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## Bankruptcy

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### Bankruptcy court shutdown may bring other hardships

By [Kelsey Butler](#) Updated 04:15 PM, Oct-11-2013 ET

Some effects of the government shutdown have been easy to spot: federal workers have been furloughed, national parks have been shuttered, talking heads have invaded our television screens and Twitter feeds mark the entrenched positions of our representatives in Washington.

Heading into the weekend, lawmakers on both sides of the aisle expressed some hope that the ice was thawing and a deal on both the shutdown and the federal debt limit were in the offing.

For the nation's bankruptcy court system, a weekend deal would come just in the nick of time. In an Oct. 10 announcement on its website, the Administrative Office of U.S. Courts said that courts would only definitely remain open for business through Oct. 17 if the shutdown continued.

"When no funding mechanism was in place on Oct. 1, the Judiciary projected that fee income and no-year appropriated funds would enable court operations to continue for ten business days," a notice on its website said. "The Judiciary has severely restricted spending during that period so that limited additional funding now exists. Spending rates and fund balances will continue to be monitored closely in hope that adequate funds may be available to allow courts to operate through the end of the work week."

There will be exceptions. Several courts, such as the U.S. Bankruptcy Court for the District of Delaware in Wilmington in Delaware, which handles a massive amount of bankruptcy cases, and the U.S. Bankruptcy Court for the Eastern District of Michigan in Detroit, which is handling the Motor City's Chapter 9 case, have already announced that they will remain open for the duration of the shutdown.

Some other courts, however, have yet to announce their plans.

According to Sam Gerdano, executive director for the American Bankruptcy Institute, an Alexandria, Va.-based research organization, individual chief judges will decide how to proceed after Oct. 17.

"The tradition is that the courts never close and with electronic filings, that's all the more the case," he said. "Bottom line is, this is a really unique situation so I think the court's instinct is to stay open even if the money

runs out so that the public sees as little a difference as possible, but you really don't know. That could change. You just don't know how long anyone could sustain this on the fumes of the resources that are left over."

A shutdown of bankruptcy courts could be a real economic issue for the rest of the court system, because the bankruptcy court brings in a large revenue stream through filing fees, special fees and "money just passing through the bankruptcy system," Gerdano said.

He pointed out that other court systems, such as the ones for adjudicating immigration and criminal law cases, just don't generate the revenues that bankruptcy does.

"It's really unique to bankruptcy," Gerdano said. "Bankruptcy filings have a direct impact on the federal judiciary budget...[and] really float the rest of the Article III boat."

Washington, D.C.-based Nelson Cohen of **Zuckerman Spaeder LLP**, the debtor counsel for **Automated Business Power Inc.**, said the potential closure could truly have a "substantial adverse effect on bankruptcy cases."

Lawrence Perkins, CEO of restructuring advisory firm **SierraConstellation Partners LLC**, is more specific, believing that if courts do shut down, or aren't operating at full capacity after next week, the largest impact will be on new cases.

**Perkins** said emergency first-day motions such as those to pay employee wages or maintain utilities may not be considered in time.

"Those are things that are most uncertain," Perkins explained. "If they're not taken care of, it could be highly debilitating and potentially catastrophic to the outcome of the case. It could really stop the ability to operate as a going concern."

Richard Bendix, co-leader of **Dykema Gossett PLLC**'s restructuring group, also pointed out that bankruptcy matters tied to deadlines — deals that must close by a certain date in order not to create a financing default, for example—would be in question if they were not heard on time by courts.

"Lenders could possibly waive defaults, but it definitely creates at least potential problems," Bendix said.

Scenarios involving automatic deadlines, such as a lease automatically terminating, could also affect companies involved in the bankruptcy process.

For instance, tenants in shopping centers or commercial properties have 120 days to assume or reject a lease in bankruptcy. If the lease is not assumed in that timeframe, Bendix said, the lease automatically terminates, leaving the potential for a bankrupt company to be booted from its property.

Bendix added that **pro se** debtors—those that have yet to retain counsel—might be affected by any court closure. He estimates that 95% of court filings are done electronically, but pro se debtors that want to file petitions can usually only do so in person with a court clerk.

"If there is no clerk there, they wouldn't be able to file. They wouldn't get the benefit of the automatic stay," Bendix said, leaving business at risk of their properties being foreclosed on.

Aspects of bankruptcy that require regulatory approval will also be stalled.

At least one medical facility operator, **American Medical Technologies Inc.**, has had its case affected by the shutdown.

The company, which filed under the name **Gordian Medical Inc.**, was unable to exit Chapter 11 on its expected date because the Centers for Medicare and Medicaid Services couldn't properly evaluate the company's plan due to the shutdown.

Randye Soref, a bankruptcy lawyer at **Polsinelli Shughart PC**, said the shutdown has already affected cases she's involved in.

"I've got a couple of distressed healthcare deals that I'm working on, where [we couldn't get] clearance to do some sales," Soref explained. "License transfers had to be approved and the Office of the Inspector General is closed. There is no one to talk to there, and in healthcare, that's a problem...I haven't experienced any deals tanking, but at some point, things move forward and people get deal fatigue. So, how long does this last?"

The branches of the Office of the U.S. **Trustee**, a unit of the Justice Department, have also felt the pinch the past two weeks.

According to **Kathryn Catherwood**, a **Foley & Lardner LLP** bankruptcy attorney, because two-thirds of those branches' employees have been furloughed, those offices are "stretched really thin right now."

Analysts that aid trustees in the watchdog process have been furloughed, so initial case meetings for bankruptcies aren't being set as of now, further delaying the process, she said.

**Karol K. Denniston** at **Schiff Hardin LLP**, who focuses on municipal restructurings and is special counsel to distressed **Pacific Grove, Calif.**, maintains that this will only make the bills pile up at companies that are already financially strapped.

"Bankruptcy is a serious situation in a sense of cash flow," Denniston asserted. "When hearings are delayed, you're increasing everybody's costs...there is a layer of administrative costs that is going to hit everybody."

The longer the shutdown lasts, the harder it will be to get in front of a judge, if courts are even open at all.

"What we've been told is, it's got to be almost life and limb. Health and safety issues, high-priority matters," Foley's Catherwood explained. "You better be able to show the extreme urgency of it, and where that threshold will be may change depending on how long this lasts. That bar will raise as things drag out."

At this point, bankruptcy advisers appear to be holding back on filing any new cases until the immediate future seems a bit clearer.

"Most savvy lawyers are working around it," Schiff's Denniston said. "They are not going to file a new case until they know for sure that courts will be open."

SierraConstellation's Perkins, who said that he isn't preparing any immediate filings for clients, said the court's status would be a "massive consideration if we were on the razor's edge of filing or not."

Perkins said that those involved in bankruptcy are preparing contingency plans for next week.

When explaining that many in the bankruptcy community feel that a solution will get worked out because there's no other option, Perkins said, "**Maybe** it's optimistic— and a bunch of people in the bankruptcy business being optimistic doesn't really seem [like it's] consistent—but that might be what it is."

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