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# **Guidance for Understanding Petroleum Storage Tank Bankruptcy**

## **Final Report**

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**State Fund – Financial Responsibility Task Force  
Tanks Subcommittee**

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ASTSWMO is an organization supporting the environmental agencies of the States and Territories (States). ASTSWMO's mission is to enhance and promote effective State and Territorial programs and to affect relevant national policies for waste and materials management, environmentally sustainable practices, and environmental restoration.

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**PREFACE**

This document is intended to encourage dialogue between regulators and their legal counsel when regulated facilities are subject to bankruptcy proceedings. This is an introduction to legal terms and concepts related to bankruptcy to facilitate communication and enhance understanding. It also presents an overview of the process, milestones, and potential actions and decisions that may need to be taken with the guidance and assistance of legal counsel.

The circumstances of each case will guide the regulator on how to best proceed in order to continue the corrective action at release sites that are in bankruptcy proceedings. Regulators are encouraged to be cognizant of key deadlines that are critical in the bankruptcy process. In addition, it is important to understand the roles, authorities, and limitations of the bankruptcy laws, as well as the intersection of State laws related to the environment, so as to proceed in the best interest of environmental protection.

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## I. BANKRUPTCY IN GENERAL AND TYPES OF BANKRUPTCY

A bankruptcy proceeding is a legal proceeding involving a person or business that is unable to repay outstanding debts. Bankruptcy proceedings are governed by the U.S. Bankruptcy Code (U.S. Code Title 11) and official rules and forms. Bankruptcy proceedings take place in bankruptcy courts, which are federal courts established in each federal judicial district as adjuncts to the U.S. District Courts. These bankruptcy courts are concerned exclusively with the administration of the Bankruptcy Code and are presided over by bankruptcy judges. Bankruptcy courts must follow State laws, so long as those laws do not conflict with the Bankruptcy Code. Debtors<sup>1</sup> are still required to comply with State laws while they are in bankruptcy.

Chapter 7 of the Bankruptcy Code governs liquidation proceedings. In a Chapter 7 proceeding, a trustee is appointed to gather the property of the debtor that is not exempt from the proceedings, convert the property to cash, and distribute the available proceeds to the creditors.<sup>2</sup> The debtor is allowed to keep certain exempt property. What the debtor gets in exchange for filing is possible relief, or discharge,<sup>3</sup> from the amount of their debts that exceed the cash the trustee is able to obtain from the debtor's nonexempt property. Not all debtors are able to obtain discharge, and not all debts are discharged.

Chapter 9 of the Bankruptcy Code addresses the adjustment of the debts of a municipality.

Chapter 11 of the Bankruptcy Code governs the reorganization of financial obligations by debtors. A State is most likely to encounter storage tank owners or operators filing for bankruptcy under Chapter 11. In a Chapter 11 proceeding, the debtor generally remains in business during the bankruptcy action, retains property, and pays creditors in accordance with a plan approved by the court. A plan confirmed by the court binds both the debtor and creditors, even those that did not accept it.

Chapter 13 is for individual debtors or couples who have a source of income. They present a plan to the bankruptcy court that proposes to pay their disposable income to a Chapter 13 trustee who distributes it to creditors in accordance with the priority of the Bankruptcy Code and the Chapter 13 plan. This is also known as a wage-earner plan. These plans typically last five years, and can vary from paying 0% to 100% to unsecured creditors.

A bankruptcy proceeding may be voluntary, in which case a debtor files a petition to seek protection from creditors. A bankruptcy proceeding may also be involuntary, in which case it

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<sup>1</sup> A debtor is a person, partnership, corporation, or local government that owes a debt or who may be compelled to pay a claim to someone (i.e., a creditor). Government units, which are defined broadly to include government agencies, are not eligible to be debtors under Chapters 7 or 11; however, local governments can be debtors under Chapter 9.

<sup>2</sup> A creditor is one who has the right to require the fulfillment of an obligation or contract. A creditor is normally someone from whom a person (the debtor) has acquired assets or services for which she or he is legally required to make payment or provide services in the future.

