

BANKRUPTCY AND INSURANCE COVERAGE

A faint, stylized image of a pair of scales of justice is visible in the background, centered behind the text. The scales are rendered in a light blue color, matching the overall theme of the slide.

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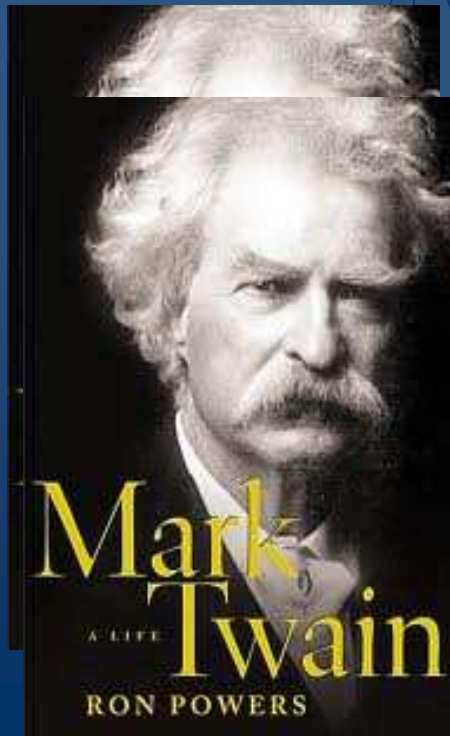
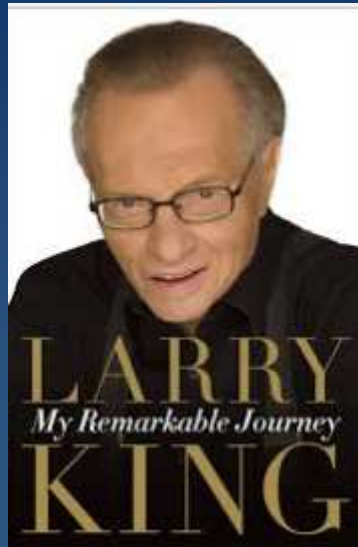
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A faint, stylized image of a balance scale is visible in the background, centered behind the text. The scale has two pans hanging from a horizontal beam, and a vertical post supporting the beam. The entire scene is set against a dark blue gradient background.

