



**The Exception to the Automatic Stays: Determining Whether Revenues are Pledged  
Special Revenues**

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**Introduction**

The Bankruptcy Code provides two automatic stays in cases under chapter 9.<sup>1</sup> These automatic stays, with limited exceptions, prevent both direct and indirect collection efforts against a municipal debtor.<sup>2</sup> The first automatic stay provided by section 362(a) generally stays all direct collection efforts against the debtor.<sup>3</sup> In addition, section 922(a) provides for an automatic stay that, with limited exception, also stays the commencement and continuation of claims against an officer as inhabitant of a municipal debtor, and the enforcement of a lien on or arising out of taxes or assessments of the municipal debtor.<sup>4</sup> However, section 922(a) imposes a broader automatic stay than section 362(a).<sup>5</sup>

The automatic stays imposed by sections 362(a) and 922(a) allow a municipality to operate in order to adjust creditors' claims; the municipal debtor can benefit from these automatic stays, in order to negotiate and implement a plan of adjustment to restructure its debt

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<sup>1</sup> See 11 U.S.C. §§ 362, 922.

<sup>2</sup> Gelfand, *State and Local Government Debt Financing* § 14:13 (2d ed.).

<sup>3</sup> See 11 U.S.C. § 362.

<sup>4</sup> See 11 U.S.C. § 922.

<sup>5</sup> Compare 11 U.S.C. § 362(a) with 11 U.S.C. § 922(a).

and obligations.<sup>6</sup> Section 922(d), however, provides an exception to the automatic stays imposed by sections 362(a) and 922(a).<sup>7</sup> This exception allows the municipality to make certain post-petition bond payments and to distribute certain pledged funds to its bondholders.<sup>8</sup> In particular, section 922(d) provides, “Notwithstanding section[s] 362 [and 922(a)] a petition filed under...chapter [9] does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.”<sup>9</sup> The purpose of section 922(d) is to protect the pledge of special revenues made by the municipality under the special revenue bonds.<sup>10</sup> Section 922(d) was included in the Bankruptcy Code in order to “prevent the delay and expense” from countless requests for relief during the automatic stays, in order to enforce such pledges since many state statutes had “mandated the application of pledged revenues after payment of operating expenses to the payment to secured bonds.”<sup>11</sup> This section allows a municipal debtor to make a post-petition

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<sup>6</sup> See 11 U.S.C. §§ 362(a), 922(a); *Chapter 9 Case Administration*, JUSTICE.Gov, [http://www.justice.gov/ust/eo/ust\\_org/ustp\\_manual/docs/Volume\\_5\\_Chapter\\_9\\_Case\\_Administration.pdf](http://www.justice.gov/ust/eo/ust_org/ustp_manual/docs/Volume_5_Chapter_9_Case_Administration.pdf) (last visited Apr. 18, 2015).

<sup>7</sup> See 11 U.S.C. § 922(d).

<sup>8</sup> *Chapter 9 Case Administration*, JUSTICE.Gov, [http://www.justice.gov/ust/eo/ust\\_org/ustp\\_manual/docs/Volume\\_5\\_Chapter\\_9\\_Case\\_Administration.pdf](http://www.justice.gov/ust/eo/ust_org/ustp_manual/docs/Volume_5_Chapter_9_Case_Administration.pdf) (last visited Apr. 18, 2015).

<sup>9</sup> 11 U.S.C. § 922(d).

