

**AVAILABILITY OF BANKRUPTCY COURTS TO MARIJUANA
BUSINESSES**



AVAILABILITY OF BANKRUPTCY COURTS TO MARIJUANA BUSINESSES

37th Annual Jay L. Westbrook Bankruptcy Conference

November 16, 2018

Kyung S. Lee

klee@kasowitz.com

(713) 220-8851

Robert J. Shannon

rshannon@kasowitz.com

(713) 220-8850

Kasowitz Benson Torres LLP

1415 Louisiana Suite 2100

Houston, Texas 77002

Historical Stereotype



2

New Cannabis Consumers



3

Are Bankruptcy Courts Available to Marijuana Businesses?

- “We spoke to two dozen people across Oregon’s cannabis industry. They describe a bleak scene: small businesses laying off employees and shrinking operations. Farms shuttering. *People losing their life’s savings are unable to declare bankruptcy because marijuana is still a federally scheduled narcotic*”.

- Is this accurate?

Are Bankruptcy Courts Available to Marijuana Businesses?

I.

The United States Trustee Position

Are Bankruptcy Courts Available to Marijuana Businesses?

- The United States Trustee says “NO”.
- Rationale:

Premise: The Controlled Substances Act (the “CSA”) has primacy over conflicting state laws.

Two impediments created by premise.

1. Bankruptcy system may not be used as an instrument in the ongoing commission of a crime, and reorganization plans that permit or require continued illegal activity may not be confirmed.
2. Trustees and other estate fiduciaries should not be required to administer assets if doing so would cause them to violate federal criminal law.

Are Bankruptcy Courts Available to Marijuana Businesses?

- United States Trustee has moved to dismiss and bankruptcy courts have so far rejected bankruptcy cases filed by “businesses engaged in the legal cultivation and sale of marijuana or by their principals who would use marijuana business income to fund their individual plans.
- *McGinnis*, 453 B.R. 770 (Bankr. D. Or. 2011)(court refused to confirm chapter 13 plan funded by income generated by cultivating and sale of marijuana)
- *Johnson*, 532 B.R. 53 (Bankr. W.D. Mich. 2015)(chapter 13 case would be dismissed unless debtor stopped operating marijuana business, even though only part of the debtor’s income came from cultivating and selling marijuana)
- *Mother Earth’s Alternative Healing Coop., Inc.* (Del. 2012)(court dismissed chapter 11 case filed by medical marijuana dispensary on the basis that the debtor was violating the CSA).
- So, the United States Trustee position appears to be on solid footing when it comes to “companies directly involved in the cultivation and distribution of marijuana.”

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Availability of Bankruptcy Courts to Marijuana Business

Also available as part of the eCourse

[2018 Jay L. Westbrook Bankruptcy eConference](#)

First appeared as part of the conference materials for the
37th Annual Jay L. Westbrook Bankruptcy Conference session
"Marijuana and Bankruptcy: Just Say No!"