<sup>3</sup> A discharge of debts is a step in the bankruptcy process whereby the debtor is released from his or her obligation to satisfy creditors' claims.

must be commenced under Chapter 7 or 11 of the Bankruptcy Code against a person that may be a debtor. In order to commence an involuntary bankruptcy case, at least three creditors who have claims that meet certain requirements must file a petition with the bankruptcy court.

## **II. WHEN TO FILE A PROOF OF CLAIM IN A STORAGE TANK BANKRUPTCY CASE**

A claim in bankruptcy is (1) a right to payment from a debtor, or (2) a right to an equitable remedy for breach of performance by a debtor if such breach provides a right to payment. In a claim involving a breach of performance by the debtor, the creditor must demonstrate that they lost or will lose money from such a breach and present an associated dollar amount such that a tangible monetary value (claim) may be assigned. For example, if the debtor breaks a lease, and the lease provided for payment of rent for all periods up through the end of the original term of the lease, then the landlord's right to those payments constitutes a claim. Creditors with claims are eligible to participate in any distribution of the debtor's property that may be made.

In order to be eligible for any monetary recovery through the case, a creditor must file a proof of claim (POC) with the court or a claims agent if one is appointed. A POC is a document setting forth information about the claimant or creditor and the nature of the claim. The form can be found on the court's website. There are deadlines for filing POCs, so prompt action is suggested. Generally speaking, a claim will be timely in a liquidating Chapter 7, Chapter 12, or Chapter 13 case if it is filed within 90 days of the first date set for the meeting of creditors.<sup>4</sup> However, in Chapters 7, 12 and 13, governmental units have a longer time – 180 days from the filing of the case. In Chapter 11 cases, a claims bar date often will be set by the court upon request by the debtor.<sup>5</sup> Often these claims bar date orders give additional time for governmental units, but they should be scrutinized as they are binding. If the Chapter 7 trustee has assets to distribute, a notice of the need to file claims is generally sent out by the court.

In determining how to respond to a petroleum storage tank bankruptcy notice, the following factors should be considered:

### **A. Potential for Recovery**

In determining whether to file a POC, the potential for recovering payment on the claim should be considered.<sup>6</sup> This involves an analysis of the amount and priority of a State's claim in relation to the assets and liabilities of the bankruptcy estate.

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<sup>4</sup> 11 U.S.C. 502(b); Fed. R. Bankr. Proc. 3002(c)

<sup>5</sup> Fed. R. Bankr. Proc. 3003(c)(3)

<sup>6</sup> The debtors are required to file schedules of assets and liabilities with the court. These can be viewed on the PACER website. Also, claims filed in the case will be on PACER or the website of the claims agent if one is appointed in the case. PACER is discussed in greater detail in Section VII of this document.

## 1. Amount and Priority of a State's Claim

Under the Bankruptcy Code, claims are organized into classes and paid in accordance with the bankruptcy priority scheme.<sup>7</sup> Generally, classes of claims that have a higher priority must be paid in full before any payment is made to creditors holding claims of a lower priority.<sup>8</sup> Within each class of claims, if there are insufficient funds to pay all claims in full, payment is pro rata.<sup>9</sup>

Environmental claims generally fall into one of the following categories:

**Secured Claims** – If a State perfected a lien prior to the bankruptcy filing against the storage tank owner or operator,<sup>10</sup> the State may have a secured claim.<sup>11</sup> A State may also have a secured claim if it obtained a judgment lien against the property before the storage tank owner or operator filed a bankruptcy petition<sup>12</sup> (i.e., filed for bankruptcy<sup>13</sup>). A State may also have a secured claim to the extent that its claim is subject to a setoff<sup>14</sup> against any claim that a storage tank owner or operator may have against a State.<sup>15</sup> Secured claims are paid in order of priority of the liens. These claims will be paid in bankruptcy to the extent of the value of the collateral securing the claim. If the amount of the claim exceeds the value of the collateral, the difference will be treated as an unsecured claim.