<sup>10</sup> *Syncora Guar. Inc v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, (E.D. Mich. July 11, 2014), at \*5 (citing COLLIER ON BANKRUPTCY, ¶ 922.05 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009), available at LEXIS 6-922 Collier on Bankruptcy P 922.05). Special revenue bonds are bonds that are issued to fund a particular purpose. Business Workouts Manual § 35:46. Special revenue bonds are given special treatment in chapter 9 cases. *Chapter 9 – Municipal Bankruptcy*, olshanlaw.com, <http://www.olshanlaw.com/resources-alerts-Chapter9-Municipal-Bankruptcy.html> (last visited Apr. 18, 2015). Under section 902(a), some examples of special revenues include “receipts derived from the ownership, operation, or disposition of projects or systems of the debtor that are primarily used or intended to be used primarily to provide transportation, utility, or other services,” special excise taxes that are levied on certain activities, and “incremental tax receipts from the benefited area.” 11 U.S.C. § 902(a). Most special revenue bonds are secured by taxes or fees generated by a project that the bonds financed. Jay Bender, *New Developments, New Issues for Creditors and Debtors in Chapter 9 Bankruptcy Cases*, WL 4785314 Aspartore (2014). Generally these funds are only payable from the special revenue fund and not from the municipality’s general fund. *Id.* These bonds are treated as secured debt, as opposed to unsecured general revenue. Walter W. Miller Jr., *Municipal Bonds in Chapter 9 Adjustment Proceedings*, 9 Westlaw Journal Bankruptcy 1 (2013); *Chapter 9 – Municipal Bankruptcy*, olshanlaw.com, <http://www.olshanlaw.com/resources-alerts-Chapter9-Municipal-Bankruptcy.html> (last visited Apr. 18, 2015).

<sup>11</sup> 5 Norton Bankr. L. & Prac. 3d § 90:11.

payment of pledged special revenue funds to bond holders.<sup>12</sup> Section 922(d), however, does not mandate that payments be made; rather, the section only permits such payments.<sup>13</sup>

Two courts have recently addressed the issue of whether certain revenues are “pledged special revenues,” and have come to different conclusions.<sup>14</sup> On one hand, the court in *In re Jefferson County* held that the debts secured by Jefferson County’s sewer system were pledged special revenues.<sup>15</sup> On the other hand, the court in *Syncora Guarantee Inc. v. City of Detroit*<sup>16</sup> held that casino tax revenues pledged to secure the debtor’s swap obligations did not qualify as pledged special revenues.<sup>17</sup> It is important to note that the issue facing the court in *Syncora* was slightly different from the one in *Jefferson County*, because in *Syncora* the parties disagreed over the term “special,” while in *Jefferson County*, the parties disagreed over the term “pledged.”<sup>18</sup>

This Article will discuss generally the exception to the automatic stays for municipal debtors under section 922(d). Part I discusses the automatic stays and their purposes. Part II discusses section 922(d). Subsection i. will address *In re Jefferson County*, subsection ii. will address *Syncora Guarantee Inc. v. City of Detroit*. Part III discusses the implications of the exception under 922(d).

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<sup>12</sup> *Chapter 9 Case Administration*, JUSTICE.Gov, [http://www.justice.gov/ust/eo/ust\\_org/ustp\\_manual/docs/Volume\\_5\\_Chapter\\_9\\_Case\\_Administration.pdf](http://www.justice.gov/ust/eo/ust_org/ustp_manual/docs/Volume_5_Chapter_9_Case_Administration.pdf) (last visited April 18, 2015).

<sup>13</sup> Business Workouts Manual § 35:46.

<sup>14</sup> See *Syncora Guar. Inc. v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, (E.D. Mich. July 11, 2014), *In re Jefferson County*, 474 B.R. 228 (Bankr. N.D. Ala. 2012) *aff'd*, BR 11-05736-TBB, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).

<sup>15</sup> *In re Jefferson County*, 474 B.R. 228 (Bankr. N.D. Ala. 2012) *aff'd*, BR 11-05736-TBB, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).

<sup>16</sup> *Syncora Guar. Inc. v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, (E.D. Mich. July 11, 2014).

<sup>17</sup> *Id.* at \*4–5.

<sup>18</sup> Compare *Syncora Guar. Inc.*, 2014 U.S. Dist. LEXIS 94107, at \*4–5 with *In re Jefferson Cnty.*, 474 B.R. at 262.

