

DEBT RELIEF



ATTY. LAWRENCE YANG

GM, the largest company in the world, filed for bankruptcy relief this week. The government gave GM another 20 billion to usher it into a "prepackaged" bankruptcy and to give it enough cash to operate while it remains in bankruptcy. The administration confirmed that the bankruptcy was needed so that GM could be reborn as a leaner, more competitive, and profitable business enterprise. In bankruptcy, GM is expected to raise cash by selling major

assets, cut down and restructure debts, void contracts, shed hundreds of dealerships, reduce union and employee benefits, restructure ownership, and reduce brand names and product lines. GM is the maker of Chevy, Cadillac, Saturn, Hummer cars and trucks and has been the flag bearer of American business in the last century. It is a sad day for all Americans that this icon of American business acumen has knocked on the door of bankruptcy court this week but the fact is, without bankruptcy protection and reorganization, GM would have collapsed after the 20 billion new infusion of government funds was used up. The cash infusion would have permitted GM to continue operating for another sixty days. Thereafter, without new funds or bankruptcy court protection,

GM would not be able to pay its legal obligations. Banks, suppliers and other creditors could no longer be paid.

Isn't it ironic to say that GM would get reborn as a profitable business after going through bankruptcy? Not in the least. Bankruptcy protects GM from all creditors and legal obligations and permits it to shed unwanted debt while allowing it to conduct business as usual. Thus, bankruptcy provides a protective wall around GM while it reorganizes and reshapes itself. A Chinese equipment maker has offered to buy Hummer, and a racecar driver has offered to buy Saturn as soon as the Chapter 11 petition of GM was filed. The Chinese company will market Hummer in China where it is perceived to be a status symbol for the new rich there. A

high end Hummer will retail for \$200,000 in Beijing. It's hard to imagine how an expensive gas-guzzler can sell in a communist country but the Chinese company has made the offer to buy and the purchase is pending bankruptcy court's approval. The British flag bearer Jaguar was sold to Tata, the largest Indian carmaker, last year. So, it's not that surprising that the new owner of Hummer will be Chinese. The world economic order has been reshaped in the last 20 years and continues to be reshaped. Colonial powers have ceased to exist for the last half century and the new rich are making their economic strength felt worldwide.

Just like GM, individuals can also use bankruptcy law to their advantage to reshape themselves financially. An in-

dividual debtor with too much accumulated debt may qualify for a chapter 7 "fresh start", or a chapter 13 "consolidation and reorganization". For instance, if you have real estate foreclosures where the second trust deeds are going after you, a chapter 7 might solve your problems. Client's rental property was foreclosed last year and the second trust deed holder has sent him a demand letter to collect \$120,000 claiming that they received nothing from the foreclosure sale. Client is now aware that he still owes the second trust deed of \$120,000 despite the fact that he has lost the rental to foreclosure. In addition, client owes \$50,000 of credit card debt. His net household income of \$6,000 is enough to pay for the first trust deed on his residence

of \$3,500, and the second trust deed on his residence of \$700, plus his 2 car payments that total \$800, and other necessary monthly living expenses. There is no money left to make credit card or the \$120,000 rental second trust deed. Using chapter 7 bankruptcy, client will wipe out \$170,000 of debt and get a "fresh start", just like GM. It's a great deal for client!

If you need debt relief, contact my office. I will analyze your case personally.

Lawrence Bautista Yang specializes in bankruptcy, business, real estate and civil litigation and has successfully represented more than five thousand clients in California. Please call Angie, Barbara or Jess at (626) 284-1142 for an appointment at 1000 S. Fremont Ave., A-1 Suite 1125 Unit 58, Alhambra, CA 91803.

(Advertising Supplement)

GM seeks rebirth through bankruptcy

PROBLEM SOLVED



AGNIEZKA DOLINSKA

BEING placed in removal (formerly deportation) proceedings can be very scary and overwhelming. The fear of the removal process itself as well as the possibility of being sent back home can be not only paralyzing, but also energy zapping and costly. However, having a competent legal representation through the immigration court proceedings frequently makes all the difference - in most cases for the better.

A few introductory notes here. Removal proceedings are civil in nature, which means that that most individuals in immigration court are not detained and their liberty is not restrained. As such, immigrants are not entitled to free legal representation before immigration judges. They can either hire either own attorneys (very much recommended) or they represent themselves, thus acting as their own lawyers (not advisable). In fact, most immigration judges will routinely grant continuances for individuals to retain counsel because it is easier and quicker for them to deal with attorneys.

