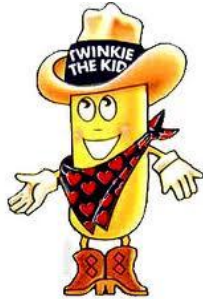


Please, Not the Twinkies!

Golden Sponge Cake and Multiple Bankruptcy Filings

By John Skiba, Arizona Bankruptcy Lawyer

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Hostess, the company that makes the Twinkie, is preparing to file for chapter 11 bankruptcy for the second time in the last seven years. The purpose of a chapter 11 bankruptcy filing is to allow a company to restructure and emerge from bankruptcy leaner, healthier company, a process that Hostess has felt necessary to do more than once. Which leads to the question, “how many times and how often can a person file for bankruptcy?”

The answer is you can file for bankruptcy as many times as you like, however you will not receive the benefit of a bankruptcy discharge if you file more often than allowed under the Bankruptcy Code. In my experience this is not a huge issue in bankruptcy law, but there are those who need to file for bankruptcy more than once in their lifetime. There are some people who need to file multiple times in a relatively short period of time. Here are the guidelines as to how often you can file a bankruptcy case and obtain a discharge/elimination of your debts:

Chapter 7 Bankruptcy

You cannot obtain a [discharge](#) of your debts if you have received a discharge in a previous [chapter 7 bankruptcy](#) in the last 8 years. Likewise, you cannot obtain a discharge in a chapter 7 bankruptcy if you have obtained a discharge in a [chapter 13 bankruptcy](#) case filed in the last 6 years.

Chapter 13 Bankruptcy

You cannot obtain a discharge in a chapter 13 bankruptcy case if you received a discharge in a previous [chapter 7 bankruptcy](#) in the last four years. Further, you cannot obtain a discharge in a chapter 13 bankruptcy if you received a discharge in a prior chapter 13 bankruptcy in the last two years.

It is important to understand that the dates are calculated from the day your case is filed with the court, not from the date when you receive your discharge order.

Limitations on the Automatic Stay

When a bankruptcy case is filed the bankruptcy court automatically enters an order that “stays” or stops all [collection efforts](#) against you. This is called the [Automatic Stay](#) and generally lasts the entire period of your bankruptcy case. The [automatic stay](#) is one of the most powerful tools of the bankruptcy process. However, if you file multiple cases in a short period of time you may not get the benefit of the automatic stay.

For instance, if you file for bankruptcy and have filed a previous bankruptcy case in the last 12 months, the automatic stay will only last for the first 30 days of your case. After that your creditors will be able to resume collection activities such as [garnishment](#), [foreclosure](#), etc. We can, however, ask the bankruptcy court to extend the 30 days if there is a good reason.

If you have filed two prior bankruptcy cases in the last 12 months, and then file a third case, there is no automatic stay protection unless you get the bankruptcy court to agree to extending it.

The reason why this is important to understand is because I have had clients who have filed a prior bankruptcy, had it dismissed, and now need to file a new bankruptcy to stop a foreclosure sale or a garnishment. If there have been prior bankruptcy cases filed in the last 12 months, you may not get the benefit of the bankruptcy filing, or at least not as long as you may have hoped.

If you need to file bankruptcy, even if you have already filed in the last 12 months – especially if need to file and have already filed in the last 12 months – come in for a free consultation and learn what limitations you may have in your case and how we can try and get around those obstacles. I can be reached at (480) 420-4028 or via email at john@skibalaw.com.

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