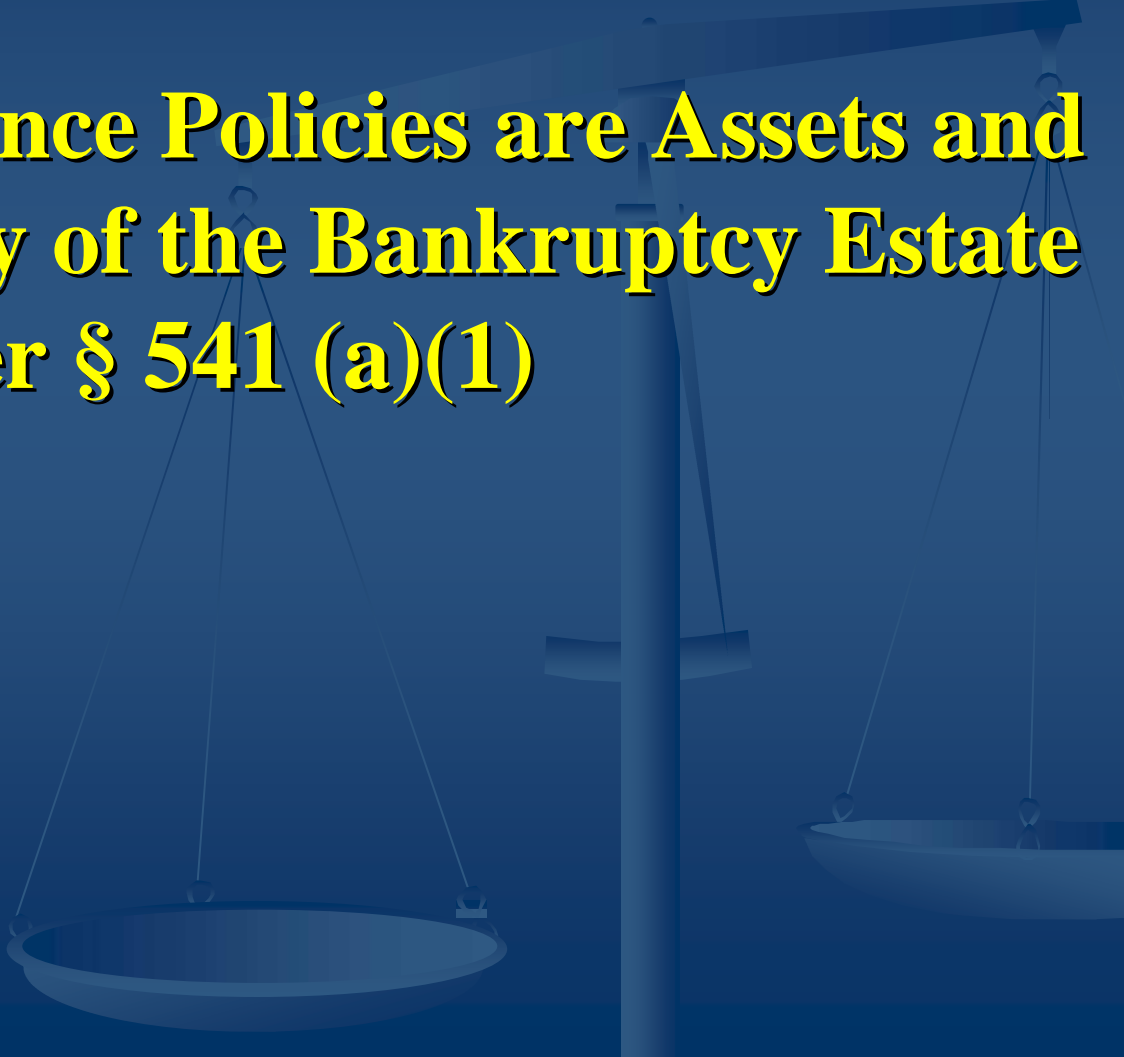
**CHANCES ARE HIGH THAT YOU
WILL HAVE A BANKRUPTCY
CLAIM IN YOUR CAREER**

STATISTICS

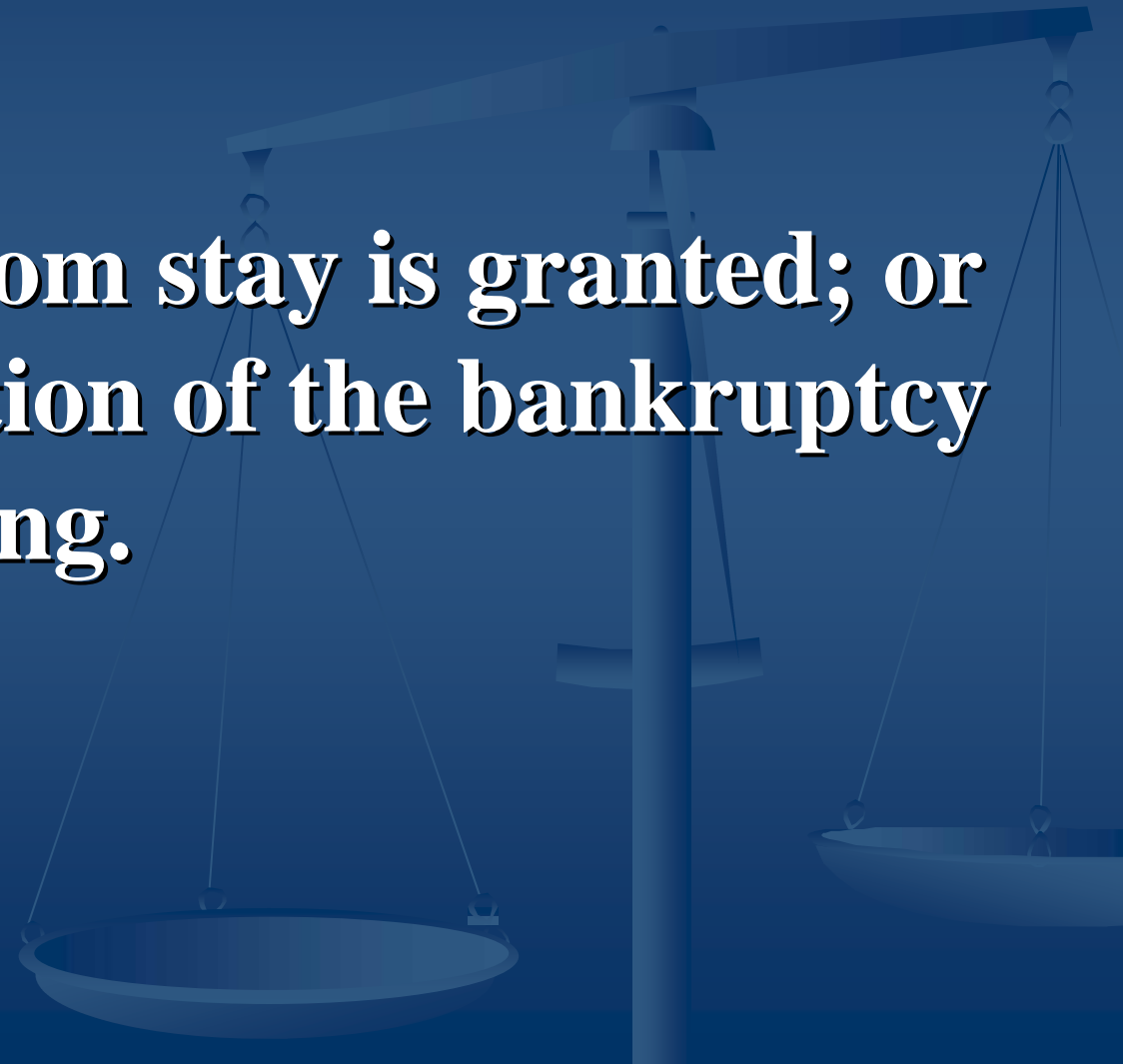
Table F-2. U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2012															
Circuit and District	Total Filings	Total Chapter 7	Total Chapter 11	Total Chapter 12	Total Chapter 13	Predominant Nature of Debt ¹									
						Business Filings					Nonbusiness Filings				
						Total	Chapter 7	Chapter 11	Chapter 12	Chapter 13	Total	Chapter 7	Chapter 11	Chapter 13	
TOTAL	1,221,091	843,545	10,361	512	366,532	40,075	27,274	8,900	512	3,252	1,181,016	816,271	1,461	363,280	



