Photo provided by LA CVB

AMERICAN BAR ASSOCIATION

General Practice, Solo & Small Firm Division

Bankruptcy for Non-Bankruptcy Lawyers

Saturday, October 17, 2009
11:00 a.m. - 12:00 p.m.

2009 Fall Meeting and
National Solo and Small Firm Conference
October 16 - 17, 2009
Millennium Biltmore Hotel
Los Angeles, CA

Moderator:

Larry B. Feinstein is a partner in the Seattle law firm of Vortman & Feinstein. Mr. Feinstein practices exclusively in all phases of Chapter 7, 11, and 13 since 1975. He is a Board Certified Business Bankruptcy Specialist and a Board Certified Consumer Bankruptcy Specialist by the American Board of Certification and has been since 1992. He was a Panel Chapter 7 Trustee for the Western District of Washington for 12 years, and has represented both creditors and debtors in all phases of bankruptcy proceedings. He is a frequent speaker on bankruptcy for the ABA.

Mr. Feinstein currently serves of Co-Chair of the Bankruptcy Section of the GP|Solo Section of the ABA. In this position he has been active in the ABA's efforts on the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCA). He is a previous officer of the Washington State Bar Association Debtor/Creditor Section and the King County Bar Bankruptcy Section.

Panel:

Marc S. Stern is a solo practitioner in Seattle, Washington where his practice emphasizes Insolvency and Bankruptcy. He is Board Certified as a Business Bankruptcy Specialist by the American Board of Certification and has been since 1993. He has represented both creditors and debtors in all phases of Bankruptcy Proceedings. Mr. Stern currently serves of Co-Chair of the Bankruptcy Section of the GP|Solo Section of the ABA. In this position he has been active in the ABA's lobbying efforts opposing the Attorney Liability Provision of the proposed Bankruptcy Abuse Provention and Consumer Protection Act (BAPCPA) that he insists on calling the Bankruptcy Abuse Reform Fiasco (BARF). He is also the co-editor Letters for Bankruptcy Lawyers (ABA Press, 2005). He serves on the ABA's Task Force on Attorney Discipline of the Joint Ad Hoc Committee of Bankruptcy Court Structure and is a contributing author to its Report on the Scope of Inquiry Required Pursuant to §707(b) as amended.

He is admitted to practice in the U.S. Supreme Court, the Ninth Circuit Court of Appeals, the Court of Appeals for the Armed Forces, the District and Bankruptcy Courts for both the Eastern and Western Districts of Washington and the Washington State Supreme Court. He earned his J.D. University of Idaho, College of Law, Moscow, Id. in December 1977 and his A.B. *cum laude* from Washington University, St. Louis, Mo. in May in 1975 with Majors in Anthropology and Political Science.

Lesley A. Hoenig is a Solo Attorney in Mount Pleasant, Michigan. She practices Primarily Bankruptcy law, but also in other consumer related fields such as foreclosure, collections, and landlord/tenant law.

She is a member of the American Bar Association, and is Chair of the GP Solo Agricultural Law Committee, Co-Vice Chair of the GP Solo Bankruptcy Committee, a Member of the GP Solo Magazine Editorial Board, and Vice Chair of the Young Lawyers Division Bankruptcy Committee. Additionally, she is a member of the Illinois State Bar Association, Minnesota State Bar Association, State Bar of Michigan, and the Isabella County Bar Association.

She earned her J.D. in 2002 from Northern Illinois University College of Law, and her B.S., in 1999 from University of Illinois at Urbana-Champaign. She is admitted to the bars of Illinois, Minnesota, and Michigan as well as the Northern and Central Districts of Illinois and the Eastern and Western Districts of Michigan.

BANKRUPTCY FOR NON-BANKRUPTCY LAWYERS

1. So you want to be a bankruptcy lawyer or "Should you do this one for your friend?"

1.1. Basic Considerations

1.1.1. Required Disclosures

1.1.2. Retainer agreements

1.2. Schedules

1.2.1. Requirement that you have software

1.2.1.1. Means Test

1.2.1.1.1. Medum Income

1.2.1.1.2. County Standards

1.2.1.1.3. Other considerations

1.2.1.2. Creditors

1.2.1.2.1. Credit Report

1.2.1.2.2. FInding out who the creditors are (regularly sale of accounts)

1.2.1.2.3.

