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Keys To Defending A Bankrupt Insured In A Civil Case, *Law360*

By Gregory Brown, KD attorney, and Robert T. Norton, complex claims director at Lexington Insurance Company
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Years ago, we handled a set of professional liability cases against an architectural firm. While the cases were underway, the firm entered Chapter 11 bankruptcy with the goal of reorganizing and continuing to operate.

After several months, the firm's creditors failed to agree to a reorganization plan, and the firm entered Chapter 7 liquidation and closed its doors. Though the firm no longer existed, its professional liability insurance policy still covered the claims and we found ourselves handling the litigation defense of a nonexistent entity.

Our experience in defending the architectural firm comes to mind with the economic distress caused by the COVID-19 pandemic. In light of recent events, claims and litigation involving bankrupt or liquidated insureds stand to become more frequent, and defense counsel should be prepared to address the novel issues that come into play when a claim enters the bankruptcy or liquidation setting.

The Bankruptcy Stay

Under Section 362 of the Bankruptcy Code, the commencement of a bankruptcy case by a debtor acts as an automatic stay on any judicial proceeding against the debtor "that was or could have been commenced" before the filing of the bankruptcy case. Often, the imposition of a Section 362 stay delays underlying litigation for a period of months or longer. However, there is no guarantee that the stay will remain in place until the bankruptcy proceeding ends.

Section 362(d) of the Bankruptcy Code allows an interested party to file a motion with the bankruptcy court to terminate, annul, modify or condition the stay "for cause." Thus, defense counsel should be prepared for another party in the underlying litigation to request the bankruptcy court for relief from the stay based on the availability of insurance to cover the claim against the insured.

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