

Orr&Reno

Dealing with a Financially Distressed Client: Bankruptcy Basics

Justin M. Boothby
Orr & Reno, P.A.



QUICK FACTS

Bankruptcy is a congressionally designed scheme for the orderly reorganization or liquidation of a debtor's financial affairs.

Chapter 7 – Liquidation for individuals and businesses

Chapter 11 – Reorganization for businesses and individuals with large debts

Chapter 13 – Reorganization for individuals

Orr&Reno



BANKRUPTCY FILINGS

Circuit and District	Filings		
	2008	2009	Percent Change ¹
UNITED STATES	1,042,806	1,402,816	34.5
FIRST CIRCUIT (ME, NH, MA, RI and PR)	34,672	44,560	28.5
New Hampshire	3,676	4,976	35.4
NINTH CIRCUIT (Including CA and AZ among others)	191,604	310,028	61.8

Source: US Federal Judiciary – for September 30, 2008- September 30, 2009

Orr&Reno

BANKRUPTCY FILINGS

Circuit and District	Total Filings	Total Chapter 7	Total Chapter 11	Total Chapter 13	Business Filings			
					Total	Chapter 7	Chapter 11	Chapter 13
TOTAL	1,402,816	989,227	14,745	398,210	58,721	40,225	13,439	4,424
FIRST CIRCUIT	44,560	30,471	514	13,542	2,016	1,291	452	240
NEW HAMPSHIRE	4,976	4,000	57	917	523	377	52	92

Source: US Federal Judiciary – for September 30, 2008- September 30, 2009

Orr&Reno



THE AUTOMATIC STAY



Orr&Reno



THE AUTOMATIC STAY

Upon the filing of the case you must stop ALL collection activities with respect to pre-petition debts and against property of the bankruptcy estate.

Actions taken in violation of the automatic stay are void.

There are severe penalties for violation of the stay, including, the assessment of the debtor's attorneys' fees and costs.

Willful violations are subject to punitive damages.



WHAT ARE PREFERENCES?

A preference is the ability of the bankruptcy trustee or debtor-in-possession to undo transactions with preceded bankruptcy.

Look-back – transactions within 90 days of the filing are suspect (the period is one year for insiders).

The practical effect is that money can be clawed-back to the bankruptcy estate and divided-up amongst the other creditors.



IS IT A PREFERENCE?

- (1) Widget Co. sells \$10,000 worth of widget inventory to Retailer, Inc., and is paid within 45 days of delivery. This is the ordinary course of business for each Widget and Retailer and consistent with industry practice.
- (2) Same as above, except that Retailer has always paid within 10 days of receipt previously.
- (3) Retailer, Inc. has owed your company \$100,000 for one year, and suddenly pays you off. 90 days later, Retailer files for bankruptcy.
- (4) Same as 3, but this time Retailer does not declare bankruptcy until 91 days after the payment.
- (5) Local Bank, NA loans Retailer, Inc. \$10,000 and takes a security interest in Retailer's inventory. One year later, Local Bank files with the NH Secretary of State to perfect its security interest. Two days later, Retailer files for bankruptcy.