

Bankruptcy Intersection With Commercial Collections

Practical Considerations for Creditors, Collection Agencies, and their Counsel

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How Bankruptcy Affects Collections Work

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- A bankruptcy filing immediately changes the collection landscape.
- The Automatic Stay of 11 U.S.C. § 362(a) applies to stop all collection efforts.
- The Bankruptcy Court is a debtor-friendly forum, usually without a right to a jury trial for collections cases.
- However, the Bankruptcy Code contains both debtor-friendly and creditor-friendly provisions.



Keep the End Goal in Mind

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- The ultimate objective remains payment.
- Creditors must remember their secured vs. unsecured status and the size of the creditor classes affect recovery.
- Unsecured claims often receive less than full payment, however, there are certain priorities within the unsecured class of claims (i.e., reclamation claims, cure claims, administrative priority claims, etc.)
- General unsecured claims often receive less than full payment.
- Creditors must weigh the time and expense of pursuing a claim against the expected recovery.



The Automatic Stay: Stop Means Stop

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- 11 U.S.C. § 362 immediately halts most creditor actions upon filing.
- After actual notice, creditors and their agents must stop new efforts and affirmatively halt pending collection proceedings.
- Ninth Circuit authority treats proceedings taken in violation of the stay as void.
- Collection systems should have a reliable bankruptcy hold to prevent automated contacts or form letters.



Automatic Stay Violations: Risk & Relief

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- Willful violations of the stay can expose creditors to claims for actual damages, attorney fees, and potentially punitive damages.
- Lack of actual knowledge can affect sanctions in appropriate cases.
- Creditors can seek relief from the automatic stay for "cause" under 11 U.S.C. § 362(d)(1).
 - Factors courts consider in granting relief from stay include judicial economy, trial readiness, state-law issues, multiple parties, and likelihood of success.



Plan Ahead Before the Bankruptcy Filing

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- Do not wait for the bankruptcy petition to be filed before analyzing its impact.
- Anticipate bankruptcy threats used to extract litigation concessions.
- If settling before a possible bankruptcy filing, address future bankruptcy in the settlement agreement.
- Timing can determine whether a claim is contingent, unliquidated, or disputed.



Pre-Petition Payments: Preference & Fraudulent Transfer Risk

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- 90-day Preference Period: certain payments of unsecured claims received before filing may be recovered for benefit of the estate (but there are defenses!)
 - Settlement payments can be challenged as preferences if the statutory elements are met.
 - State and federal fraudulent transfer statutes can expose transfers made within two years, or longer under applicable state law.
- Only accept payments from your Borrower.
- A key defense is reasonably equivalent value.



Judgments, Garnishments & Procedural Deadlines

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- Pre-petition judgments and garnishments may be vulnerable to attack if they are completed during the Preference Period or are affected by procedural irregularities.
- Separate lawsuits can be filed by the Debtor to set aside the pre-bankruptcy judgment or garnishment
- Bankruptcy procedures can affect claim allowability even when the underlying claim is otherwise timely.



Participating in the Bankruptcy Case

- Unsecured creditors generally must participate in the bankruptcy case by filing a Proof of Claim to receive distributions, unless the creditor's claim is properly scheduled and treated as allowed.
- However, participation has costs and may expose creditors to estate counterclaims.
- Collection agencies acting as agents can create additional notice and authority issues.
- Track bankruptcy deadlines carefully; a missed proof-of-claim deadline can impair or bar recovery.
- Review filings and contents of plans and settlements that may attempt to allow invalid claims, barred claims, or elevate the priority of claims.



Schedules & Proofs of Claim

- Debtors must list or “schedule” all of their assets and debts in their Schedules of Assets and Liabilities and file a Statement of Financial Affairs.
- A scheduled, undisputed, noncontingent, liquidated claim is deemed allowed.
 - If the scheduled amount of a claim is incorrect, a timely Proof of Claim must be filed.
 - A claim that is scheduled as disputed, contingent or unliquidated will not be allowed, and a timely Proof of Claim must be filed.
- A properly filed proof of claim is prima facie evidence of the validity and amount unless successfully challenged by the Debtor or any creditor.



Ryniker v. Sumec Textile Co., 177 F.4th 365 (2d Cir. 2026)

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- The Second Circuit addressed service of an adversary complaint on a collection agency acting as a sub-agent for an agent for a foreign creditor.
- The collection agency filed a proof of claim on behalf of the foreign creditor and designated its address for creditor notices.
- The Court found that the collection agency had implicit actual authority to accept service in the bankruptcy adversary proceeding because resisting preference recovery and claim disallowance is part of collecting the “full amount.”
- The Court held that service by mail on the collection agency satisfied Bankruptcy Rule 7004(b)(3)’s requirement for service on an “agent authorized by appointment,” given the established subagency and designated notice address in the Proof of Claim. *Id.* at 39.
- Lesson: broad collection authority can carry litigation and service consequences.



FDCPA: Bankruptcy Does Not End the Analysis

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- FDCPA liability can arise before, during, and after a bankruptcy case is filed.
- In the Ninth Circuit, a claim premised on a discharge-injunction violation is generally handled through the Bankruptcy Code's remedial scheme.
- Some Court have held that independent FDCPA theories remain viable.



Time-Barred Debts & Bona Fide Error

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- Filing an obviously time-barred proof of claim in Chapter 13 is not, by itself, an FDCPA violation.
- Other proof-of-claim defects may still create FDCPA exposure.
- Reasonable procedures can support the FDCPA bona fide error defense.
- The defense does not excuse willful automatic-stay violations.



The Discharge Injunction

- After discharge, 11 U.S.C. § 524(a)(2) replaces the automatic stay to bar acts to collect a discharged debt as the debtor's personal liability (but not secured debts!)
- Violations are addressed through civil contempt; compensatory relief and fees may be available.
- Collection systems must accurately reflect discharge status before any post-discharge activity.
- Notice and agency communication remain important compliance issues.



Bankruptcy Tools for Creditors

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- Section 341 Meeting of creditors: creditors may attend and ask questions of the Debtor under oath.
- Rule 2004 examinations provide broad discovery concerning assets, conduct, and financial condition.
- Creditors may seek conversion or dismissal of cases for bad faith filings or in the best interests of creditors.
- A trustee or examiner may be appointed where "cause" exists or creditor interests warrant it.
- Creditors may challenge discharge or dischargeability of Debtors in appropriate cases.



Practical Compliance Checklist

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- Maintain reliable systems for identifying bankruptcy filings.
- Immediately place accounts on bankruptcy hold and stop collection activity.
- Affirmatively stay any actions in pending non-bankruptcy proceedings against the Debtor.
- Prepare and timely file a Proof of Claim with proper documentation.
- Track schedules, deadlines, and status of the bankruptcy case.
- Consider whether bankruptcy tools can improve recovery rather than simply viewing bankruptcy as an obstacle.



Key Takeaways

- Bankruptcy changes the rules, but it can also create leverage and information for creditors.
- Early planning and precise compliance are essential.
- The automatic stay and discharge injunction require disciplined collection controls.
- Proof-of-claim practice can be both a recovery tool and a source of exposure.
- Used strategically, bankruptcy procedures can help creditors maximize recovery.