## I. Automatic Stays Under the Bankruptcy Code

### A. Section 362

Section 362 provides for an automatic stay that arises upon a debtor filing its bankruptcy petition, which stays all collection efforts against the debtor, with very little exception.<sup>19</sup> Section 362(a) applies to stay most actions taken against the debtor or the property of the debtor's bankruptcy estate in order to collect a debt owed by the debtor.<sup>20</sup>

The purpose of the automatic stay is to relieve the debtor from the pressure of creditors trying to collect their claims.<sup>21</sup> The automatic stay also promotes another larger policy of the bankruptcy code—equity of distribution amongst creditors—by preventing a race to the courthouse amongst the debtor's creditors.<sup>22</sup> As such, in addition to protecting debtors, the automatic stay protects creditors by preventing any individual creditor from recovering more of the debtor's assets than the other creditors.<sup>23</sup>

### B. Section 922(a)

Section 922 also imposes an automatic stay in chapter 9 cases that also extends to both pre and post petition claims made against a debtor.<sup>24</sup> Section 922(a) “operates as a stay, in addition to the stay provided by section 362.”<sup>25</sup> Section 922(a) provides for an automatic stay that operates to stay:

- (1) the commencement of continuation, including the issuance or employment of

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<sup>19</sup> Attorney's Practice Guide to Negotiations § 34:2.

<sup>20</sup> Attorney's Practice Guide to Negotiations § 34:2.

<sup>21</sup> Rummler, Arthur W. *Understanding the Automatic Stay of Bankruptcy for the General Practitioner*, 22 THE JOURNAL OF DUPAGE COUNTY BAR ASSOCIATION (2009-10), <http://www.dcbabrief.org/vol221109art2.html>.

<sup>22</sup> *See id.*

<sup>23</sup> 3-362 Collier on Bankruptcy P 362.03.

<sup>24</sup> *See* 11 U.S.C. § 922(a); 6-922 Collier on Bankruptcy P 922.02.

<sup>25</sup> 11 U.S.C. § 922(a).

process, of a judicial, administrative, or other action or proceeding against an officer or inhabitant of the debtor that seeks to enforce a claim against the debtor; and (2) the enforcement of a lien on or arising out of taxes or assessments owed to the debtor.<sup>26</sup>

Accordingly, section 922 imposes a broader automatic stay than the automatic stay imposed by section 362.<sup>27</sup> “Section 922 of the Bankruptcy Code both expands and modifies the provisions of section 362, which are incorporated into chapter 9 by section 901(a).”<sup>28</sup>

## **II. Exception to the Automatic Stays Under Section 922(d)**

As discussed above, section 922(d) provides an exception to the automatic stays imposed by sections 362 and 922(a) in section 922(d). In particular section 922(d) provides that, “Notwithstanding section[s] 362 [and section 922(a)] of this title and subsection (a) of this section, a petition filed under...chapter [9] does not operate as a stay of application of pledged special revenues in a manner consistent with section 927 of this title to payment of indebtedness secured by such revenues.”<sup>29</sup> As such, section 922(d) allows the municipal debtor to continue to transfer funds from pledged special revenues to the indenture trustee of that bond issue.<sup>30</sup>

Congress enacted section 922(d) in order to allow bondholders with claims on pledged special revenues to not be subjected to the automatic stays.<sup>31</sup> It is important to remember that under section 922(d) while a municipal debtor may voluntarily continue to apply pledged special revenues against the debtor’s bond debt, bondholders cannot force the municipality to make such

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<sup>26</sup> *Id.*

<sup>27</sup> Compare 11 U.S.C. § 362 with 11 U.S.C. § 922(a).

<sup>28</sup> COLLIER ON BANKRUPTCY ¶ 922.01, (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009), available at LEXIS, 6-922 Collier on Bankruptcy P 922.01.

<sup>29</sup> 11 U.S.C. § 922(d).

<sup>30</sup> § 15.25 --Limitation of the Automatic Stay, ADVCHEL s 15.25.

<sup>31</sup> See Business Workouts Manual § 35:46.

payments.<sup>32</sup> While, there is very little case law interpreting section 922(d), it is normally understood to ensure “the protection...of a pledge of special revenues under revenue bonds.”<sup>33</sup>

Two cases have come to different conclusions on determining whether revenues were “pledged special revenues” or not in deciding whether section 922(d) was applicable. However, the issues facing each court were slightly different—in *In re Jefferson County* the parties argued over the meaning of “pledged,” while in *Syncora v. City of Detroit*, the parties argued over the meaning of “special.”<sup>34</sup> As discussed below, in *In re Jefferson County* the court found that the revenues at issue were “pledged special revenues,” while in *Syncora* the court found the revenues at issue were not “pledged special revenues.”

