

Privilege and Conflicts Post-Petition

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By its nature, a corporate client can experience a myriad of changes that affect its legal rights and relationships. The succession of a corporation's rights in the context of mergers, stock and asset sales is a frequent subject of litigation. Similarly common is the litigation over the succession of legal rights when a corporation files a bankruptcy petition under Title 11 of the U.S. Code. For attorneys who represent the debtor corporation pre-petition, two particularly nettlesome issues can arise: (1) whether the attorney-client privilege can be asserted (or waived) by the debtor-in-possession or trustee insofar as it applies to pre-petition privileged communications; and (2) whether or not the post-petition entity falls into the category of "former client" for conflicts purposes.

The attached article will discuss the reported decisions in these areas and how they have led to somewhat conflicting results.

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