**A Debtor's Insurance Policies are Assets and
therefore Property of the Bankruptcy Estate
under § 541 (a)(1)**



ONCE AN INSURED FILES BANKRUPTCY, THERE IS NO COVERAGE UNTIL

- 1. Relief from stay is granted; or**
 - 2. Completion of the bankruptcy proceeding.**
- 

RELIEF FROM STAY

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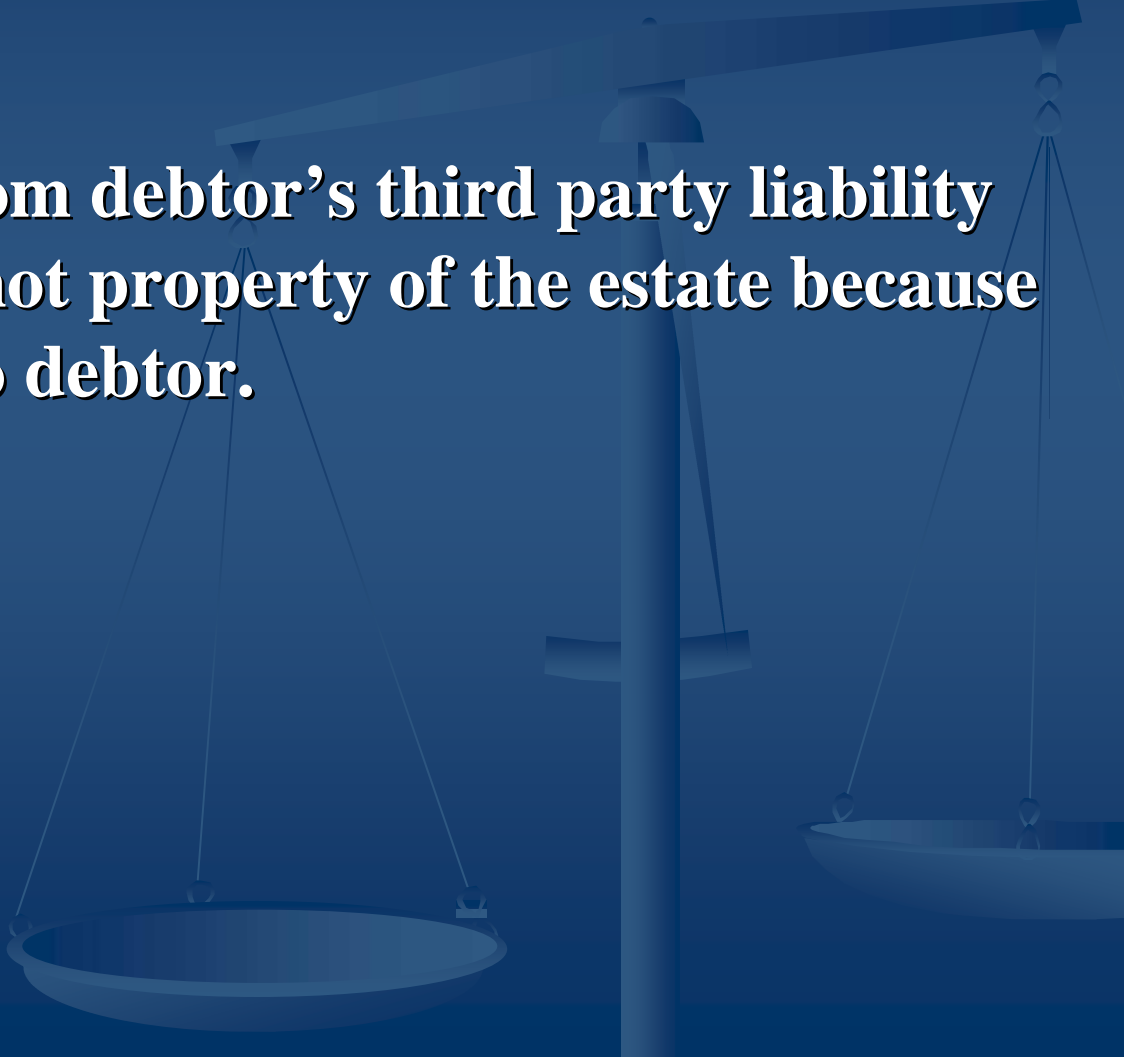
1. State insurance law requires judgment against debtor before recovery against insurer;
2. Claimant agrees not to collect any monies from debtor; and
3. Pursuit of claim does not cause undue expense to debtor.