1.2.1.3. Assets

1.2.1.3.1. List of lose

1.2.1.3.2. Judicial Estoppel

1.2.1.3.3. Exemptions

2. Some Key Concepts

- **2.1.** Stay
  - **2.1.1.** Requirement to quash garnishment and bench warrants
  - **2.1.2.** BACPA Amentments and what they mean
    - **2.1.2.1.** 2nd filing and 30 days against debtor
    - **2.1.2.2.** Property of the estate
    - **2.1.2.3.** Garnishment in Chapter 13 - post stay, pre discharge.
    - **2.1.2.4.** Small business cases
- **2.2.** Co-debtor stay
- **2.3.** Cram Down
- **2.4.** Preference
- **2.5.** Fraudulent Conveyance
- **2.6.** Insider
- **2.7.** Discharge
  - **2.7.1.** Exceptions thereto
    - **2.7.1.1.** Chapter 7
    - **2.7.1.2.** Chapter 13
- **2.8.** Property of the estate
- **2.9.** Strip off

3. Debt Relief Agency Liability for non bankruptcy lawyers

- **3.1.** Assisted Person
- **3.2.** Disclosures
- **3.3.** Penalties for Nondisclosure
- **3.4.** Milavetz and Grant of Cert.

4. DIVORCE

- **4.1.** Continued pursuit of child support
- **4.2.** Property distribution
- **4.3.** Control of the property

5. Personal Injury

- **5.1.** Relief from Stay to pursue insurance
- **5.2.** Discharge questions for wilful and malicious injury

6. Foreclosure

- **6.1.** Relief from Stay
- **6.2.** Hot issues
  - **6.2.1.** Standing
  - **6.2.2.** Who is the holder of the Note?
    - **6.2.2.1.** Where are you going - Someone is owed money

Young Lawyers Division

AMERICAN BAR ASSOCIATION

Bankruptcy Basics[1]

By Colin T. Darke and Latanishia D. Watters

For many attorneys, bankruptcy law is unfamiliar and difficult to understand. For example, Charlie Creditor and Danny Debtor negotiate a resolution regarding a debt Danny owes Charlie. Danny pays down the entire outstanding account in one lump-sum payment but still has trouble paying his other creditors and is forced to file for bankruptcy protection under Chapter 7 of the Bankruptcy Code. The Chapter 7 trustee (who administers Danny's new bankruptcy estate) sues Charlie Creditor to recover the lump-sum payment for the bankruptcy estate, claiming it was a preferential transfer—and the trustee is probably right.

Policy issues aside, bankruptcy concerns run throughout many areas of law and may be at play without your even realizing it. This article is a brief overview of some common bankruptcy concepts.

Preference Actions: "Fair" share. The example above illustrates a preference action that is part of a Chapter 7 trustee's arsenal in bringing money back into a debtor's bankruptcy estate. The trustee has a duty and obligation to bring certain pre-petition transfers (or the value thereof) back into the bankruptcy estate so that the money may be redistributed among the debtor's creditors on a pro rata basis.

Specifically, the trustee may sue a creditor who received payment of an antecedent debt within 90 days prior to the debtor's filing for bankruptcy protection (or within one year if the payment was to an insider). Creditors, however, have certain defenses to a preference avoidance action: The Bankruptcy Code protects transfers made in the ordinary course of business. For example, when two parties have a long-standing business relationship whereby the debtor pays the creditor $50 on the 15th of every month, those payments may not be avoidable. The Bankruptcy Code also protects transfers to the degree that the creditor provided the debtor with new value (i.e., goods or services) after the transfer.

Automatic Stay: Stop everything. The Bankruptcy Code imposes, with few exceptions, an immediate stay against all entities from any actions against the debtor or the debtor's property (there are no notice requirements for the stay to be effective). A creditor who fails to stop certain collection efforts would violate federal law. For example, a creditor would violate the automatic stay if she sought to enforce a judgment or perfect a security interest (with some exceptions) against the debtor. Certain exceptions to the automatic stay, such as the continuation of certain criminal proceedings or the collection of alimony, do exist. When in doubt, however, the party is

---

[1] Reprinted with permission, originally published by the American Bar Association, 11 *The Young Lawyer* 6 (April 2007)

better off asking for permission to continue collection efforts because a violation of the automatic stay may result in stiff penalties such as punitive damages—along with the action's being voided from inception.

