

## A Plaintiff's Bankruptcy Created a Pathway to Settlement

The U.S. Court of Appeals for the Ninth Circuit recently reminded litigants that a plaintiff's bankruptcy can benefit a defendant by providing an alternative settlement path. The plaintiff's bankruptcy trustee can settle claims that arose before the plaintiff's bankruptcy case was filed because those causes of action are part of the bankruptcy estate controlled by the trustee. Defense counsel should consider including a bankruptcy search as part of their standard due diligence.

The case of [In re Vasquez](#), No. 17-55544 (9th Cir. September 13, 2018), involved a debtor who sued her employer shortly after receiving her bankruptcy discharge. She alleged claims based on conduct that occurred both before and after she filed her bankruptcy petition. The parties recognized that it is settled law that claims that arise pre-petition are property of her bankruptcy estate that is administered by her bankruptcy trustee pursuant to 11 U.S.C. § 541(a)(1).

The court confirmed that, for bankruptcy purposes, a claim arises "at the time of the events giving rise to the claim, not at the time plaintiff is first able to file suit," citing *O'Loughlin v. Cty. of Orange*, 229 F.3d 871, 874 (9th Cir. 2000), and that "claims are construed 'broadly . . . to ensure that all legal obligations of the debtor, no matter how remote or contingent' are part of the bankruptcy estate," quoting *In re SNTL Corp.*, 571 F.3d 826, 839 (9th Cir. 2009) (internal citations omitted). The court then parsed the portions of the debtor's claims that arose pre-bankruptcy versus post-bankruptcy.

In affirming the bankruptcy trustee's settlement of pre-bankruptcy causes of action after the trustee reopened her case, the Ninth Circuit reiterated that the bankruptcy trustee was the only party with authority to settle claims arising from pre-bankruptcy conduct. While the defendant would certainly have preferred a cheap and quick settlement of all the debtor's causes of action, it was able to dispose of a significant part of that debtor's lawsuit by settling with her bankruptcy trustee.

Those defending lawsuits might think that bankruptcy trustees would monitor dockets to seize upon settlement opportunities when one of their debtors files suit during or after their bankruptcy case. The reality is that bankruptcy trustees lack the resources and financial incentives to make the searches. Including the search as part of a defendant's due diligence can occasionally pay large dividends.

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