**A Debtor's Insurance Policy Proceeds
are Sometimes Property of the
Bankruptcy Estate**



PROCEEDS ARE NOT PROPERTY OF THE ESTATE

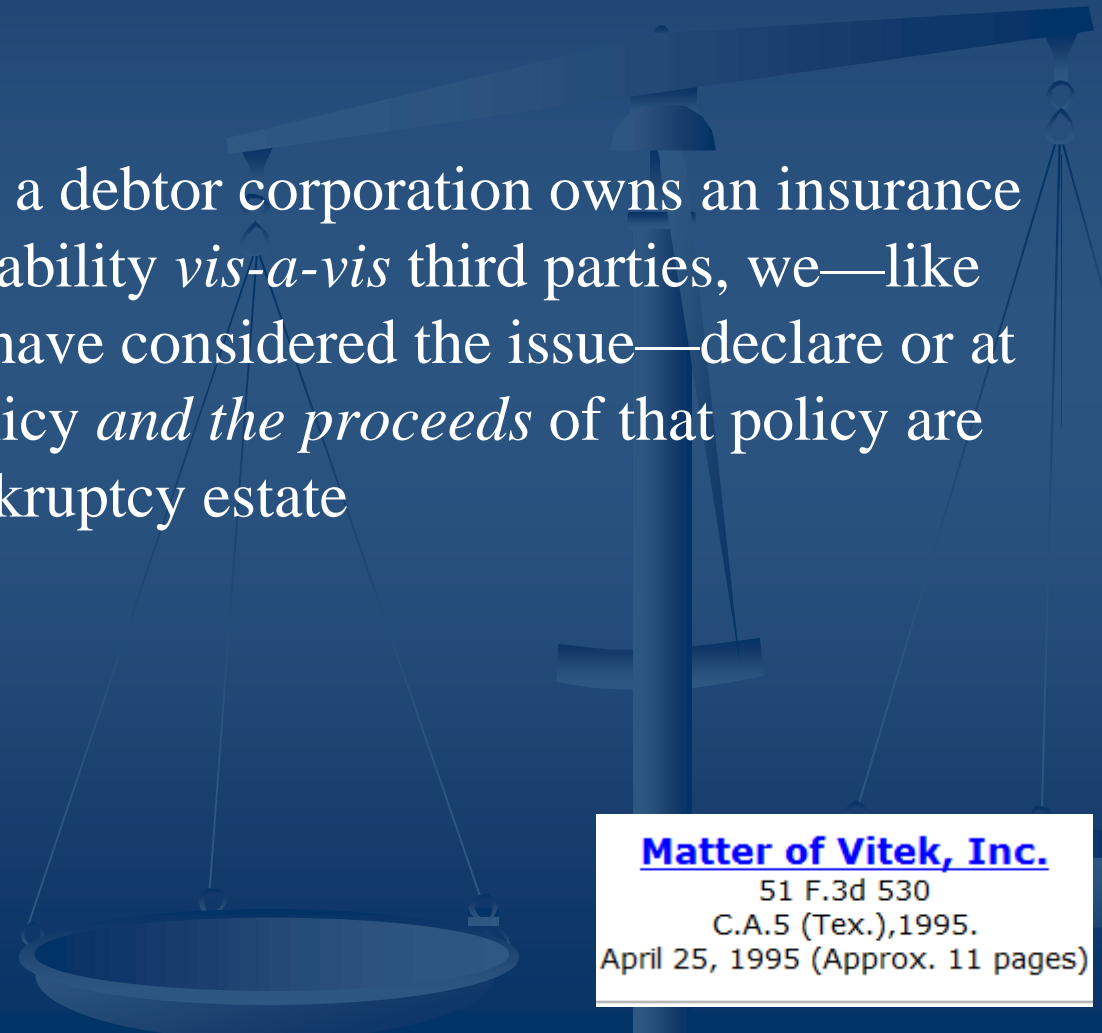
Insurance proceeds from debtor's third party liability policies are generally not property of the estate because they are not payable to debtor.