**Administrative Expense Claims** – Response costs actually incurred by a State for cleanup of the debtor's property after the bankruptcy filing may qualify as administrative expenses. In order to have the administrative claim allowed, the State will have to file a motion for allowance of an administrative claim. It may require a hearing, particularly if another party objects. These claims have priority and are paid before general unsecured claims.<sup>16</sup> Penalties that arise post-petition

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<sup>7</sup> 11 U.S.C. 507.

<sup>8</sup> Under Chapter 11, certain priority claims may be paid over time under a plan of reorganization. See 11 U.S.C. 1129.

<sup>9</sup> Pro rata means that the percentage paid will be equal for all claimants in that class. For example, if there are ten claims for \$10, but there is only \$80 for the class, each claimant's pro rata share is 10% or \$8.

<sup>10</sup> Perfecting a lien is when the lien has been recorded in the county where the property resides.

<sup>11</sup> Having a secured claim means that the lien was filed as to property, and proceeds from the sale of the property will be distributed to the lienholders before any funds go to the seller. Secured claims allow a stronger position for recovery.

<sup>12</sup> A judgment lien is a lien that is based on an order or judgment obtained through litigation. In other words, when the agency sues a tank owner for recovery of cleanup costs and gets an order from the court, it may then file that order as a lien against the owner's property. Then, any proceeds from the sale of the property would be used to satisfy the judgment. This is opposed to a mortgage lien that is based on a promissory note.

<sup>13</sup> Once the debtor files for bankruptcy, any act to create, perfect, or enforce a lien against property of the debtor or bankruptcy estate is prohibited by the automatic stay of Section 362(a)(4)-(5) of the Bankruptcy Code.

<sup>14</sup> A setoff exists when the parties each owe money to the other for pre-petition obligations. For example, the debtor owes the State money and the State owes the debtor money, such as if the debtor owes a fee but also is due a refund.

<sup>15</sup> 11 U.S.C. 506. A right to setoff may exist when the debtor owes creditor money and the creditor also owes the debtor money. In certain situations, and with court permission, those amounts can be netted out so that only the difference between the obligations remains, as opposed to the creditor having to pay the debtor and then the debtor paying the creditor. Setoffs are fact specific, so each setoff needs to be analyzed before it is pursued.

<sup>16</sup> Section 503(b)(1)(A) of the Bankruptcy Code defines administrative expenses to include the "actual, necessary costs and expenses of preserving the estate." Section 507(a) of the Bankruptcy Code grants first priority to the

from the debtor's continued operation of its business may be treated as administrative expenses and paid as a priority claim.<sup>17</sup>

General Unsecured Claims – Cost of cleanup of storage tank release sites that were incurred prior to the bankruptcy filing that are not secured and do not qualify as administrative expenses are general unsecured claims and are paid only after all secured and priority claims are paid in full or otherwise satisfied. Such a claim will be allowed if no other party or the debtor objects.

Penalties – Penalties assessed under a State's environmental protection laws and regulations for violations that occurred prior to the bankruptcy filing, including unpaid tank fees, are subordinated in Chapter 7 cases and paid only after all other general unsecured claims are paid in full.<sup>18</sup> Pre-petition environmental penalties, including unpaid tank fees, are subordinated in Chapter 7 cases even if they have been reduced to judgment and secured by a perfected judgment lien,<sup>19</sup> that is, a judgment in a proceeding is recorded as a lien on the debtor's property. Pre-petition penalties, including unpaid tank fees, in many Chapter 11 reorganization cases are treated as non-subordinated general unsecured claims in recognition of the fact that such claims are not likely to be subordinated where the debtor is reorganizing.<sup>20</sup>

In sum, first priority administrative claims, such as a claim for post-petition penalties or for response costs incurred post-petition, are more likely to be paid than general unsecured claims, including pre-petition penalties such as unpaid tank fees. A claim under a State's storage tank statutes and regulations for reimbursement of all past and future response costs may constitute the largest general unsecured claim and would, therefore, receive a high appropriation of the available funds in a pro rata distribution. Recovery on a pre-petition penalty claim may be remote in light of the low priority afforded this type of claim.