Hiring a competent attorney is clearly very important, but results can vary. Sometimes immigrants retain bad lawyers. However, let me be clear here. Having a good lawyer in immigration proceedings does not always mean winning in court. As an attorney spending a significant portion of my practice in immigration court, I can attest that most immigration court cases are very difficult to win. Subject to many bureaucratic delays, immigration court cases drag for a long time. Once in proceedings, individuals can usually apply only for a very limited number of applications, which all are subject to judicial discretion. In another words, immigration judges get to use their personal judgment in either granting or denying the requested benefit. No application is ever granted automatically in immigration court, even if it involves marriage to a United States citizen. Sometimes immigration judges display bias and clearly misinterpret the law even when favorable and compelling factors are present. Sadly, there are also cases where simply nothing can be done other than to ensure that the individual in proceedings is treated fairly and with due process.

In some instances, however, individuals lose their cases because of the deficient performance of their attorneys. Law-

yers can make mistakes, which go further than choosing a wrong strategy. The mistakes can include bad judgment calls, coming to court unprepared, neglecting to file appropriate applications and motions, and missing a crucial deadline. Some mistakes can be corrected; some cannot. Is there any recourse against ineffective and incompetent attorneys? The answer is probably yes, depending on one's specific circumstances. The answer may be filing a motion to reconsider or reopen one's case based on ineffective assistance of prior counsel before immigration judges or the Board of Immigration Appeals.

On January 7, 2009, the departing Attorney General Mukasey issued a last-minute decision pertaining to the issue of ineffective assistance of counsel in removal proceedings. The case was Matter of Compean et al. It was not a good case from the immigrant rights' standpoint. In fact, when the Compean decision was released, it stunned everyone because it promoted ideas contrary to many years of legal precedent regarding competent legal representation in removal proceedings.

In a nutshell, Attorney General Mukasey held in Compean that individuals in removal proceedings enjoy no legal or constitutional right to be represent-

ed by lawyers. Consequently, such individuals have no right to complain or seek redress if their rights were compromised by incompetent and ineffective legal representatives. Rather, immigration judges and the Board of Immigration Appeals are vested with discretion to reopen proceedings based on deficient performance of counsel if and when such discretion is deemed appropriate - in a few "extraordinary case" when prior attorney's actions were so lacking that they would have "likely changed the outcome of an alien's initial removal proceedings." The following requirements have to be satisfied: "An alien who seeks to reopen his removal proceedings based on deficient performance of counsel bears the burden of establishing (i) that his lawyer's failings were egregious; (ii) that in cases where the alien moves to reopen beyond the applicable time limit, he exercised due diligence in discovering and seeking to cure his lawyer's alleged deficient performance; and (iii) that he suffered prejudice from the lawyer's errors, namely, that but for the deficient performance, it is more likely than not that the alien would have been entitled to the ultimate relief he was seeking."

The Compean decision signaled a clear warning that times were to get much tougher for individuals in removal proceedings. It also put in place a difficult procedural hurdle, which in some cases could be detrimental

to immigrants previously prejudiced by actions of their prior bad lawyers. Most importantly, Compean not only overturned existing case law and procedure governing assistance of counsel in removal proceedings, but it also did so a very underhanded manner - without first requesting the full range of public notice and input.

As expected, the Compean decision resulted in public outcry and bewilderment. Fortunately, on June 3, 2009, the present Attorney General Eric Holder issued an order vacating Matter of Compean. In his order, Attorney General Holder indicated that the Department of State would initiate new rulemaking procedures on the issue pertaining to ineffective assistance of counsel in removal proceedings. The public is to be invited to comment and weigh in on the proposed rule whenever it is released. In the meantime, the pre-Compean or prior law will be in effect.

This new decision by Attorney General Holder has been well received by immigration proponents and practitioners alike. It not only did away with a bad precedent, but also brought about hope that the future of immigration in the United States is brighter than it has been in the recent years. While there is no way to tell whether or not a new immigration reform is around the corner, this new order by Eric Holder does symbolize a different approach to immigration by the new administration.

In the meantime, individuals represented by attorneys should keep the following in mind. Always make sure that you understand your case and the strategy employed by your attorney. Keep a copy of the retainer agreement between you and your lawyer, clearly stating what your lawyer was hired to do. Also keep copies of the payment and filing fee receipts to prove that you did in fact engage the services of your attorney. These types of documents can be very helpful if you ever need to prove ineffective assistance of your prior attorney.

Our office will be glad to help you with any questions you may have regarding the immigration court process. We can also review your prior immigration case to see if anything can be done, including a motion to reopen. Please do not hesitate to contact us.

Agnieszka (Aggie) Dolinska is admitted to both the State Bar of California and the State Bar of Utah. She is also admitted to the United States District Court for the Central District of California and to the US Court of Appeals for the 9th Circuit. Ms. Dolinska's immigration practice involves all areas of Immigration and Nationality Law, including family and employment-based immigration, non-immigrant visas, deportation defense, litigation, and asylum law. She is also a member of the Orange County Bar Association and J. Reuben Clark Law Society, Orange County Chapter. You may contact Ms. Dolinska at (562) 207-6789. Wilner & O'Reilly, APLC, is located at 17777 Center Court Drive, Suite 200 Cerritos, CA 90703. Visit the firm's website at www.wilneroreilly.com.

