

A frequently overlooked source of information regarding bodily injury and property claims is the United States Bankruptcy Court. With record numbers of filings and easy access to court records, these files can be a source of hidden treasure in more than one sense.

For those not familiar with bankruptcy procedure, a very general overview may be in order. A bankruptcy is initiated by the filing of a petition by the “debtor.” With the filing of the petition, all property of the debtor becomes property of the bankruptcy “estate,” to be administered by the bankruptcy “trustee.” The petition contains “schedules,” which are lists of the debtor’s assets and liabilities. The idea behind bankruptcy is to give the debtor a fresh start, while paying as much as possible to the creditors. The debtor is, therefore, allowed to keep certain assets, referred to as exempt assets. Although bankruptcy is under federal jurisdiction, exemptions for Oregon bankruptcies are found in ORS 18.345.

Once the petition is filed, the bankruptcy trustee determines whether there are assets that are not exempt and therefore available for distribution to the creditors. The trustee reviews the petition, conducts an interview of the debtor (referred to as a “meeting of creditors”), and may request additional information from the debtor. Liquidation bankruptcy, known as “Chapter 7,” is the most common form of bankruptcy. In a Chapter 7, any non-exempt assets are liquidated and distributed to the creditors. Most debtors eventually receive a discharge of most or all of their liabilities while retaining their exempt assets.

If the assets are listed in the petition’s schedules (“scheduled”) and the trustee does not dispose of them, the assets are deemed to have been abandoned to the debtor. If, however, the

## Bankruptcy Files: Hidden Treasure?

— by Tim Heinson

debtor fails to list an asset, that asset is “unscheduled” and remains the property of the bankruptcy estate. Vucak v. City of Portland, 194 Or App 564, 566 (2004). Of primary interest is “Schedule C” of the petition, on which is listed the debtor’s assets. If, at the time the petition is filed, the debtor has a pending claim against another party, that claim is property of the estate and must be listed in Schedule C. If the debtor discloses the claim, the value the debtor places on that claim will be disclosed in Schedule C.

However, ORS 18.345(1)(k) provides an exemption for up to \$10,000 in such claims. It exempts:

“The debtor's right to receive, or property that is traceable to, a payment or payments, not to exceed a total of \$10,000, on account of personal bodily injury of the debtor or an individual of whom the debtor is a dependent.”

If the claim was not disclosed in the bankruptcy, a claimant should not be allowed to pursue a subsequent claim against your insured. The bankruptcy estate, not the claimant, owns the claim so the claimant is not the “real party in interest.” If the case goes to litigation, such a claim may be addressed by a motion for summary judgment.

If a claim was listed in Schedule C, the value placed on the claim by the debtor/claimant should be binding upon the claimant in a subsequent legal action. Under the principle of “judicial estoppel,” a person who has benefited from a statement or position in a previous court proceeding may be prohibited from taking an inconsistent position in a later proceeding. Its purpose is both to preserve the

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sanctity of the oath taken by litigants and to protect the integrity of the judicial system. *White v. Goth*, 180 Or App 138, 141 (2002). When filing the bankruptcy petition, the debtor declares under penalty of perjury that all of the information contained in it is “true and correct.” Furthermore, the bankruptcy trustee relies upon that information in determining whether to abandon the claim. If the former debtor subsequently makes a claim against your insured, the claimant should be bound by that statement of the value of the claim.

Another potential source of information is Schedule F, which is a list of unsecured creditors. Names of medical providers may be listed there, indicating potentially relevant prior treatment and areas of further discovery.

Information regarding bankruptcy filings may be accessed on-line through the bankruptcy court’s PACER system, or in person.



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