

Breach of Fiduciary Duty Not Dischargeable in Bankruptcy

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If a party brings an action alleging a breach of fiduciary duty by a person holding a Power of Attorney, or by an Executor of the Estate, this party should be aware that this judgment may have a lasting impact should it be obtained.

In general, most civil judgments are dischargeable in bankruptcy should the judgment debtor file for bankruptcy. With regard to a breach of fiduciary duty, however, these judgments are often non-dischargeable in bankruptcy.

What that means is that the judgment cannot be discharged should the judgment debtor file for bankruptcy, but instead, will remain intact after the bankruptcy action. This fact can be used during settlement negotiations in an attempt to resolve such a lawsuit without the necessity of a Trial.

The rationale for not discharging a breach of fiduciary duty judgment is that the bankruptcy courts deem such a finding to be a “defalcation,” or improper conduct, which is not a dischargeable debt. The case law is clear on this issue and it is not unusual that a breach of fiduciary duty judgment is discharged by a bankruptcy court. As such, a judgment for breach of fiduciary duty is strong and has long-lasting effects.

Thus, if a party possesses a claim for breach of fiduciary duty against a person operating under a Power of Attorney or the Executor of an Estate, it is strongly recommended that this claim be prosecuted.

As an added bonus, a party may be entitled to an award of counsel fees under such a claim as well. For these reasons, a claim for breach of fiduciary duty is an important claim that should be asserted any time it is supported by the facts in the context of probate or related litigation.

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National Law Review, Volume IX, Number 128

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