**i. *In re Jefferson County***

In *In re Jefferson County*, the indenture trustee was the holder of warrants issued by Jefferson County (the “County”) and John S. Young, Jr. LLC (“Young”).<sup>35</sup> Young was the receiver of Jefferson County’s sewer system properties, and was appointed in connection with an Alabama state receivership case.<sup>36</sup> The indenture trustee wanted the bankruptcy court to permit the Alabama receivership case to continue and to determine that the automatic stays in sections 362(a) and 922(a) did not apply to either the receivership case or the receivers.<sup>37</sup> Both the County and the indenture trustee disagreed over whether section 922(d), the exception to the automatic stay applied, and thus argued over the scope of “pledged” in 922(d).<sup>38</sup> The debtor, the County, argued that the exception found within 922(d) did not apply because the special

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<sup>32</sup> Business Workouts Manual § 35:46.

<sup>33</sup> *Syncora Guar. Inc. v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, at \*5 (E.D. Mich. July 11, 2014), (citing COLLIER ON BANKRUPTCY, ¶ 922.05 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009), available at LEXIS 6-922 Collier on Bankruptcy P 922.05).

<sup>34</sup> *Compare Syncora Guar. Inc.*, 2014 U.S. Dist. LEXIS 94107, at \*4–5 with *In re Jefferson Cnty.*, 474 B.R. at 262.

<sup>35</sup> *In re Jefferson Cnty.*, Ala., 474 B.R. 228, 235 (Bankr. N.D. Ala. 2012) *aff’d*, No. BR 11-05736-TBB, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 263.

revenues were not pledged.<sup>39</sup> In contrast, the indenture trustee argued that the exception within 922(d) did apply because the revenues were pledged.<sup>40</sup>

The County had filed for bankruptcy because it was burdened by crushing debt and the loss of a large part of its tax revenues.<sup>41</sup> The County's debt load was in excess of four billion dollars, most of which was incurred in order to finance repairs of the county sewer system.<sup>42</sup> The County used special revenue warrants that made the sewer system the only source of repayment of the warrant debt.<sup>43</sup> Accordingly, the County and Young did not dispute the fact that such revenues were "special revenues."<sup>44</sup> They did argue, however, that such revenues were not "pledged" under section 922(d).<sup>45</sup>

The court carefully examined the meaning of "pledged" under section 922(d).<sup>46</sup> The County argued that "pledged" refers to the way a creditor secures payment, which according to the County meant possession until repayment.<sup>47</sup> The County argued that the "pledged" in section 922(d) had to be interpreted in conjunction with sections 928, 562(a), and 362(a).<sup>48</sup> Essentially, the County argued, the term "pledged" meant a person giving property to another person to hold until the debt was satisfied.<sup>49</sup> However, the indenture argued that "pledged" does not mean just a possessory lien, and that the indenture is not required to have actual possession of the revenues in order to be granted 922(d)'s exception to the automatic stays in sections 363(a) and 922(a).<sup>50</sup>

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<sup>39</sup> *Id.* at 264.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 236.

<sup>42</sup> *Id.* at 237.

<sup>43</sup> *In re Jefferson Cnty.*, 474 B.R. at 238.

<sup>44</sup> *Id.* at 263.

<sup>45</sup> *Id.*

<sup>46</sup> *See id.* at 264.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

Supporting its view, the indenture cited the legislative history, which supports a broad meaning of “pledged special revenues” which would include the revenues at issue.<sup>51</sup>

The court acknowledged that the term pledged is subject to two separate meanings, as represented above, one limited and the other broad.<sup>52</sup> The court found that the County’s interpretation of “pledged” was problematic because it disregarded the structure of special revenue financing and the intent of the drafters of section 922(d).<sup>53</sup> Congress’ intent for the term “pledged” could be found in its Senate Report, which stated, “‘pledged revenues’ includes funds in the possession of the bond trustee as well as other pledged revenues.”<sup>54</sup> The financing system in place by the County was intended to be continuously used to pay the operating expenses and the revenues to the indentures.<sup>55</sup> The revenue financing was not meant to hold the revenues until another source of payment was received.<sup>56</sup> Ultimately, the court held that certain revenues were “pledged special revenues” even though the revenues at issue were not in the actual possession of the bondholders.<sup>57</sup>