## 2. Assets and Liabilities of the Bankruptcy Estate

The other factor in evaluating the likelihood of recovery is the amount, if any, of funds available for distribution in the bankruptcy case and the priority and amount of other claims against the bankruptcy estate, particularly secured claims. In a no-asset Chapter 7 case, there are no funds available for distribution and no possibility of recovery; there is no need to file a proof of claim in such cases.

In bankruptcy cases where there are assets, evaluating the amount of funds that may be recovered for the benefit of creditors and the amount and priority of other creditors' claims may not be possible until late in the bankruptcy case and after the deadline for filing a proof of claim. While the debtor's bankruptcy schedules list assets and liabilities, they are sometimes

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payment of administrative expenses. Cases holding that response costs incurred post-petition to clean up property of the estate are entitled to administrative priority. See *Pennsylvania v. Conroy*, 24 F. 3d 568 (3rd Cir. 1994); *In re Hemingway Transport, Inc.*, 993 F. 2d 915 (1st Cir. 1993); *In re Smith Douglass, Inc.*, 856 F. 2d 12 (4th Cir. 1988).

<sup>17</sup> See *In re Hemingway Transport, Inc.*, *supra*.

<sup>18</sup> Subordinated means that the claim is to be paid after all unsecured claims are paid in full, even the late claims.

<sup>19</sup> See 11 U.S.C. 726(a).

<sup>20</sup> See *Schultz Broadway Inn v. United States*, 912 F. 2d 230, 233 (8th Cir. 1992).

misleading. This is because values assigned to assets are sometimes speculative or difficult to determine. Also, the value and availability of assets can change over the course of the case.

It is important to note that deadlines for filing claims are strictly enforced, and claims filed after the deadline will almost certainly be disallowed. If a deadline is approaching, but cleanup costs have not been calculated, the agency should consider filing an unliquidated claim as a placeholder. An unliquidated claim is one for which the final liability has not been determined as of the filing date. “Unliquidated amount” should be listed in the amount section of the proof of claim form. A brief description of the basis of the expected liability should be included, possibly as an attachment, perhaps in the form of an affidavit.

#### **B. Impact on Department Resources**

Once a proof of claim is filed, a State must be prepared to substantiate the claim before the bankruptcy court on a potentially accelerated schedule. In addition, a State may have to respond to discovery requests and develop expert testimony on the estimate of future response costs on relatively short notice. The need to allocate resources for such matters should be measured against the potential gain in filing a claim.

#### **C. Fairness to other Liable Parties**

The decision to forego filing a proof of claim need not be based solely upon a State’s ability to recover costs from other liable parties. The interests of fairness and justice or other policy considerations may also be considered.<sup>21</sup>

#### **D. Other Considerations**

All the factors that are taken into account in deciding whether to take enforcement action in a non-bankruptcy case should be considered, including the culpability of the debtor, the strength of the evidence against the debtor, the deterrence value of such action, and the precedential value of such action.

### **III. ABANDONMENT OF CONTAMINATED PROPERTY**

Section 554 of the Bankruptcy Code provides that, upon request of the trustee or other party in interest, the bankruptcy court may allow abandonment<sup>22</sup> of property of the estate when the property is “burdensome” or “of inconsequential value and benefit to the estate.” The power to

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<sup>21</sup> 11 U.S.C. 502(e)(1).

