AVAILABILITY OF BANKRUPTCY COURTS TO MARIJUANA BUSINESSES



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37th Annual Jay L. Westbrook Bankruptcy Conference

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Historical Stereotype



New Cannabis Consumers



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?

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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 crated 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 required 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."

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