

**COLLECTION OF WATER AND OTHER MUNICIPAL
CHARGES IN BANKRUPTCY**

LOU JONES BREAKFAST

APRIL 9, 2013

**BY: KEVIN P. SULLIVAN, ASSISTANT CITY ATTORNEY
CITY OF MIWLAUKEE**

- A. Collection of water charges, generally.
 - 1. Water charges billed quarterly by Milwaukee Water Works.
 - 2. Statutory lien to secure payment, Wis. Stat. § 62.69(2)(f).
 - 3. This statutory lien held unperfected until delinquent amounts certified to tax roll *In re U.S. Leather, Inc.* 271 BR 306 (E.D. Wis. 2001).
 - 4. Accordingly, pre-petition water charges treated as unsecured claim.

- B. Collection of post-petition charges.
 - 1. Offer of adequate assurance. Bankruptcy Code § 366.
 - 2. Absent adequate assurance, utility may terminate service. *See Jones v Boston Gas Co. (In re Jones)* 369 B.R. 745 (BAP1 2007)
 - 3. Collection activities with respect to **debtor's** property not barred by automatic stay. Bankruptcy Code § 362(a)(5).
 - 4. Perfection of statutory lien by certification to tax roll for property of the **estate** barred by automatic stay. Bankruptcy Code § 362(a)(4).
 - 5. Relief from stay to permit perfection of statutory lien by certification to tax roll.
 - a. *See In re Connell Adams*, 2012 Bankr. Lexis 5101, Case No. 12-21445-svk (E.D. Wis 2012).
 - b. “[R]elief should be freely granted in recognition of the principles set forth in *Clark* and *Frausto* [citations omitted], that a post-petition creditor not provided for by the Plan bears a relaxed burden to obtain stay relief.” *Adams* at page 4.

C. Municipal charges and fines.

1. Chapter 7 discharge excludes municipal fines. Bankruptcy Code § 523(a)(7).
2. Chapter 13 discharge includes municipal fines if not part of a criminal conviction. Bankruptcy Code § 1328(a)(3).
3. Post-petition charges and code enforcement.

AVOIDANCE OF TAX FORECLOSURE JUDGMENT AS FRAUDULENT TRANSFER

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- A. Overview of tax foreclosure process.
 - 1. Wis. Stat. Sec. 75.521 *in rem* proceeding
 - 2. Absent redemption, 100-120 days until judgment
 - 3. Judgment vests title in City and eliminates liens

- B. Commencement of avoidance proceeding.
 - 1. Filing of an adversary proceeding. Bankruptcy Rule 7001(1).
 - 2. Transfer within two years of the date of petition. Bankruptcy Code Sec. 548(a)(1)

- C. Standing: trustee or debtor as plaintiff.
 - 1. Bankruptcy Code Sec. 548(a)(1): “The **trustee** may avoid any transfer...”
 - 2. Bankruptcy Code Sec. 522(h): “The **debtor** may avoid a transfer of property...”

- D. Reasonably equivalent value.
 - 1. *BFP v. Resolution Trust Corp.* 511 U.S. 531, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) rejecting view that “fair market value” is the standard to be applied.
 - 2. *In re Williams* 473 B.R. 307 (Bankr. E.D. Wis. 2012)

- E. Status of current Eastern District of Wisconsin litigation.

KEVIN P. SULLIVAN
PERSONAL BIOGRAPHY

Mr. Sullivan is an Assistant City Attorney for the City of Milwaukee, a position he has held since 2005. In that capacity, he represents the City in connection with tax and other collection matters which include frequent appearances in bankruptcy court as well as in circuit court proceedings with respect to tax lien foreclosures. Prior positions included serving as Assistant General Counsel to a number of financial institutions, such as Bank One and Marine Bank, where he specialized in commercial lending and collection activities. Mr. Sullivan is a 1981 graduate of the University of Illinois College of Law.