<sup>22</sup> The term “abandonment” used in the context of bankruptcy refers to taking the property at issue, real or personal, out of the estate such that the automatic stay no longer applies. In a bankruptcy situation, “abandonment” is not related to “abandoned tanks” which is common regulatory program terminology for tanks without a person responsible for their removal.

abandon property is not unlimited and may not be allowed in contravention of a State statute or regulation reasonably designed to protect the public health or safety from identified hazards.<sup>23</sup>

If abandonment is allowed, the property is no longer property of the estate and it is returned to the debtor and any other party with an interest in the property. If abandonment of contaminated property is allowed, however, the trustee or debtor may contend that response costs incurred after the abandonment no longer have administrative priority status because the cleanup was not necessary to “preserve the property of the estate.”<sup>24</sup> In evaluating whether to oppose a motion to abandon contaminated property filed by a trustee or other party in interest in a bankruptcy case, the following should be considered:

**A. Whether There Are Unencumbered Assets in the Bankruptcy Estate that Could Be Used to Fund Response Actions**

In a bankruptcy case with few or no unencumbered assets (i.e., assets that are not subject to a lien), it is unlikely that there would be sufficient funds in the bankruptcy estate to finance a cleanup of the contaminated property. In such cases, there may be no reason to oppose a motion for abandonment. In cases where there are some funds in the estate, but not enough to pay for all cleanup costs, it may be appropriate to ask the bankruptcy court to condition the abandonment upon the trustee undertaking certain tasks such as maintenance of the site security or performing a discrete portion of the cleanup necessary to protect public health or the environment.<sup>25</sup>

**B. Nature of Environmental Threat**

Consideration should be given to the nature and extent of the environmental problems posed by the site. In opposing abandonment, the agency will need to demonstrate that there is an imminent and identifiable risk of harm to public health and safety and not just a potential threat of harm to the environment. Further, the remedy cannot be too onerous on the administration of the estate.<sup>26</sup>

**C. Need for Access to Conduct Future Cleanup Activities**

It is important to consider the need of a State to access contaminated property in order to conduct future cleanup activities. While bankruptcy proceedings are underway, trustees or debtors in possession of the property will often cooperate with requests for access. Also, the

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<sup>23</sup> In *Midlantic National Bank v. New Jersey Department of Environment Protection*, 474 U.S. 494 (1986), the Supreme Court established that the trustee’s abandonment power is limited and may not be exercised in contravention of laws designed to protect the public health or safety.

<sup>24</sup> 11 U.S.C. 507.

<sup>25</sup> See *In re FCX, Inc.*, 96 Bankr. 815 (Bankr. E.D. Va. 1994) (as a condition to allowing the debtor to abandon contaminated property, the court required the debtor to set aside \$250,000 to pay for cleanup of the abandoned property as an administrative expense); *In re Franklin Signal Corp.*, 65 Bankr. 268 (Bankr. D. Minn. 1986) (prior to abandonment, the trustee was required to investigate the presence of hazardous substances on property and inform federal and state environmental agencies of the results and any intent to abandon).

<sup>26</sup> *Midlantic*.

agency may obtain permission from a landlord or operator at the site. In addition, the State could include the request for access in an objection opposing abandonment.

Gaining access to property abandoned by the trustee and returned to a debtor which is a corporate shell<sup>27</sup> may be especially vexing. Because a corporate shell has no active business operations, it may not only be difficult but impossible to locate an individual willing to cooperate with a request for access to property. In such situations, the agency may consider looking to its State-specific authority to access sites in which the owners and operators of a storage tank are unknown, unable, or unwilling to take corrective actions to remediate a contaminated site.

#### **IV. IMPACT OF AUTOMATIC STAY ON ADMINISTRATIVE AND JUDICIAL PROCEEDINGS**

Section 362(a) of the Bankruptcy Code provides for a broad stay which prevents litigation, lien enforcement, and certain other actions that would affect or interfere with the bankruptcy process. This stay arises automatically upon the filing of the bankruptcy petition and applies in all bankruptcy cases. The automatic stay is a fundamental part of the bankruptcy process intended to protect the status quo during the pendency of the bankruptcy case.