(Advertising Supplement)

The skinny on ineffective assistance of counsel

HEALTH ALERT

Measures to consider for H1N1 Flu (Swine Flu) prevention

JUNO CONNECTION



CHARMAINE TEODORO

H1N1 is the new influenza virus causing illnesses in tens of thousands of people worldwide. The World Health Organization received reports from 62 countries reporting a total of 17,410 cases. 115 people have died from the virus with most of the fatalities occurring in Mexico. The United States, which first detected the virus two months ago, has the highest number of cases, with a reported number of 5,029. The Center for Disease Control and Prevention says that the virus spreads from person-to-person, similar to how seasonal influenza is transmitted. The World Health Organization, with a six-level pandemic alert system that measures if the virus is about to become a widespread global epidemic, considers the spread of the illness at level 5. With nations around the world possibly bracing for an outbreak of this new and potentially deadly flu, individuals should take precautions in order to prevent possible illness.

What makes this influenza difficult to immediately identify is the fact that symptoms of H1N1 are very similar to that of seasonal influenza. H1N1, which is commonly known as swine flu because it is a respiratory disease in pigs, do not normally infect humans but have evolved in ways that lead to a human-to-human spread. Common symptoms of the flu are: fever of 100+ degrees Fahrenheit, cough, sore throat, muscle ache, headache, chills and fatigue. Less common symptoms include diarrhea and vomiting. It is highly recommended to consult a doctor immediately if such symptoms manifest.

According to the World Health Organization, the Center for Disease and Control Prevention (CDC), WebMD (<http://webmd.com>) and other health experts, the following guidelines will help prevent us from contracting the new influenza virus.

Wash your hands often. This may be common sense but it does reduce your risk of catching the flu. Wash it for at least 20 seconds with soap, then rinse it with warm water and dry with a clean, disposable towel. Do this especially before eating, after you sneeze, cough or when you commute and touch public surfaces like a handrail or items like a door knob, gate, etc. If water is not available, use an alcohol-based hand sanitizer.

Make sure to cover your mouth and nose when you cough or sneeze. This is common courtesy, and more importantly, it prevents whatever virus, not just H1N1, from spreading.

Keep yourself from touching your eyes, nose or mouth. This is how germs spread.

Eat foods that will boost your immunity and capacity to fight infection. Foods rich in Vitamin C such as green peppers, tomatoes, strawberries and pineapple enhance your immune system. Vitamin E-enriched ingredients like seeds, veg-

etable oil and grains enhance your body's ability to produce B-cells, the immune cells that destroy bacteria. Omega-3 fats, which increase the activity of white blood cells that eat up bacteria, will be very beneficial for your diet. Salmon, tuna and yogurt are some of the foods that contain Omega-3.

Avoid alcoholic beverages. Drinking your favorite beer or cocktail can decrease your ability to resist infections like this new flu. They are known to be immune suppressants aside from being mood depressants.

Exercise! Now may be the best time for all of us to do some repeated moderate exercise. According to WebMD (<http://webmd.com>), when such exercise is repeated almost daily, "there is a cumulative immune-enhancing effect, which leads to a sustained response by the immune system to illness." Simply put, exercise makes your body stronger against viruses.

Without being paranoid or offensive, avoid close contact with sick people.

When you find yourself having symptoms similar to the ones mentioned early on, stay at home for a week until you are symptom-free for 24 hours. This is to prevent the spread of the virus.

Regular flu and swine flu can look and feel similar, so when you have flu-like symptoms, do not conclude that you have contracted H1N1. However, if your symptoms become severe or you live in an infected area, consult a doctor immediately.

Also take note of any office, community or school notices regarding the flu. Public health advisories abound these days, so be conscious of it when commuting or visiting public locations. It is advisable to avoid crowds while the flu is still a public concern.

Taking these precautions will help us protect ourselves from this virus and ensure that we can move on and live a normal life. While it is easy to feel anxious and worried, try to remain calm and rational. Keep in mind that we live in a society with the best medical technologies today, and the flu is nothing to panic about. As long as you maintain your composure and at the same time follow the necessary precautions, you should be able to go on about your daily lives with confidence and peace of mind.

(Side note: H1N1 explained by the Centers for Disease Control and Prevention)

A New Influenza Virus

Novel Influenza A (H1N1) is a new flu virus of swine origin that was first detected in April 2009. The virus is infecting people and is spreading from person-to-person, sparking a growing outbreak of illness in the United States. An increasing number of cases are being reported interna-

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