

# Is Nash Engineering the latest company bankrupted by asbestos litigation?

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Pump manufacturer Nash Engineering Company appears to have recently become the latest casualty of asbestos litigation. On October 19, 2021, Nash Engineering filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Connecticut. If Nash Engineering's petition for relief is approved, this will spell the end of the 100-year-old corporation.

Nash Engineering now joins a list of more than 60 other companies that have been forced to declare bankruptcy due to the burden of their asbestos-related liabilities.

## Mass tort litigation and bankruptcy

Corporations facing insurmountable liabilities from mass tort litigation generally have two available options — declare bankruptcy and restructure without the liability or sell off their assets and shutter their doors. Chapter 11 bankruptcy, which allows the company to discharge the liabilities, restructure, and emerge on the other side, is by far the more common approach.

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In the context of asbestos litigation, Chapter 11 bankruptcy is often accomplished by the creation of an "asbestos bankruptcy trust." To effectively discharge its asbestos liabilities, the restructuring company places cash and stock of the new company into a trust that is used to pay asbestos claimants pre-determined amounts through a streamlined administrative system rather than through contentious litigation.

In contrast, Chapter 7 bankruptcy involves the full winding down of the affected business and all assets of the company are sold off to benefit its creditors. Thus, Chapter 7 bankruptcy is a much more drastic measure only undertaken in the most extreme circumstances.

## Why did Nash Engineering file for bankruptcy protection?

While Nash Engineering has not made any public statement explaining its pending dissolution, signs point to settlement and defense costs associated with its ongoing asbestos litigation playing a significant role.

As NERA Economic Consulting has reported,<sup>1</sup> the average cost for a defendant to resolve an asbestos claim continues to climb year over year and the list of creditors filed by Nash Engineering is replete with asbestos plaintiffs' firms, indicating that the lion's share of the company's debts come from asbestos litigation.

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*All pending asbestos litigation against Nash Engineering will be automatically stayed pending the decision of the bankruptcy court.*

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Although Nash Engineering's decision may appear sudden, it is not the first sign of trouble from the company. On April 20, 2020, Nash Engineering filed a notice of dissolution<sup>2</sup> with the State of Connecticut, but it did not declare bankruptcy at that time and continued to be an active participant in asbestos litigation.

Then, in August 2021, several of Nash Engineering's insurers filed an action in Connecticut federal court<sup>3</sup> claiming that they were not obligated to provide coverage under their respective umbrella policies due to Nash Engineering's failure to follow certain protocols in paying expenses related to its asbestos litigation. Nash Engineering declared bankruptcy two months after this case was filed and before a final decision was reached.

All pending asbestos litigation against Nash Engineering will be automatically stayed pending the decision of the bankruptcy court. The effects of this bankruptcy will be felt by the remaining viable defendants, who will be told that they now need to cover the portion

of any settlement that would previously have been paid by Nash Engineering.

The Nash Engineering Company is represented by James Berman of Zeisler & Zeisler, P.C.

The case is *In re: The Nash Engineering Company*, case number 21-50644, in the U.S. Bankruptcy Court for the District of Connecticut.

### Notes

<sup>1</sup> <https://bit.ly/3DHhYPv>

<sup>2</sup> <https://bit.ly/2Zhk49T>

<sup>3</sup> <https://bit.ly/2ZhWGcd>

### About the authors



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