**ii. *Syncora Guarantee Inc. v. City of Detroit***

In *Syncora Guarantee Inc. v. City of Detroit*,<sup>58</sup> the court held that the swap agreements at issue were not special revenue bonds and therefore, were not covered by section 922(d).<sup>59</sup> Prior to filing for bankruptcy in 2013, the City of Detroit (the “City”) had major debt problems.<sup>60</sup>

While the City tried to strengthen its finances, the City issued debt by forming two not-for-profit

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<sup>51</sup> *Id.* at 270–71 (quoting S. REP. NO. 100-506, at 13 (1988)).

<sup>52</sup> *Id.* at 264.

<sup>53</sup> *Id.* at 265.

<sup>54</sup> *In re Jefferson Cnty.*, 474 B.R. at 271 (quoting S. REP. NO. 100-506, at 13 (1988)).

<sup>55</sup> *Id.* at 271.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 273.

<sup>58</sup> *Syncora Guar. Inc. v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, (E.D. Mich. July 11, 2014).

<sup>59</sup> *Id.* at \*4–5.

<sup>60</sup> *Id.*



service corporations to issue Certificates of Participation (“COPs”).<sup>61</sup> These service corporations sold the COPs, while the City used the capital raised to fund the City’s pensions.<sup>62</sup> While some of the COPs had fixed interest rates, others had floating interest rates.<sup>63</sup> In order to protect it against the risk of floating interest rates, the service corporations executed interest-rate swaps agreements with two banks.<sup>64</sup> Because the City had a substantial debt-loan, bondholders would not buy the COPs, and the banks would not execute the swap agreement unless the bonds and COPs sways were insured.<sup>65</sup> Syncora, a monoline insurer, agreed to insure the payments required by the COPs and the swaps.<sup>66</sup>

Ultimately, a credit to downgrade to the City gave swap counterparties the right to terminate the swaps and demand a termination payment in excess of three hundred million dollars.<sup>67</sup> The City ended up defaulting.<sup>68</sup> However, with Syncora’s permission, the City entered into a collateral agreement with swap counterparties.<sup>69</sup> The City gave the swap counterparties an optional termination right and created a “lockbox” system that caused casino tax revenues to be paid into a designated bank account.<sup>70</sup> This account could be frozen if the City did not make its swap payments, and the swap counterparties could access the casino tax only by obtaining an appropriation from the City.<sup>71</sup>

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *In re Syncora Guar. Inc.*, 757 F.3d 511, 513 (6th Cir. 2014).

<sup>64</sup> *Syncora Guar. Inc.*, 2014 U.S. Dist. LEXIS 94107, at \*4–5.

<sup>65</sup> *In re Syncora Guar.*, 757 F.3d at 513.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 513–14.

<sup>71</sup> *In re Syncora Guar.*, 757 F.3d at 514.

In June 2013, Syncora notified the bank that an “event of default had occurred.”<sup>72</sup> As a result, the bank froze the account containing the casino tax revenues.<sup>73</sup> If the City refused to make such an appropriation the swap counterparties could seek a writ of mandamus.<sup>74</sup> The City sued in state court to recover the funds.<sup>75</sup> Then Syncora removed the case to federal district court.<sup>76</sup> However, after the City filed for bankruptcy in July 2013, the district court transferred the case to bankruptcy court.<sup>77</sup> The bankruptcy court held that the casino tax revenue was property of the estate and therefore was protected by the automatic stay.<sup>78</sup> The district court had stayed Syncora’s appeal of the bankruptcy court’s decision regarding the casino tax revenues until the Sixth Circuit ruled on whether the City was eligible to file.<sup>79</sup> The Sixth Circuit, however, granted Syncora’s request for a writ of mandamus and directed the district court to rule on Syncora’s appeal.<sup>80</sup>

The district court then affirmed the bankruptcy court’s decision and held that section 922(d) was inapplicable because the casino tax revenues that secured the City’s swap obligation payments were not “pledged special revenues” under special revenue bonds, and the City’s swap obligation was not a form of indebtedness issued to either the swap counterparties or Syncora.<sup>81</sup> In so holding, the court emphasized that “one of the main purposes of section 922(d)

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *In re Syncora Guar.*, 757 F.3d at 515.