There are certain exceptions to the automatic stay.<sup>28</sup> Actions by a governmental unit to enforce its police or regulatory powers and the enforcement of non-monetary judgments obtained by a governmental unit to enforce its police or regulatory powers are excepted and, therefore, not automatically stayed at the commencement of a bankruptcy case. However, attempts to collect debts (including costs, penalties, or fees), enforce monetary judgments, perfect liens, or obtain possession or control over property of the estate do not fall within this exception and are subject to the automatic stay. It is important to understand the types of enforcement activities that are prohibited by the automatic stay. It is equally important to understand what types of enforcement activities are not stayed.

##### **A. Regulatory Compliance and Enforcement Actions**

While a storage tank owner or operator may continue to operate its business during Chapter 11 reorganization proceeding, the Bankruptcy Code does not excuse such a company from its obligation to comply with environmental laws and regulations.<sup>29</sup> Environmental enforcement actions seeking injunctive relief against entities in bankruptcy are generally excepted from the automatic stay as an exercise of the “police power” exemption in the Bankruptcy Code. Administrative and judicial proceedings to fix the amount of a penalty or to establish the amount of cost recovery owed are also exempt from the automatic stay. However, once a penalty is assessed or a judgment is obtained, the automatic stay prohibits collection activities other than through the bankruptcy process.

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<sup>27</sup> “Corporate shell” is defined as a corporation without active business operations or significant assets.

<sup>28</sup> 11 U.S.C. 362(b).

<sup>29</sup> 28 U.S.C. 959(b).

## **B. Information Gathering**

The Bankruptcy Code provides methods for obtaining information about a debtor. Section 343 of the Bankruptcy Code requires the debtor to attend the first meeting of creditors and to submit to the examination of any entity relating to the acts, conduct, or property, to the liabilities or financial condition of the debtor, or to any matter that may affect the administration of the bankruptcy estate.

## **C. Liens**

Any act to create, perfect, or enforce a lien against property of the debtor may violate the automatic stay.<sup>30</sup> In fact, while not a violation of the stay, liens perfected in the 90 days before the filing of bankruptcy can be stripped off during the case. As a result, a State should not attempt to perfect a lien on a debtor's property where the debtor is in bankruptcy.

Violations of the automatic stay may be punishable by a contempt judgment.<sup>31</sup> This could result in sanctions or monetary penalties being imposed by the court. If sanctions are sought, representatives of the agency will need to appear before the court with counsel to explain the violation and to assure that no further violations will occur. This can be a complicated and uncomfortable situation, which is why it is important to determine whether an action is permitted in a bankruptcy case before moving forward.

Agencies can continue to perform their police and regulatory powers. They can continue to gather information and require reporting consistent with the authority in a non-bankruptcy context.

## **V. APPROACH TO STORAGE TANK BANKRUPTCY PROCEDURE AND FINANCIAL ASSURANCE**

Storage tank owners and operators must demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by releases arising from the operation of storage tanks. Agencies cannot treat the debtor differently just because it filed for bankruptcy, although given the filing, a financial strength test may no longer be appropriate. Also, most forms of financial assurance, such as insurance policies, letters of credit, or bonds, are not generally considered part of the bankruptcy estate, even if calling them can have an impact on the debtor. Therefore, States can require compliance with financial assurance requirements in the manner allowed under non-bankruptcy law.

After commencement of a voluntary or involuntary proceeding under the Bankruptcy Code naming (1) an owner or operator of a storage tank as debtor, or (2) a local government owner or operator as debtor, some States require the owner or operator to notify the appropriate State agency by certified mail of such commencement and submit required information.

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<sup>30</sup> 11 U.S.C. 362(a)(5).

<sup>31</sup> 28 U.S.C. 1481.

After commencement of a voluntary or involuntary proceeding under the Bankruptcy Code naming (1) a guarantor providing financial assurance as a debtor, or (2) a guarantor providing a local government financial assurance as a debtor, some States require such guarantor to notify the owner or operator and the appropriate State agency by certified mail of such commencement.<sup>32</sup>

## VI. DISCHARGE

At the conclusion of most bankruptcy cases, the debtor will receive a discharge. This means that almost all obligations of the debtor that were owed at the time the case was filed cannot be collected after the discharge is entered by the court. However, some debts are not discharged. The scope and effect of the discharge vary from chapter to chapter and by the type of debtor.