Prebankruptcy Planning: All is not lost. Prebankruptcy planning is done prior to filing bankruptcy to protect assets. It allows a debtor to take maximum advantage of exemptions by converting nonexempt assets into exempt assets. Exempt assets are those a debtor can keep out of the hands of a creditor. Typical examples include a homestead exemption for the debtor's principal residence, retirement plans, annuities, and insurance policies. There are both federal and state exemptions. One possible pitfall to consider is the debtor's conversion of nonexempt property within one year of filing bankruptcy with the intent to "hinder, delay or defraud" a creditor. The risk is that the conversion may result in a denial of the claim of exemption or (more extreme) a denial of discharge.

Proof of Claim: Know your rights. Charlie can file a proof of claim listing all debts owed to him by Danny, including any amounts the trustee may have recovered from Charlie in the preference avoidance action. A proof of claim is a written statement setting forth a creditor's claim—it is what the trustee uses to distribute any monies he has recovered for the benefit of the estate. If the claim is based on a writing, the writing must be filed with the proof of claim. If the claim is secured, it must be accompanied by evidence that the security interest has been perfected. Creditors have a certain amount of time—typically set by the court soon after the date of the creditors' first meeting—within which to file claims, so awareness of this deadline is crucial.

READY RESOURCES

• Attorney Liability in Bankruptcy. 2006. PC # 5150415. ABA General Practice, Solo and Small Firm Division.

• Portable Bankruptcy Code and Rules, 2007 ed. PC # 5070549. ABA Section of Business Law.

© 2009. American Bar Association. All Rights Reserved.

The Impact of the Automatic Stay

Margaret M. Anderson
Fox, Hefter, Swibel, Levin & Carroll
200 W. Madison, Suite 3000
Chicago, IL 60606

This article analyzes the automatic stay issues that arise when a party to litigation is in bankruptcy. It also discuses the impact of the stay on claims and actions that have not been filed.

I. Introduction To Bankruptcy

A. The Petition

A bankruptcy case is commenced by the filing of either a voluntary petition filed by a debtor or an involuntary petition filed by creditors of the debtor against the debtor. The legal fiction is that the filing of the petition creates a new legal entity, the bankruptcy estate. Due to the paramount importance of the petition in the bankruptcy scheme, the period of time before the filing of the petition is often referred to as the prepetition period, while the period of time after the filing of the petition is called the post-petition period.

Bankruptcy cases can only be filed in federal bankruptcy courts, which are adjuncts of the federal district courts. The United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, is the framework that governs bankruptcy cases. (Hereinafter, all section references are to the Bankruptcy Code.) Bankruptcy courts also apply the substantive laws of the various states in deciding numerous issues that arise in bankruptcy cases, such as whether a creditor's lien is properly perfected, or whether a contract is enforceable.

B. Types of Cases

There are six types of bankruptcy cases - Chapter 7 (liquidation), Chapter 9 (municipality), Chapter 11 (reorganization), Chapter 12 (family former), Chapter 13 (wage earners), and Chapter 15 (ancillary and other cross-border cases). Of these types, chapters 7, 12, and 13 cases are the most common. In a chapter 7 case, or straight liquidation case, a trustee is appointed to take charge of all the debtor's assets in order to either sell them and/or to distribute them in accordance with the priority scheme set forth in the Bankruptcy Code. In a chapter 11 reorganization case, typically, the existing management of the debtor remains in possession (that is, becomes a "debtor-in-possession"), although a Chapter 11 trustee can be appointed in certain circumstances section 1104. In a chapter 11 case, debtors are allowed to operate their business in the ordinary course, but need to seek court approval for any actions outside normal business practices. The goal of a chapter 11 reorganization case is to have a plan of reorganization confirmed that provides for payment of various classes of creditors. A debtor-in-possession (or any other plan proponent) is allowed broad latitude in the structure of the plan of reorganization and in the treatment of claims under that plan. Any plan must meet certain standards set forth in the Bankruptcy Code and must be approved by the bankruptcy court. In a Chapter 13 case, an individual wage earner proposes a plan under which the debtor's excess wages (the amount by which the debtor's take home pay exceeds his reasonable expenses), are paid for a three to five year

period to a chapter 13 trustee. The Chapter 13 trustee distributes the payments received from the debtor to the debtor's unsecured creditors *pro rata*.

