

Do I Need an Attorney to File for Bankruptcy? Part 3: The Lawsuit You Didn't Know You Were Giving Away

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Many myths continue to surround bankruptcy. While it can help people in financial distress, bankruptcy also carries hidden traps that can have unintended consequences.

This third article in Frost Law's special series looks at the advantages for people working with an attorney when filing for bankruptcy — and ways to avoid potential problems.

Most people who file for bankruptcy are focused on one goal — getting out from under an unmanageable mountain of debt. They disclose their bank accounts, their car, and their home. They answer every question on the forms as honestly as they can.

But consider this. Months later, these people are in a car accident — through no fault of their own — and they hire a personal injury attorney to pursue the other driver. What they do not realize is that their bankruptcy filing created a hidden obligation that, if overlooked, could hand that accident recovery — sometimes worth hundreds of thousands of dollars — to the very defendant who caused their injuries.

A landmark decision issued by the United States Supreme Court on June 11, 2026, *Keathley v. Buddy Ayers Construction, Inc.*, No. 25—6, 608 U.S. ____ (2026), brings this hidden danger into sharp focus — and makes the case for experienced legal counsel more urgent than ever.

The experienced bankruptcy attorneys at Frost Law can help. Schedule a free consultation by calling [\(410\) 864-1163](tel:410-864-1163).

Two Clients, Two Accidents, Two Very Different Outcomes

Here are two different stories that illustrate the difference in bankruptcy when having experienced legal representation.



David's Story: David filed a Chapter 13 bankruptcy petition in early 2024. His plan was confirmed by the court, and he was faithfully making monthly plan payments.

About a year into his case, David was rear-ended at a stoplight by a commercial delivery driver. He was seriously injured. Acting quickly, he hired a personal injury attorney and filed a lawsuit against the driver's employer.

He never told his bankruptcy attorney about the accident. He assumed the two matters had nothing to do with each other. When the defendant's lawyers discovered the open bankruptcy case, they moved to have David's personal injury lawsuit dismissed. Because David had not disclosed the lawsuit to the bankruptcy court — even though his case was still open — the court found that he had taken “inconsistent positions” in two separate legal proceedings.

The lawsuit was dismissed. David received nothing.

Maria's Story: Maria was in almost identical circumstances. She, too, was in an active Chapter 13 case when she was involved in a serious accident caused by a negligent driver.

Maria, however, had an experienced bankruptcy attorney who called her regularly to ask whether anything had changed in her financial or legal situation. When she mentioned the accident, her attorney immediately recognized the issue. Within days, her attorney filed an amended bankruptcy schedule formally disclosing the personal injury claim as an asset of her bankruptcy estate. The claim was properly listed, the trustee was notified, and Maria's lawsuit proceeded to a successful settlement.

The financial proceeds were used, in part, to pay her creditors more than they would have otherwise received,

and Maria retained a portion as well. Her attorney knew that one phone call — and one amended form — would make all the difference.

The Hidden Obligation: Your Duty to Disclose

When a person files for bankruptcy, a “bankruptcy estate” is created that encompasses virtually all of their legal and financial interests. This estate is not limited to what the debtor owns on the day they file. In a Chapter 13 case, it also includes property — and legal claims — that arise after the filing date and before the case is closed, dismissed, or converted to another chapter.

The Bankruptcy Code requires debtors to disclose all claims against third parties on their bankruptcy schedules — whether or not a lawsuit has already been filed. These are on official Form 106A/B, Schedule A/B, Part 4, Question 33. The form specifically lists “accidents” and “rights to sue” as examples of assets that must be reported. Critically, debtors sign these schedules under penalty of perjury, attesting that the information provided is “true and correct” under official Form 106Dec.

This is where the doctrine of judicial estoppel becomes a serious trap for the unwary. In legal terms, judicial estoppel is an equitable doctrine that prevents a party from taking one legal position in one court proceeding and an inconsistent position in another. When a bankruptcy debtor fails to list a potential claim on their schedules — effectively representing to the court that the claim does not exist — and then attempts to pursue that very claim in a separate lawsuit, courts have found this to be the kind of inconsistency that judicial estoppel is designed to punish. The practical result: the debtor's lawsuit is dismissed, the defendant goes free, and the debtor's creditors — the very

people the bankruptcy system is designed to protect — receive nothing either.

