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Eligibility for Damage Awards Under 11 U.S.C. § 362(h): The Second Circuit Answers the Riddle--When Does Congress Actually Mean What It Says?

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ELIGIBILITY FOR DAMAGE AWARDS

The automatic stay provision of the United States Bankruptcy Code (the “Code”), as codified at 11 U.S.C. § 362(a), is the cornerstone of federal debtor-creditor law. By prohibiting all collection

1 11 U.S.C. § 362(a) (1988). The automatic stay provision provides:
[A] petition filed under section 301, 302, or 303 of this title . . . operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

Id.

2 See id. §§ 361-366. Chapter 3, subchapter IV of the Bankruptcy Code provides for the powers of administration of the petitioning debtor's estate. See id. The Administrative Powers sections of the Code have been hailed as “some of the most highly significant . . . of the entire legislation.” 2 D. Cowans, Cowans Bankruptcy Law and Practice § 11.1 (1989). These sections give the debtor in possession of the estate or the trustee in bankruptcy the ability to perform certain activities and to enjoy protections vital to the debtor’s successful completion of its bankruptcy, while also providing for the concerns of creditors. See id. The Administrative Powers sections address issues concerning the following: (1) adequate protection for creditors, 11 U.S.C. § 361 (1988); (2) the automatic stay, id. § 362; (3) use, sale, or lease of the estate property, id. § 363; and (4) obtaining credit while in bankruptcy, id. § 364. Chapter 3 powers are generally applicable to chapter 7 liquidation cases, chapters 11
efforts pending a determination of the rights of interested parties by a bankruptcy court, the automatic stay prevents the depletion

and 13 rehabilitation cases, and, in part, chapter 12 family farmer cases. P. Murphy, Creditors' Rights In Bankruptcy § 1.11 (2d ed. 1990).

Of all the Administrative Powers sections, the debtor's successful liquidation or reorganization rests primarily with § 362, which provides for the automatic stay. See H.R. Rep. No. 595, 95th Cong., 2d Sess., reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 5963, 6296-97 (hereinafter H.R. Rsp. No. 595) (creditors' race of diligence would prevent orderly liquidation or successful reorganization); see also In re Clausken, 118 Bankr. 1009, 1014 (Bankr. D.S.D. 1990) ("automatic stay is bankruptcy's cornerstone"). The stay arises immediately upon the filing of a voluntary or involuntary petition in bankruptcy by a corporate or individual debtor. See M. Bienenstock, Bankruptcy Reorganization 97 (1987) (filing of petition with bankruptcy court "instantaneously shields the debtor from the creditors' predatory acts—as if by magic"). Because Congress intended it to be very broad, see H.R. Rep. No. 595, supra, at 6297, the stay is construed to generally prohibit all actions against the debtor and against the property of the bankruptcy estate. Sepinuck, The Problems With Setoff: A Proposed Legislative Solution, 30 WM. & MARY L. REV. 51, 61 (1988). The section "provides for a broad stay of litigation, lien enforcement, and other actions, judicial or otherwise, which would affect or interfere with property of the estate, property of the debtor, or property in the custody of the estate." 2 COLLIER ON BANKRUPTCY ¶ 362.01 (L. King ed. 15th ed. Supp. 1990) (hereinafter COLLIER).

The scope of the stay is not limited to creditors; it expressly applies to "entities," which even include governmental units. Smith, Local Government Regulation and Bankruptcy: To Stay or Not to Stay, 21 URS. L. REV. 151, 153 (1989) (stay provision applies to local governmental units, even when this government is not a creditor of debtor). "The stay remains in effect until the property is no longer property of the estate or, in the context of actions taken against the debtor personally or against property exempted from the estate, until the debtor receives his discharge or confirmation of the reorganization plan." Comment, Monetary Awards to the Debtor for Violations of the Automatic Stay, 11 FLA. ST. U.L. REV. 423, 424 (1983). For a brief history of the evolution of the stay, see COLLIER, supra.

