased litigation
- Suppliers seek to invoke contractual *force majeure* provisions to excuse performance
- Requirements:
 - Specifically identified condition in contract
 - Performance directly impaired
 - Nonperformance must not be foreseeable
- Most courts find COVID does not trigger provision

Outlook for 2022

New COVID variants and their impact

End of government stimulus funds

Inflation

Rising interest rates

Risky loans and more outstanding debt

Outlook for 2022

Industry issues

- Foot traffic is still below pre-pandemic levels
 - Fitness 39% decline
 - Leisure 33% decline
 - Restaurants 26% decline
 - Home improvement 15% decline
- Travel
 - COVID variants continue disruption
 - Business travel restricted
- Office occupancy rates in major cities are still below 40%

Outlook for 2022

Retail and e-commerce challenges

- Supply chain issues continue
 - Longer shipping times
 - Supplier inability to fulfill orders – leading to litigation
- Limited carrier capacity and increased cost
 - Carriers cutting services to retailers
 - Inefficiency of residential delivery
 - Cost of retail delivery increased more than 70% over last several years
- Retailers believe carrier capacity is top threat to e-commerce business

Outlook for 2022

Inability to keep up with fulfillment needs

- 99% of retailers lost sales because of fulfillment capacity issues
- Average lost sales – more than 20%
- Lack of warehouse space
- Use of store space for online fulfillment

Disconnect with consumers on fulfillment speed

- Consumers believe “fast” delivery is next-day
- “Late” delivery leads to consumer dissatisfaction

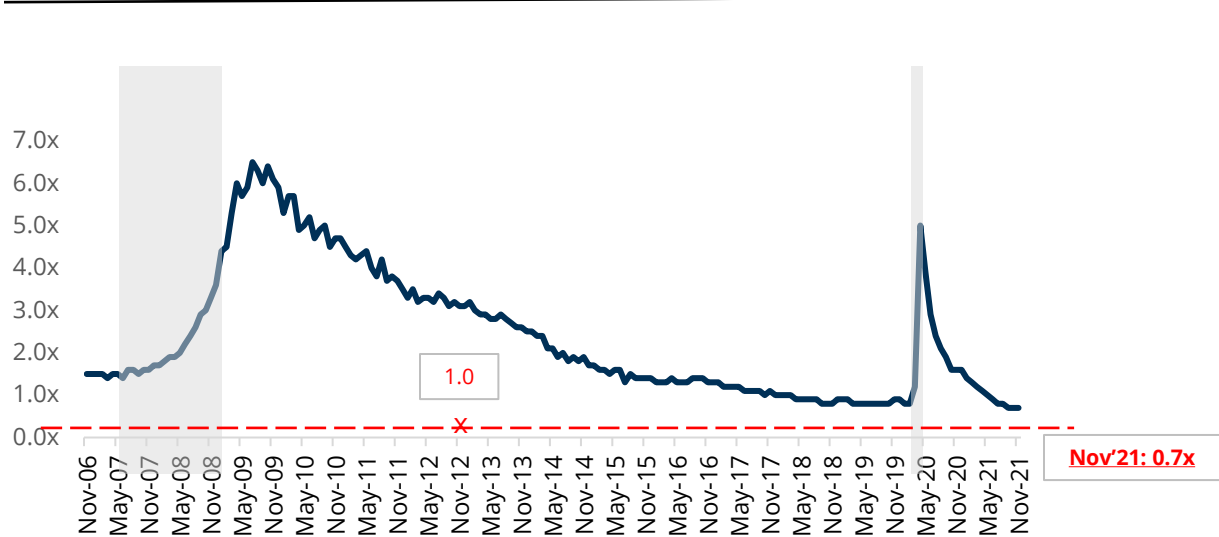
Labor shortages and increased costs

Outlook for 2022

Macro Environment - Tightening Labor Market

- There are now more jobs available than unemployed people in the labor force
- Total compensation increased by 4% in the past year, the highest year ever

NUMBER OF UNEMPLOYED PERSONS PER JOB OPENING (SEASONALLY ADJUSTED)



Source: BLS

Chapter 11 Considerations

Increasingly difficult to get value to unsecured creditors

Asset values typically substantially less than secured debt

Insufficient case budgets, administrative insolvency

Accelerated case timelines

Limitations on involvement of unsecured creditors:

- Pre-negotiated plans
- Quick sales followed by liquidation or dismissal
- Subchapter V
- Creditors' committees only if "cause" exists

Chapter 11 Considerations

Importance of creditors' committees:

- Enhance recovery
- Challenge process
- Identify value sources
- Control preference litigation
- Investigate releases

Chapter 11 Considerations

Benefits of serving on the creditors' committee:

- Access to financial and operational information
- Early notice of case direction
- Access to debtors
- Input on the bankruptcy process, litigation, exit strategy, and distributions

Legal Developments – Third Party Releases

Plans provide releases in exchange for “value”

- Can be the crux of a chapter 11 plan
- Can serve as an important (or sole) source of unsecured creditor recovery

Recent court decisions hold that releases are unconstitutional

Nondebtor Release Prohibition Act of 2021

- Proposed amendments to Bankruptcy Code to eliminate releases and limit stays of litigation against related third parties

Legal Developments – Third Party Release

Potential impact

- Harder for committees to unlock value and may encourage litigation
- Eliminate potential source of unsecured creditor recovery
- Roadblock for third parties, including lenders and equity, to fund settlements in exchange for releases
- Could result in more sale cases rather than reorganizations

Legal Developments – Venue

J&J

- Filed in North Carolina
- Texas Two Step
- Transferred to New Jersey based on strong connections

Ascena

- Filed in Virginia
- District court questioned why cases are being filed in Richmond
- Regular approval of third-party releases
- Cautioned that Richmond billing rates will apply

Legal Developments – Venue

Bankruptcy Venue Reform Act of 2021

- Requires filings where principal assets or place of business is located
- Widely supported by state attorneys general

Reform efforts have been ongoing for years

THANK YOU CRF MEMBERS!



ERIC WILSON
(212) 808-5087
EWILSON@KELLEYDRYE.COM



JASON ADAMS
(212) 808-5056
JADAMS@KELLEYDRYE.COM