What the U.S. Supreme Court Said in Keathley

Thomas Keathley was a Chapter 13 debtor whose bankruptcy plan had been confirmed by the court. About a year into his case, he was involved in a car accident in Mississippi with a driver employed by Buddy Ayers Construction, Inc. He retained a personal injury attorney and informed his bankruptcy lawyer of the accident — but neither attorney took the crucial next step of disclosing the claim to the bankruptcy court. When Buddy Ayers Construction later moved to dismiss Keathley’s personal injury lawsuit on grounds of judicial estoppel, the lower courts agreed. That’s because Keathley knew the underlying facts of his claim and had a hypothetical motive to conceal it (disclosure might have required him to pay interest under his bankruptcy plan), making his failure to disclose not an “inadvertent mistake.” Summary judgment was entered against him, and the Fifth Circuit affirmed.

The Supreme Court unanimously reversed the decision. Writing for the Court, Justice Jackson held that the Fifth Circuit’s two-factor test — which asked only whether the debtor knew the underlying facts and whether there was a potential motive to conceal — was both too rigid and too broad. Because a debtor will *almost always* know the facts of their own accident and will *almost always* have some hypothetical reason not to disclose extra assets, the Fifth Circuit’s rule effectively eliminated the “inadvertent mistake” exception entirely. The Court held that whether a disclosure failure is inadvertent must be evaluated under the “totality of the circumstances” — a full equitable inquiry into all the facts, not a mechanical two-part test.

The Supreme Court vacated Keathley’s case and remanded it back to the lower courts for a proper equitable analysis. That is meaningful good news for those in bankruptcy — but it is critical to understand what the decision does not do. It does not eliminate judicial estoppel in the bankruptcy context. It does not create a safe harbor for debtors who deliberately conceal claims. It simply requires courts to conduct a more thorough inquiry before dismissing a lawsuit.

A debtor who never discloses a claim at all, or who does so only after being caught, may still face dismissal — and the risk of criminal exposure for bankruptcy fraud.

How Legal Counsel Protects You

An experienced bankruptcy attorney provides several layers of protection that people representing themselves — known as a pro se debtor — simply cannot replicate. Here are some examples:

- **Ongoing Disclosure Guidance:** A Chapter 13 case can last three to five years. A skilled attorney maintains active communication with the client throughout the case and recognizes immediately when a new asset — an inheritance, an insurance settlement, a personal injury claim — must be disclosed to the bankruptcy court. The Bankruptcy Code imposes a continuing obligation to keep schedules current, and the consequences of failing to do so can be severe.
- **Coordination Between Cases:** When a client has both an active bankruptcy and a pending personal injury claim, there are two separate legal proceedings that must be managed in coordination. An attorney experienced in bankruptcy will ensure that the injury claim is promptly disclosed, that the Chapter 13 trustee is properly

notified, and that any settlement proceeds are handled in a way that maximizes the client's benefit — potentially paying down the plan more quickly or reducing the total amount owed to creditors. See 11 U.S.C. § 1329 (plan modification).

- **Remediation When Mistakes Occur:** As the Keathley Supreme Court case itself illustrates, sometimes a disclosure obligation is missed despite good intentions. If a disclosure failure is discovered early, an attorney can file an amended schedule immediately, provide documentation of the inadvertent nature of the omission, and work proactively with the bankruptcy court and trustee. Swift, transparent correction is far more likely to result in a favorable outcome than a last-minute amendment filed only after a judicial estoppel motion has been served.
- **Protecting the Value of Your Claims:** Justice Sotomayor's concurring opinion in Keathley pointed out the perverse outcome that judicial estoppel produces when applied in a pending bankruptcy: It does not protect creditors; it wipes out the very asset those creditors might have recovered. An experienced attorney understands that proper disclosure is not just a legal formality. It is the key to preserving the value of a personal injury claim for everyone involved, including the debtor's creditors.

When Should You Contact a Bankruptcy Attorney?

The answer has not changed from Parts 1 and 2 of this series: It's sooner than you think.

If you are currently in an active bankruptcy case — under any chapter — and something significant has changed in your life, speak with your bankruptcy attorney before taking any other action. The practical result: The debtor's

lawsuit is dismissed, the defendant goes free, and the debtor, who would otherwise be entitled to compensation, and the debtor's creditors, who may have benefited from the settlement or award, receive nothing.

The Supreme Court's decision in Keathley gives courts more flexibility to find that an honest mistake is just that — an honest mistake. But it does not eliminate the risk, and it will not protect a debtor who was never properly counseled in the first place.

The difference between David and Maria in the stories above was not luck. It was the presence of an attorney who understood the law, monitored the case, and knew exactly what to do when circumstances changed.

Bankruptcy law is more nuanced than it appears, and the stakes — including the right to bring a lawsuit that may be your family's most valuable financial asset — are far too high to navigate alone.

If you are struggling with debt or have questions about how a pending bankruptcy case may affect other aspects of your legal and financial life, contact the experienced bankruptcy attorneys at Frost Law. Call us at [\(410\) 497-5947](tel:4104975947) or [schedule a free consultation](#).

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