* See B. Weintraub & A. Resnick, Bankruptcy Law Manual § 1.09(1) (1986). The automatic stay does not alter the creditor's right to collect its due from the debtor; it merely holds that right in abeyance. Id.; see also Hunt v. Bankers Trust Co., 799 F.2d 1060, 1069 (6th Cir. 1986) (stay allows court to decide validity and amount of claims against debtor). However, Congress did realize that the rights of creditors were affected by the stay. See H.R. Rsp. No. 595, supra note 2, at 6297; see also D. Cowans, supra note 2, § 11.2, at 278-79 (owners of collateral often required to defer "realizing upon their rights to foreclose, retake possession, terminate or other similar remedy"). Congress was especially concerned that the automatic stay should not injure a creditor whose collateral may be declining in value while the stay is in force. See H.R. Rep. No. 595, supra note 2, at 6135; cf. Flaschen, Adequate Protection for Oversecured Creditors, 61 AM. BANKR. L.J. 341, 341 (1987) (courts must balance benefits of automatic stay to debtor against detriment suffered by secured creditors whose rights to retake collateral are suspended by stay).

To protect creditors, Congress enacted § 361, which preserves a creditor's position at the time of the debtor's filing in bankruptcy, just as the automatic stay works to maintain the position of the debtor. See D. Cowans, supra note 2, § 11.2; see also Comment, Adequate Protection—The Equitable Yardsstick of Chapter 11, 22 U. RICH. L. REV. 455, 455 (1988) (adequate protection preserves value of collateral from loss due to use, depreciation, or age). If adequate protection is not forthcoming, a creditor can call on the bankruptcy court to have the stay lifted or modified to protect his interest. See 11 U.S.C. § 362(d) (1988).
of assets from the debtor's estate and shields the debtor from harassment by creditors. Because these concerns are so fundamental,

What exactly constitutes adequate protection varies from case to case. See W. Drake, Bankruptcy Practice for the General Practitioner § 9.01 (2d ed. 1990). Although the Code does not define "adequate protection," it does provide examples of what might be acceptable. See 11 U.S.C. § 361 (1988). For example, a trustee is permitted to make periodic cash payments to a creditor to the extent that the value of the collateral has depreciated. See W. Drake, supra. Furthermore, the creditor may be granted an additional or replacement lien in the amount of the decrease of the value of the collateral. See Collier, supra note 2, ¶ 362.07(1). Finally, the Code permits a grant to the creditor of the "indubitable equivalent" of his interest in the property. 11 U.S.C. § 361(3) (1988); see also In re Yale Express Sys., Inc., 384 F.2d 990, 992 (2d Cir. 1967) (granting of administrative priority is not "indubitable equivalent"); In re Murel Holding Corp., 75 F.2d 941, 942 (2d Cir. 1935) (origin of "indubitable equivalent" language in present Code). Other suggestions for adequate protection include: "designation of certain duties with respect to accounting procedures, management of cash of the estate, payment of certain kinds of expenses which have an indirect bearing on the interest of the person entitled to adequate protection." W. Drake, supra.

The creditor can also seek relief from the stay if the debtor has no equity in the property and the property is not necessary for an effective reorganization. See 11 U.S.C. § 362(d)(2) (1988). In seeking this relief, the creditor may have difficulty in setting the value of the property to prove lack of equity. See J. Anderson, Chapter 11 Reorganizations § 9.06 (1983). To establish the standard of "effective reorganization," the debtor must prove there is a possibility of effective reorganization and that it can be effected within a reasonable period of time. Cohn, Protecting Secured Creditors Against the Costs of Delay in Bankruptcy: Timbers of Inwood Forest and Its Aftermath, 6 Bankr. Dev. J. 147, 150 (1989). In the absence of such proof, the stay may be lifted. Id.; see also Collier, supra note 2, ¶ 362.07 (relief from stay should be granted if there is no reasonable likelihood of reorganization due to creditor dissent or feasibility considerations).

See Smith, supra note 2, at 152. Two of the primary policies underlying bankruptcy law are the equitable distribution of a debtor's assets to creditors and the opportunity for a debtor to make a fresh start. Id. There are several instances in which these policies are expressed within the Code. Id. at 152 n.8; see also 11 U.S.C. § 727 (1988) (discharge of debtor); id. § 507 (prioritize allowed claims); id. § 547 (voids preferential transfer of assets for specified time prior to filing bankruptcy petition).