Under Chapter 7, a corporate debtor does not receive a discharge,<sup>33</sup> although after the liquidation of the business, there will likely be no entity or assets to pursue. As to an individual debtor, certain debts are not discharged, for example, taxes, civil fines, and penalties owed to a governmental unit; student loans; and domestic support obligations.<sup>34</sup> Debts that are based on fraud can be excepted from the discharge but require a special lawsuit to be filed in the bankruptcy case to demonstrate fraud.

The Chapter 11 discharge is different for corporations and individuals.<sup>35</sup> Individuals have the same exceptions from discharge as a Chapter 7 debtor. A liquidating corporation receives no discharge. But a reorganizing corporation has all debts provided for by the plan. Other than the treatment provided by the plan, all other pre-bankruptcy debts are discharged, with exceptions for some debts incurred by fraud.

An individual in a Chapter 13 case receives a broader discharge than a Chapter 7 discharge and is subject to fewer exceptions. In most Chapter 13 cases, civil fines and penalties will be discharged but not criminal restitution.<sup>36</sup>

Similar to the automatic stay, the discharge is a permanent bar to further actions to collect a debt that arose before the debtor filed for bankruptcy. Efforts to collect a discharged debt can result in sanctions before the bankruptcy court. Accordingly, it is important to make the correct determination as to whether or not a claim survives the discharge. Those debts not discharged are collectible again at the conclusion of the bankruptcy case.

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<sup>32</sup> A guarantor is the company or government that provides the guarantee.

<sup>33</sup> 11 U.S.C. 727 provides the discharge for Chapter 7 debtors.

<sup>34</sup> 11 U.S.C. 523 sets out the exceptions to discharge.

<sup>35</sup> 11 U.S.C. 1141 provides the discharge for Chapter 11.

<sup>36</sup> 11 U.S.C. 1328 provides for the discharge in a Chapter 13 case. 1328(b) provides a hardship discharge that has more exceptions than are provided in 11 U.S.C. 523.

It is also important to note that government agencies are prohibited from discriminating against an individual or corporation on the basis that they filed for bankruptcy. This particularly applies to licenses and the revocation, suspension, and denial of renewal.<sup>37</sup>

## VII. RECOMMENDATIONS

As soon as an agency learns of a bankruptcy proceeding involving a person or entity that it oversees, any efforts to collect a monetary debt should stop immediately. At that point, the agency should seek guidance from legal counsel and, if available, bankruptcy specialists to determine what actions are permissible going forward. Filing a request for notice is advisable if there is any possibility that there will be environmental issues that need to be addressed or for which the agency will want to file a claim. An attorney authorized to practice in the particular federal bankruptcy court will have to file any pleadings.

Consultation with a bankruptcy attorney is important because the discharge of debts at the conclusion of the case is dependent on the chapter filed, the circumstances of the case, the type of debtor (corporate or individual), and the classification of the debt. There are few one-size-fits-all answers to dischargeability.

## VIII. TOOLS

Public Access to Court Electronic Records (PACER)<sup>38</sup> allows access to the federal court docketing, and users must register for an account. There is a read-only type of account available. In order to file a pleading in the case, an attorney must have an account for each particular jurisdiction. Court-specific training may be required.

PACER allows access to all documents filed in the case. There is a charge of ten cents per page. In larger cases, courts often appoint claims agents. The claims agent websites should contain all of the claims filed in the case and often have links to significant pleadings filed in the case. These sites are free. Also, debtors sometimes set up their own sites containing pleadings and other useful information.

LexisNexis CourtLink<sup>39</sup> is another search option similar to PACER.

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<sup>37</sup> 11 U.S.C. 525

<sup>38</sup> <https://www.pacer.gov/>

<sup>39</sup> <http://www.lexisnexis.com/en-us/products/courtlink-for-corporate-or-professionals.page>