Filing Bankruptcy during Civil Litigation

The use of bankruptcy as a strategic move in litigation requires a fine line approach. Susan S. Davis and Alicia N. Vaz wrote, The Impact of Adversary Filing for Bankruptcy during Civil Litigation , Los Angeles Lawyer (Sept., 2009), from a litigation strategy perspective.

As a debtor strategy, the first inclination in seeking bankruptcy protection is to invoke 11 U.S.C. §362(a), known as the **"automatic stay."** The automatic stay operates to stop actions or proceedings against the debtor, the moment the bankruptcy petition is filed with the bankruptcy court.

Before continuing any action against the debtor, a party in a pending litigation must obtain relief from the automatic stay. Within the Central District of California, the party seeking relief from the automatic stay would file a Notice of Motion and Motion for Relief From the **Automatic Stay** under 11 U.S.C. § 362. You can find the forms here. The likelihood of prevailing on a motion for relief is highly dependent upon the type of bankruptcy action filed by the debtor, whether the bankruptcy court is the proper venue for the action and whether any insurance coverage will be afforded to the judgment.

Other considerations include timing, injunctions, removal, forum, varied jury pools and procedural concerns. Keep in mind that the **bankruptcy court** is a court of special jurisdiction and simply, is not equipped to handle the more complex and varied cases. Much like the law of insurance, if it should be covered elsewhere, then that is where it belongs.

From a debtor standpoint, be wary of using **bankruptcy as a strategy** in any civil litigation case because you must file bankruptcy in **good faith** and the other party will most likely be granted relief from the automatic stay where it would be appropriate for the court to do so.