C. The Automatic Stay in General

The filing of a bankruptcy petition results in the imposition of an automatic stay under section 362 of the Bankruptcy Code. The automatic stay under section 362 is very broad in its scope and bars all creditors from trying to collect pre-petition debts of the debtor or performing any act to obtain possession of property of the bankruptcy estate. Section 362(a) reads, in applicable part, as follows:

> Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of -
>
> (1) *the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;*
>
> (2) the enforcement, against the debtor or against property of the estate, of a judgment_obtained before the commencement of the case under this title;
>
> (3) *any act to obtain possession of property of the estate* or of property from the estate or to exercise control over property of the estate;
>
> (4) any act to create, perfect or enforce a lien against property of the estate;
>
> * * *
>
> (6) *any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title. . .* (Emphasis added)

As evidenced by the language of the statute, both lawsuits against the debtor and informal attempts to be paid by the debtor or from the debtor's property are stayed under section 362. The automatic stay remains in effect until a plan is confirmed, an individual debtor id discharged, or the case is closed or dismissed, unless lifted earlier by the bankruptcy court.

II.
Scope of the Stay

A. What Claims and Actions are Stayed

The automatic stay only applies to claims that arose before the filing of a bankruptcy petition. The claimant, therefore, must first determine when the claim arose. For purposes of the Bankruptcy Code, a claim does not arise when demand is made, but rather, arises when the underlying event that gives rise to the ability of a claimant to assert a claim occurred. The term "claim" is very broadly defined under section 101(5) to include, "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Therefore, even if a demand is first asserted after the bankruptcy case is filed, if the demand relates to an event that occurred prepetition, it is a prepetition claim and attempts to collect it are stayed. Only those claims that actually arise after the filing of the bankruptcy petition (for example, when the alleged negligence occurred post-petition) are not stayed. Even then, creditors cannot enforce any judgment obtained against property of the bankruptcy estate.

It is important to note that the automatic stay stops not only judicial proceedings against a debtor, but also all other attempts to collect, assess, or recover any claims against a debtor that arose before the commencement of the case, including pre-suit proceedings.

B. Appeals

There is a split of authority about whether the automatic stay applies to an appeal brought by a debtor. For example, the Eighth Circuit has held that the stay applies to an appeal brought by a debtor from a judgment obtained against it. *Farley v. Henson (In re Farley)* 2F3d 273, 275 (8th Cir. 1993) *See also, Ass. of St. Croix condominium Owners v. St. Croix Hotel Corp.,* 682 F2d 446 (3rd Cir. 1982) Other courts have held that the stay does not apply, *See, Morganroth & Morganroth v. DeLorean,* 213 F. 3d 1301 (10th Cir. 2000) The D.C. Circuit has held that the stay does not apply to appeals in actions brought by the debtor, *Carter Capital Group v. Firemen's Fund Ins. Co.,* 89 F. 2d 1126, 1127 (D.C. Cir. 1989)

The Third and Tenth Circuits have ruled that the automatic stay does not apply to an appeal involving a claim against a debtor when the bankrupt appellant has filed a supersedes bond, *See Mid-Jersey National Bank v. Fidelity Mortgage Investors,* 518 F.2d 640 (3rd Cir. 1975), *Grubb v. FDIC,* 833 F.2d 222 (10th Cir. 1987) The Seventh Circuit has, however, ruled that it does, *Sheldon v. Munford,* 902 F.2d 7 (7th Cir. 1990). The Seventh Circuit in its opinion suggested, however, that the bankruptcy court would readily lift the stay to let the appeal proceed, because it presumed the debtor cared about the outcome of the appeal.

C. Insurance Policies as Property of the Estate

The automatic stay not only stops parties from commencing or continuing actions against the debtor, it also stops actions against property of the bankruptcy estate. Numerous cases have held in the mass tort context that a debtor's insurance policies are property of the bankruptcy estate. *See, e.g., MacArthur Company v. Johns-Manville Corporation,* 837 F.2d 89, 92 (2nd Cir. 1988), *cert. denied* 488 U.S. 868, 109 S.Ct. 176, 102 L.Ed 145 (1988); *A.H. Robins v. Piccinin*, 788 F.2d 994 (4th Cir. 1986) *writ of certiorari dismissed*, 407 U.S. 1260, 109 S. Ct. 201, 101 L.Ed.2d 972 (1988). The filing of a bankruptcy petition, therefore, prevents injured parties from attempting to collect from an insurance policy. *MacArthur* , 837 F.2d at 92.; *In re Davis,* 730 F.2d 176, 184 (5th Cir. 1984). Preventing tort claimants from immediately recovering from insurance gives the bankruptcy court time to determine if there is sufficient insurance to pay all tort claimants, or, if not, to fashion a scheme for equitably distributing the policy proceeds. *See* Collier on Bankruptcy § 362.05, pp. 362-65.