The self-effectuating injunction of the automatic stay gives the debtor a "breathing spell" from his creditors. Smith, supra note 2; see also Zaretsky, Co-Debtor Stays in Chapter 11 Bankruptcy, 73 Cornell L. Rev. 213, 214-15 (1988) (automatic stay prevents all efforts to force debtor into repayment); Note, Bankruptcy: Creditor's Alter Ego Action Against Debtor's Parent Corporation Was Deemed Property of Debtor's Estate to Which the Automatic Stay Applied: S.I. Acquisition, Inc. v. Eastway Delivery Service, Inc. (In re S.I. Acquisition), 817 F.2d 1142 (5th Cir. 1987), 19 Tex. Tech L. Rev. 1213, 1215 (1988) (same). "The stay also protects creditors from each other, preventing a 'race of diligence by creditors for the debtor's assets' and encouraging 'an orderly liquidation procedure under which all creditors are treated equally.'" Zaretsky, supra, at 217 (footnotes omitted).

Section 541 defines the property of the debtor's estate protected by the automatic stay as "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (1988). What constitutes a "legal or equitable interest" must be determined through an examination of state law. See Holthus, A Debtor As a "Creditor" and the Automatic Stay, 65 Am. Bankr. L.J. 377, 382 (1988); see also R. Aaron, Bankruptcy Law Fundamentals § 5.05 (1990) (even property not in name of debtor may be
courts may penalize violations of the stay through civil contempt proceedings\(^6\) or by awarding damages pursuant to 11 U.S.C. § 362(h).\(^5\)

Although the scope of a court's civil contempt power is broad,\(^7\) the language of section 362(h) is restricted to the compensation of "individuals" who are injured by a willful violation of the automatic stay.\(^8\) Despite such restrictive language, the United States Court of Appeals for the Fourth Circuit, in *Budget Service Co. v. Better Homes of Virginia, Inc.*,\(^9\) construed section 362(h) to be applicable to both natural persons and corporations.\(^10\) This interpretation was adopted by the Third Circuit in *In re Atlantic Business and Community Corp.*,\(^11\) and has subsequently become the majority view among the lower federal courts.\(^12\) Recently, however, in *Maritime Asbestosis Legal Clinic v. LTV Steel Co.* (In re property of estate under § 541); Note, *supra*, at 1216 (property of estate includes debtor's rights of action).

\(^6\) See *Collier, supra* note 2, ¶ 362.11. 28 U.S.C. § 1481 enumerates the powers of the bankruptcy court and prohibits bankruptcy judges from punishing criminal contempt not committed in their presence, even contempt that warrants imprisonment. *Id.* However, § 1481 imposes no limitation on the court's power in cases of civil contempt. *Id.* Furthermore, the Bankruptcy Amendments and Federal Judgeship Act of 1984 omitted the § 1481 restrictions, creating the inference that bankruptcy judges may sanction both civil and criminal contempt. *See Zaretzky, Damages for Violations of the Automatic Stay, N.Y.L.J., Jan. 17, 1991, at 3, col. 1 n.8.*

Although the power of a bankruptcy court to punish civil contempt remains unsettled, those authorities that recognize it agree that this power stems from 11 U.S.C. § 105(a), see *Leal, The Power of The Bankruptcy Court: Section 105, 29 S. Tex. L. Rev. 487, 506 (1988)*, which provides that "[t]he [bankruptcy] court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a) (1988); see also R. Aaron, *supra* note 4, § 5.05 (unsettled nature of bankruptcy court's contempt power requires prudent jurist to refer heavier sanctions to district court).

\(^7\) (1988). Section 362(h) provides the following: "[a]n individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." *Id.*


\(^9\) See 11 U.S.C. § 362(b) (1988); see also *Collier, supra* note 2, ¶ 362.12. "As a result of the 1984 legislation, subsection (b) was added to section 362, providing for a recovery of damages, costs, and attorneys' fees by an *individual* damaged by a willful violation of the stay. In the appropriate case, punitive damages may also be recovered." *Id.* (emphasis added) (citations omitted).

\(^10\) 804 F.2d 289 (4th Cir. 1986).

\(^11\) Id. at 292.

\(^12\) 901 F.2d 325, 329 (3d Cir. 1990).

\(^13\) See, e.g., *In re Omni Graphics, Inc.*, 119 Bankr. 641, 644 (Bankr. E.D. Wis. 1990) ("ample authority [exists] for the proposition that 'individual' as used in § 362(h) includes corporations"); *In re AP Indus.*, 117 Bankr. 789, 802 (Bankr. S.D.N.Y. 1990) ("'individual' has been construed by a number of courts to include corporate debtors").
Chateaugay), the Second Circuit applied a plain meaning approach to section 362(h) and held that the term "individual" refers solely to natural persons.