<sup>80</sup> *Id.* at 514–15.

<sup>81</sup> *Id.*

is to ensure ‘the protection in chapter 9 cases of a pledge of special revenues under revenue bonds.’<sup>82</sup>

### III. Implications of Section 922(d)

It is important to note that not all pledged funds constitute special revenues under section 922(d). Courts will reach different results on determining whether 922(d) applies.<sup>83</sup> This will depend on whether the court determines that the revenues are pledged special revenues or not pledged special revenues.<sup>84</sup> If the court determines that the revenues at issue are pledged special revenues, then creditors can continue to apply the revenue to the bond debt without seeking permission from the automatic stay, however bondholders cannot compel the debtor to make payments. While the debtor is not required to make payments, if the funds are already in the bondholder’s control they can take them. The implication is if the revenue is considered a pledged special revenue, it will be considered foreclosed. For example, in *Jefferson County*, the revenues at issue were considered pledged special revenues, and thus the creditors were allowed to foreclose on the revenue. However, just because there is an exception for pledged special revenue bonds does not mean they have to be paid by the debtor, but merely allows the debt to be paid.

Especially with the changing economic climate, the bond party that is entitled to the pledge or revenues at issue will want to be able to apply those funds specifically to its debt and not allow the debtor to use the revenues generally because then the bond party risks being paid in full. It is important to note that a debtor will want to use the funds to help finance

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<sup>82</sup> *Syncora Guar. Inc. v. City of Detroit*, No. 13-CV-14305, 2014 U.S. Dist. LEXIS 94107, at \*5 (E.D. Mich. July 11, 2014), (citing COLLIER ON BANKRUPTCY, ¶ 922.05 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2009), available at LEXIS 6-922 Collier on Bankruptcy P 922.05).

<sup>83</sup> See *Syncora Guar. Inc.*, 2014 U.S. Dist. LEXIS 94107, at \*5; *In re Jefferson County*, 474 B.R. 228, 273 (Bankr. N.D. Ala. 2012) *aff’d*, BR 11-05736-TBB, 2012 WL 3775758 (N.D. Ala. Aug. 28, 2012).

reorganization, however, the creditor will want to get paid, and not care if every other creditor is paid. This is significant because in the past municipal bankruptcy always received payment in full, rather than getting paid less than in full.

However, if the revenue is not considered a pledged special revenue the opposite will occur—the revenue will not be able to be foreclosed upon by the creditor. The *Syncora* decision underscored that while 922(d) broadly covers certain pledged revenues, it does not cover all pledged revenues. As a result, revenues that are pledged to secure a municipalities’ obligations under a derivative contract, such as a swap agreement, will likely not be covered by the exception to the automatic stay contained in section 922(a). Practically, this means that counterparties will not be able to enforce their rights under the derivative contract or continue to collect the revenue from the pledged source. Therefore, chapter 9 debtors will be able to use the funds to help fund its reorganization plan.

## **Conclusion**

Sections 362 and 922(a) impose an automatic stay in bankruptcy. Section 922(a) is broader than section 362 because it also covers residents and/or officers. However, section 922(d) provides an exception to the automatic stays for pledged special revenues. While the scope of section 922(d)’s exception has rarely been litigated, courts have given some guidance through the limited case law. The court in *In re Jefferson County* determined that the funds were pledged special revenues because they were specifically funded from the County Sewer revenue. While, the court in *Syncora* found 922(d) inapplicable, and suggested that future counterparties will not be able to collect from special revenue bonds. The court determined that the swap obligations were not special revenues, because they were not revenues from a specific source.

These two cases underscore, that the determination of whether the revenues are “pledged special

revenues” is significant because it will determine whether the debtor will be able to use the funds to help fund its reorganization plan.