Even outside the mass tort cases, courts have held that insurance policies and the policy proceeds are property of the bankruptcy estate. *See In re Lavigne*, 114 F.3d 379, 384 (2d Cir. 1997) (medical malpractice policy is property of the bankruptcy estate); *In re Keck, Mahin & Cate*, 241 B.R. 583, 596 (Bankr. N.D. Ill. 1999) (debtor-law firm's malpractice insurance contract was property of the estate); *In re St. Clare's Hospital & Health Center*, 934 F.2d 15, 18-19 (2d Cir. 1991)(hospital's medical malpractice policies are property of the estate); *Baez v. Medical Liability Mutual Ins. Co.*, 136 B.R. 65, 67-68 (S.D.N.Y. 1992)(physician's medical malpractice policy and certain insurance policy proceeds are property of the bankruptcy estate); *In the Matter of Equinox Oil Company, Inc. (Unsecured Creditors Disbursement Committee v. Antill Pipeline Construction Company)*, 300 F.3d 614 (5th Cir. 2002) (proceeds of oil well control insurance policy are property of the estate).

Other cases, especially with respect to directors' and officers' liability policies, have held that although the policies are property of the debtor, the proceeds of such policies are not necessarily property of the estate. *In re Louisiana World Exposition,* 832 F.2d 1391, 1399-1400 (5th Cir. 1987); *In re Vitek,* 51 F.3d 530, 535 (5th Cir. 1995); *In re First Central Financial Corp.*, 238 B.R. 9, 16 (Bankr. E.D.N.Y. 1999); *Houston v. Edgeworth (In the Matter of Edgeworth)*, 993 F.2d 51, 56 (5th Cir. 1993); *In re Daisy Systems Securities Litigation*, 132 B.R. 752, 755 (N.D. Cal. 1991). Those courts have held that actions against the directors and officers are not stayed, and that the insurance company is not prohibited from paying defense costs or paying judgments and settlements, even though the payment of defense erodes policy limits, and thereby implicates the debtor's rights in the policies.

bankruptcy judge cannot liquidate "contingent or unliquidated personal injury tort claims or wrongful death claims against the estate." Rather, under 28 U.S.C. § 157(b)(5), the district court in which the bankruptcy case is pending is to determine whether the personal injury tort and wrongful death claim should be tried by that federal district court or in the district court in the district in which the claim arose.

Debtors can also remove pending actions to the federal district court under 28 U.S.C. § 1452, the bankruptcy removal statute, on the basis that federal bankruptcy jurisdiction now exists over the action. This may be particularly desirable when multiple parties are involved in the action because the stay only protects the debtor. By way of example, a lawsuit involving both the debtor and one of its employees may be an action that a debtor would want to be removed to federal court. Removal allows the transfer of the entire case, not only the claims against the debtor. Removal is discussed in greater length later in this article.

A debtor may be interested in using these provisions in the Bankruptcy Code to require tort claimants to liquidate their claims in connection with the bankruptcy case, if the claims are either (i) not covered by insurance or (ii) the liquidation of the claims would result in a claim against the bankruptcy estate by the debtor's insurance carrier for retrospective premium or reimbursement of deductibles. It is not uncommon for debtors to ask the bankruptcy courts to implement alternative dispute resolution procedures to liquidate tort claims. These procedures typically require tort claimants to participate in informal settlement discussions, then mediation, and possibly even arbitration (binding if the claimant consents) before the stay is lifted. The use of such alternative dispute resolution procedures often results in a quick resolution of claims against the debtor, with less cost to the debtor.

F. Post-Bankruptcy Issues

Upon confirmation of a plan of reorganization in a chapter 11 case, the automatic stay is effectively replaced by the discharge injunction, which is a permanent injunction having the same effect as the automatic stay. The confirmation of the plan of reorganization discharges the debtor from any debt that arose before the date of the confirmation of the plan of reorganization, unless otherwise provided under the plan of reorganization. *See* §§ 524(a) and 1141. Notwithstanding sections 524 and 1141, numerous cases have held that the discharge injunction should be modified to the extent necessary in order to allow a claimant to establish the debtor's liability and pursue the debtor's insurer on the theory that failing to do so would result in the insurer being unjustly enriched. *Chapman v. Bituminous Insurance Company (In the Matter of Coho Resources, Inc.)* , 345 F.3d 338 (5th Cir. 2003) (insurer required to pay covered claim even when tort claimant had not filed a claim in the bankruptcy case of the insured), *In re Jet Florida Systems, Inc.*, 883 F.2d 970 (11th Cir. 1989) (defamation action allowed to proceed even though it might result in the debtor incurring defense costs); *Houston v. Edgeworth (In the Matter of Edgeworth)*, 993 F.2d 51 (5th Cir. 1993)