PROCEEDS ARE NOT PROPERTY OF THE ESTATE

Where there are more claims than proceeds, or where proceeds are considered vital to resolution of bankruptcy, bankruptcy courts have ordered proceeds to stay within estate (Toxic Tort Cases)

Proceeds of first party policies (e.g. property insurance) are typically property of the estate because debtor is intended recipient of proceeds.



On the other extreme, when a debtor corporation owns an insurance policy that covers its own liability *vis-a-vis* third parties, we—like almost all other courts that have considered the issue—declare or at least imply that both the policy *and the proceeds* of that policy are property of the debtor's bankruptcy estate

Matter of Vitek, Inc.

51 F.3d 530

C.A.5 (Tex.), 1995.

April 25, 1995 (Approx. 11 pages)

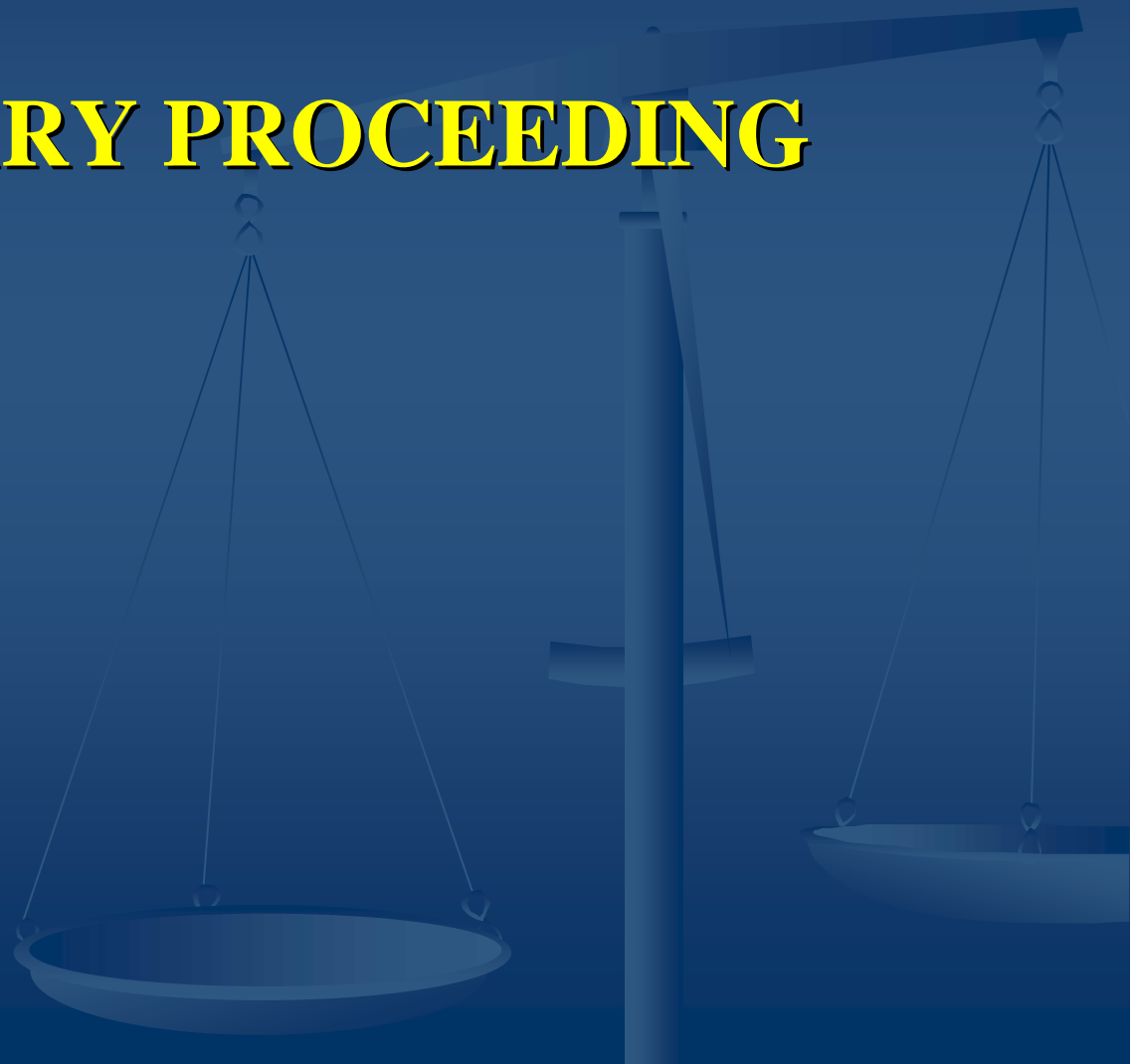
UNLIQUIDATED CLAIMS



An unliquidated claim is one that has not been calculated or established as a specific amount



ADVERSARY PROCEEDING



ADVERSARY PROCEEDING

An adversary proceeding in bankruptcy is a separate lawsuit filed within the bankruptcy case.

A creditor or the bankruptcy trustee might bring an adversary proceeding to challenge the dischargeability of a particular debt -- alleging that you incurred it through fraud.

The trustee might seek to regain property that you transferred or sold to someone else prior to your bankruptcy.

BANKRUPTCY AND *STOWERS*



253 F.3d 807
United States Court of Appeals,
Fifth Circuit.

In the Matter of David Lee DAVIS, Debtor.

Safeway Managing General Agency, Inc. for State and County Mutual Fire Insurance
Co., Appellant,

v.

Randolph Osherow, Trustee; James Baker, Individually and as Temporary Guardian of
the Estate of David Baker, an Incapacitated Person; and Lele Baker, Appellees.

Automobile insurer, whose insured had filed bankruptcy petition after being sued on claims arising from automobile accident, filed adversary proceeding, seeking declaratory judgment that no *Stowers* claim against insured under Texas law for negligently failing to settle a claim within policy limits existed or would exist in bankruptcy estate.

253 F.3d 807
United States Court of Appeals,
Fifth Circuit.

In the Matter of David Lee DAVIS, Debtor.

Safeway Managing General Agency, Inc. for State and County Mutual Fire Insurance
Co., Appellant,

v.

Randolph Osherow, Trustee; James Baker, Individually and as Temporary Guardian of
the Estate of David Baker, an Incapacitated Person; and Lele Baker, Appellees.

**The United States Bankruptcy Court for the
Western District of Texas entered judgment
declaring that a *Stowers* claim existed and was
part of bankruptcy estate.**

253 F.3d 807
United States Court of Appeals,
Fifth Circuit.

In the Matter of David Lee DAVIS, Debtor.

Safeway Managing General Agency, Inc. for State and County Mutual Fire Insurance
Co., Appellant,


v.

Randolph Osherow, Trustee; James Baker, Individually and as **Temporary** Guardian of
the Estate of David Baker, an Incapacitated Person; and Lele Baker, Appellees.

Insurer appealed, and the United States District Court held that: (1) *Stowers* claim was not part of bankruptcy estate, since no judgment was entered against debtor in underlying action until more than three years after debtor's bankruptcy case was commenced, and (2) insured did not suffer injury sufficient to support *Stowers* claim, since bankruptcy discharge relieved him from liability in excess of policy limits.

MYTH

Bankruptcy = no money



BANKRUPTCY AND *STOWERS*

Chapter 7 – Liquidation

Chapter 11 – Reorganization

Chapter 12 - Adjustment of Debts of a Family Farmer with Regular Annual Income

Chapter 13 - Adjustment of Debts of an Individual with Regular Income



Bankruptcy = no money

ENRON BK = \$780 million in fees

LEHMAN BK = \$1.4 Billion in fees

