



# When Personal Injury Meets Bankruptcy: What Trial Lawyers Need to Know

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As personal injury and bankruptcy law increasingly intersect, attorneys must navigate a complex legal landscape. Nowhere is this more apparent than in cases involving financially distressed individuals with pending personal injury claims, or tort plaintiffs pursuing recovery against bankrupt defendants. These intersections can significantly impact recoveries, case strategy and attorney compensation—often in ways that trial lawyers may not anticipate. Below are some key questions and considerations attorneys should understand when navigating these types of cases.

## What Happens When a Personal Injury Claimant Files for Bankruptcy and Has a Personal Injury Claim as an Asset?

Once an individual files for bankruptcy, any personal injury claim—whether already filed or merely potential—becomes property of the bankruptcy estate. In Chapter 7 cases, the trustee assumes control of the claim and may choose to pursue or settle it. In Chapter 13, the debtor retains control but must obtain court approval to proceed.

Importantly, personal injury claims must be scheduled in the bankruptcy filings to be preserved. Failure to disclose them may result in loss of the claim and any proceeds the claimant receives through a settlement or a judgment. While the Bankruptcy Code and some state laws provide exemptions that allow personal injury claimants to keep a certain amount of their proceeds, those exemptions can only be applied if the claim is properly disclosed.



## Where in the Order of Priority in a Bankruptcy Does a Personal Injury Creditor Fall?

Most personal injury claimants are classified as general unsecured creditors. Unless the claim stems from willful or malicious conduct, it is typically dischargeable, meaning the creditor is only entitled to share in whatever distribution the estate provides to general unsecured creditors.

To participate in any distribution, a proof of claim must be timely filed. An official proof of claim form is available in a fillable PDF format online at <https://uscourts.gov>.

## Can a Personal Injury Creditor Continue to Pursue Insurance Coverage Outside of Bankruptcy?

If there is potential insurance coverage, personal injury creditors may request relief from the automatic stay from the bankruptcy court to proceed against the insurer. Sometimes, the debtor or trustee will agree to this stay relief in exchange for waiving claims against the estate. Attorneys should consider the ramifications of this waiver, however, if insurance coverage will be uncertain or unsatisfactory.

## Do Attorneys for Personal Injury Creditors Need to Follow Any Different Process in Mass Tort Debtor Cases Like Purdue Pharma?

In typical Chapter 11 cases, tort claimants are treated like any other unsecured creditor. They file a standard proof of claim, have the same deadlines as other creditors and participate in the general unsecured distribution.

Mass tort bankruptcies, by contrast, often follow a highly structured process. Tort claimants are often represented by a dedicated committee to ensure that personal injury claimants have a voice in plan negotiations and that their claims are handled separately from those of trade creditors and vendors. A special trust is often established by the Chapter 11 plan to hold settlement funds and pay claims based on predefined criteria. Claimants must submit their claims using specialized forms,



follow separate deadlines, participate in alternative dispute resolution, and often wait longer for resolution.

It is crucial that attorneys representing tort claimants obtain bankruptcy counsel for their clients in these cases and closely monitor the required deadlines and procedures.

### **What Do Some of the Recent High-Profile Cases Mean for the Future of Mass Tort Claims in Bankruptcy?**

Cases like Purdue Pharma are reshaping the use of Chapter 11 in mass tort litigation. In *Purdue*, the U.S. Supreme Court rejected the use of nonconsensual third-party releases in Chapter 11 plans, which had long been used to shield directors and officers in exchange for funding victim settlements. Since that decision, courts and practitioners have shifted to alternative structures, including opt-in and opt-out releases, as well as insurance asset sales under Section 363.

Meanwhile, the Steward Health Care case highlights the challenges of navigating administrative insolvency and the limitations of captive insurance. Claimants with large medical malpractice damages have found themselves with limited recourse, underscoring the need for early and aggressive advocacy.

Looking ahead, mass tort bankruptcy practice is likely to become more specialized, requiring close coordination between trial lawyers and bankruptcy professionals. With new legal constraints and evolving case law, strategic collaboration between personal injury lawyers and bankruptcy lawyers will be essential to maximizing recoveries and ensuring due process for injury victims.

### **What Are Some Bankruptcy-Related Practice Tips or Important Points for a Personal Injury Attorney?**

Clear and frequent communication with clients is essential. Personal injury lawyers



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should ask clients early and often whether they've filed for bankruptcy or are experiencing financial distress. Many clients are unaware that a personal injury claim is considered an asset that must be disclosed in bankruptcy. And too frequently, clients file for bankruptcy without informing their personal injury lawyers, which can ultimately harm both the client and the lawyer. Attorneys may also consider adding language to retainer agreements requiring clients to notify them of any bankruptcy filings.

Once a bankruptcy is filed by a personal injury plaintiff, it's critical for personal injury lawyers to coordinate with bankruptcy counsel to ensure the proper approvals to proceed are obtained and your fees are protected.

Timing is critical, especially in cases where the tortfeasor becomes the debtor. Trial lawyers who wait too long to engage bankruptcy counsel risk losing influence in the case and missing critical deadlines. Being involved before plan confirmation, and particularly before a plan is filed, ensures that tort claimants have a seat at the table and understand the implications of the reorganization.

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