

Look Before You File: The Bankruptcy Code Provides Not All Debts Are Dischargeable

By Camille J. Iurillo and Gina M. Pellegrino

Section 523 of the Bankruptcy Code provides that certain debts are non-dischargeable in a bankruptcy case. Therefore, before advising any client that they should file a bankruptcy case to discharge their debts, it is imperative that you question the client first as to the nature of their debts to determine whether they are dischargeable. For example, suppose you are meeting with a client and they tell you that they have been sued in state court and one of the causes of action is for fraud, and they expect that a judgment will be entered against them on the fraud count - can this debt be discharged in a bankruptcy case? No, probably not, pursuant to 11 U.S.C. § 523(a)(4). Similarly, suppose you are meeting with a client and they want to know whether they can discharge a property settlement that they are required to pay, pursuant to a divorce decree. No, probably not, pursuant to 11 U.S.C. § 523(a)(15).

This article does not address all of the provisions of section 523 of the Bankruptcy Code and is not intended to be an exhaustive discussion.

When the Bankruptcy Code may be unclear, it is often helpful to refer to the applicable case law and legislative history in order to determine whether a particular debt may be dischargeable. For instance, 11 U.S.C. § 523(a)(9) provides that a bankruptcy case will not discharge an individual debtor from any debt "for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance." When analyzing this statute, one question that may arise is whether or not causation between the intoxication and the injury/death is a requirement in order for a debt to be deemed non-dischargeable under 11 U.S.C. § 523(a)(9).

According to the pertinent case law, there are 3 elements that must be proven by a preponderance of the evidence in order for a debt to be deemed non-dischargeable under section 523(a)(9): 1) there must be a debt based on a death or personal injury; 2) caused by operation of a motor vehicle; and 3) the motor vehicle was being operated unlawfully under state law due to the debtor's intoxication. In re Rosado, 2009 WL 3367049, 6 (Bankr. D. Puerto Rico 2009). The claimant in the bankruptcy case does not need to establish a "causal link between the debtor's intoxication and the death or personal injury." Id. In addition, other bankruptcy courts have provided that in order for such debt to be deemed non-dischargeable, there is no requirement that a pre-petition final judgment be entered against the debtor; rather, such debt is deemed non-dischargeable upon a mere showing by the claimant that the debtor was driving while intoxicated "without showing that the intoxication was the principal or sole cause of the accident." In re Dale, 199 B.R. 1014, 1022 (Bankr. S.D. Fla. 1995). Furthermore, in In re Hodak, 119 B.R. 516, 520 (Bankr. W.D. Pa. 1990), the debtor was seeking to discharge a debt arising as a result of a motor vehicle accident while he was legally intoxicated – the debtor specifically denied that the accident was caused by his intoxication. The Court in Hodak held that the claimant is not required to establish that the debtor's intoxicated condition was the cause of the injury/death in order for the debt to be deemed non-dischargeable under section 523(a)(9); the Court explained that nothing in the legislative history suggests that such causation was intended by Congress in drafting section 523(a)(9).

Thus, according to the applicable case law and legislative history, causation between the intoxication and the injury/death is not a requirement in order for a debt to be deemed non-dischargeable under 11 U.S.C. § 523(a)(9).

In conclusion, in addition to obtaining from your clients a list of their assets and liabilities, it is equally as important to understand the nature of their debts in order to fully advise them of their alternatives both in and out of bankruptcy.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, Associate. The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation, Debtors' and Creditors' Rights, and Foreclosures/Workouts.