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Wednesday, May 31, 2000

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re

SIDDARTH S. SHAH,

No. 92-11051

[Debtor](#)(s).

Memorandum

After review of the debtor's brief, the court is unconvinced that any basis exists for deviation from the general rule that a [Chapter 11](#) [discharge](#) does not bar a [creditor](#) from raising a prepetition [claim](#) as a setoff against an action brought by the debtor. *In re De Laurentis Entertainment Group, Inc.*, 963 F.2d 1269, 1276-7 (9th Cir. 1992). *See also In re Buckenmaier*, 127 B.R. 233 (9th Cir.BAP 1991). Nor is the court convinced that the debts are not mutual. Both the claims to be set off and the debtor's claim for indemnity arise out of known prepetition environmental problems. The view that a claim for indemnity arises when it is made, and not when the underlying situation occurred, is a minority position rejected by most circuits, including the ninth. *See California Dept. of Health Services v. Jensen*, 995 F.2d 925, 928 (9th Cir.1993). If the situation was reversed, and it was Fluor Corporation that was seeking indemnification from Shah, the correct ruling would be that the obligation was discharged. *In re Manville Forest Products Corp.*, 225 B.R. 862, 866 (Bkrcty.S.D.N.Y. 1998). Accordingly, the debts are mutual and Fluor has validly raised its prepetition claims against Shah as a defense to Shah's indemnification action. For the foregoing reasons, Shah's

motion to enforce his discharge will be denied. No sanctions are appropriate. Counsel for Fluor shall submit an appropriate form of order.

Dated: May 31, 2000

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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