NEWMEYER & DILLION LLP

PG&E SUBCONTRACTORS:

HERE'S WHAT THE UPCOMING BANKRUPTCY MEANS FOR YOU

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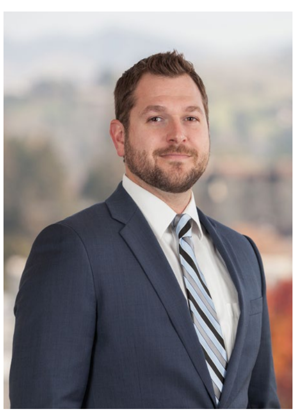
Practice Areas

Bankruptcy

Business Organizations & Reorganizations

Business Transactions

Corporate Matters



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On January 13, 2019, PG&E announced that it would be filing a petition on January 29, 2019, under Chapter 11 of the bankruptcy code. The advance notice was required pursuant to a new California law requiring 15 days' notice to employees of a change in control (including bankruptcy) of the employer. PG&E's impending bankruptcy will present challenges for those doing business with PG&E on a continuing basis. If that's you, here's what you need to know to stay informed and ahead of the curve.

What's At Stake

All creditors owed money for past events, including services or supplies provided to PG&E before the bankruptcy filing, face the prospect of nonpayment for an extended period of time and ultimate payment of less than 100% of the amount owed. Those who are party to an executory contract – a contract for which performance has not been 100% completed – remain obligated to perform those contracts unless and until PG&E rejects those contracts in the bankruptcy proceeding.

> *What could be done:* Creditors in this circumstance should consult with counsel to determine the extent of any remaining obligations and whether there is a possibility of quicker payment for prepetition services or supplies.

Adding insult to injury is the possibility that a business paid for prepetition services within 90 days of the bankruptcy filing might be required to return all or some of those payments. Generally speaking, payments made by a debtor within 90 days prior to the bankruptcy filing are presumed to be "preferential" and subject to claw back into the bankruptcy estate.

> *What could be done:* The good news is that the obligation to pay back these payments is not automatic – there are a variety of defenses available. Two of the more common defenses to a preference claim are:
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> - The payments were made in the ordinary course of established dealings with the debtor; and
> - The amount of any payment received is offset by new value (more services or supplies) provided by the creditor.

Bad News Doesn't Get Better With Time – Act Now

Creditors facing the prospect of nonpayment of existing debt and the potential obligation to repay amounts recently received should promptly consult with counsel to determine potential exposure and plan to minimize the damage caused by a large client's bankruptcy. While the notice requirement is a new wrinkle in bankruptcy filings, it's best to use the allotted time to better understand what options your business has in limiting your exposure.

James Ficenec is a partner in Newmeyer & Dillion's Walnut Creek office. He has represented California businesses for over 25 years and has assisted creditors through large bankruptcies, including General Motors and Chrysler's bankruptcies. You can contact Jim at james.ficenec@ndlf.com.

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ABOUT NEWMEYER & DILLION LLP

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