(discharge injunction modified to allow medical malpractice action to proceed so that plaintiffs could recover insurance proceeds). Some courts have even held that claimants do not need to get the discharge injunction modified first in order to proceed solely against the debtor's insurers. *Green v. Welsh*, 956 F.2d 30 (2nd Cir. 1992); *In re Donald Michael Patterson*, 297 B.R. 110 (Bankr. E.D. TN. 2003). *But see, In re White Motor Credit (Citibank v. White Motor Credit)*, 761 F.2d 270 (6th Cir. 1985) (court held claimants who had not filed claims in the bankruptcy case could not proceed against insurers); *In re Columbia Gas Transmission Corp. (Greiner v. Columbia Gas)*, 219 B.R. 716 (S.D. W.Va. 1998) (court refused to modify discharge injunction where debtor would bear cost of defense).

G. Tolling of Statute of Limitations

The filing of a bankruptcy petition by a debtor tolls (i.e., stops) the running of any statute of limitations. Section 108(c) provides:

> Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of:
>
> > 1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
> >
> > 2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

In addition to reviewing section 108(c), claimants need to review the tolling provisions of applicable state law. In many states, the statute of limitation is suspended during the pendency of the automatic stay. When state law so provides - for example, a claimant has 18 months to bring an action against the debtor when the bankruptcy case is filed - the claimant will still have 18 months to bring an action after the automatic stay is lifted, even if the stay is not lifted two years after the bankruptcy petition is filed.

III.
Litigation by the Debtor

A. Where Litigation Takes Place

Since the automatic stay applies to actions *against* debtors but not actions *by* debtors, litigation brought by a debtor will not be automatically stayed. The debtor, if it elects to do so, will be able to proceed outside the bankruptcy court with pending actions. Since the stay does, however, apply to counterclaims, other parties for the pending action cannot prosecute its counterclaims until stay is lifted. Usually, the bankruptcy court will readily lift the stay to allow the party to proceed with its counterclaim.

Actions involving bankrupts may end up being heard by the bankruptcy court. The debtor may file a new "adversary proceeding" seeking relief against the defendant in bankruptcy court. Federal courts may have jurisdiction over actions since they may be matters "arising in or related to" a bankruptcy case, 28 U.S.C. § 1334(b). That jurisdiction sits initially in the district court. As previously discussed, every district court in the country has entered a standing order automatically referring bankruptcy matters to the bankruptcy courts.

A pending action can also be removed under 28 U.S.C. §§ 1452(a). Actions can be removed to the district court where the state court case is pending. The removed actions are often then automatically transferred to the district court in which the bankruptcy case is pending, and automatically referred to the bankruptcy court.

If a party does not want to have the dispute heard by the bankruptcy court, it can seek to have a removed action remanded back to the state court for "any equitable reason." 28 U.S.C. § 1452(b). It could also ask the court to exercise its discretion and abstain from hearing the case "in the interest of justice." 28 U.S.C. § 1334(c)(1). The court must abstain if the action could not have been brought in federal court absent jurisdiction under 28 U.S.C. § 1334 and the action can be timely adjudicated in the appropriate state forum. 28 U.S.C. § 1334(c). (Note that mandatory abstention does not apply to removed tort claim, 28 U.S.C. § 157(d)). Finally, if the party wants to remain in federal court, it could ask that the "reference" of the matter to the bankruptcy court be "withdrawn" to the district court. 28 U.S.C. § 157(d).

Bankruptcy judges, which are Article I judges, can only enter final findings of fact and conclusions of law in "core" proceedings. For non-core matters, the bankruptcy judge acts much like a magistrate, being able to only propose such findings of fact and conclusions of law. Courts are more likely to abstain from, remand, or withdraw the reference of a non-core proceeding than a core proceeding. Therefore, a ruling that the dispute is non-core can be very important to the non-debtor party.

A party involved in a dispute with the debtor may decide not to file a proof of claim in the bankruptcy case, even if not doing so eliminates its rights to recover its claims against the debtor. By filing a proof of claim, a claimant subjects itself to the "core" jurisdiction of the Bankruptcy Court with respect to any dispute relating to the subject matter of the proof of claim. In addition, since parties are not entitled to jury trials in "core" matters, the claimants loses the right to a jury trial if it files a proof of claim. *Langenkamp v. Culp*, 498 U.S. 42, 111 S. Ct. 330 (1990).