This Note will examine the Second Circuit's analysis in Chateaugay, and submit that the court properly limited the right to recover damages under section 362(h) to natural persons. Part One will briefly discuss the functions of the automatic stay and its enforcement provisions. Part Two will explore the rationale of the expansive majority position extending the availability of section 362(h) damages beyond natural persons to artificial entities. Finally, Part Three will review the Second Circuit's decision in Chateaugay and assert that the court correctly construed the term "individual" as applicable only to natural persons.

I. THE AUTOMATIC STAY AND ITS ENFORCEMENT

Under bankruptcy law, the automatic stay provides a debtor with a "breathing spell" from the collection efforts of creditors by allowing the debtor, under court supervision, to either establish a plan for financial reorganization or liquidate its assets for distribution to its creditors. Once a debtor files a petition for relief in

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18 920 F.2d 183 (2d Cir. 1990).
14 Id. at 184.

The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.

Id.

17 See 11 U.S.C. §§ 1101-1174 (1988). In general, reorganization is preferable to liquidation because it minimizes unemployment and the waste of business assets. See B. Weintraub & A. Resnick, supra note 3, § 8.01. In addition, an ongoing business is the best protection for the long-term interests of creditors and shareholders. Id.

Chapter 11 is also available to individual debtors, but most individuals fare better under chapter 13. See E. Warren & J. Westbrook, The Law of Debtors and Creditors 395 (1986). Usually, those individuals who file under chapter 11 are relatively wealthy and do not qualify under chapter 13. See 11 U.S.C. § 109(e) (1988) (chapter 13 available to individual with regular income and unsecured debts of less than $100,000 and noncontingent, liquidated secured debts of less than $350,000). In a reorganization, the debtor's plan usually arranges for an extension of the time allowed for the payment of debts and a reduction of the amount owed. See E. Warren & J. Westbrook, supra.

18 11 U.S.C. §§ 701-766 (1988). After secured creditors are paid from the collateral securing their claims, id. § 725, the remaining creditors receive distribution in the following order: (1) priority claims, id. § 507; (2) unsecured claims; (3) unsecured claims filed tardily;
bankruptcy, an automatic stay takes effect and bars all creditors from collection efforts for prepetition debts. While the stay is in force, creditors may not attempt to obtain possession or control of any property in which the debtor's estate has a legal, an equitable, or even a mere possessory interest.

The three main purposes of the Code are fair treatment of the debtor, orderly reorganization or liquidation of the estate, and equitable distribution to creditors. The automatic stay facilitates these goals by rendering any aggressive creditor behavior void and thus nonbinding on the debtor. However, such actions by creditors do vex the debtor and often financially drain the estate.

(4) claims for fines or penalties; (5) post-petition interest; and (6) surplus to the debtor. Id. § 726(a).


See E. Warren & J. Westbrook, supra note 17, at 212. The "automatic stay is often likened to 'closing the windows and locking the doors' to prevent any property from leaving the newly formed estate." Id.

All property in which the debtor has a legal or equitable interest as of the date of filing for bankruptcy is property of the estate. See generally COLLIER, supra note 2, ¶ 541.01 (discussing broad concept of estate property).

See B. Weintraub & A. Resnick, supra note 3, § 1.09(2) ([p]roperty from the estate includes all property that the estate controls or possesses, whether or not the bankruptcy estate has lawful title); see also Chapes, Ltd. v. Anderson (In re Scaife), 825 F.2d 357, 361-62 (11th Cir. 1987) (trustee awarded damages against creditor for conversion of property in which debtor had only possessory interest).


See In re Computer Communications, Inc., 824 F.2d 725, 731 (9th Cir. 1987). "All parties benefit from the fair and orderly process contemplated by the automatic stay and judicial relief procedure. Judicial toleration of an alternative procedure of self-help and post hoc justification would defeat the purpose of the automatic stay." Id.

See In re Claussen, 118 Bankr. 1009, 1014 (Bankr. D.S.D. 1990) (piecemeal adjudication by creditors damages equitable distribution); see also Hunt v. Bankers Trust Co., 799 F.2d 1060, 1069 (6th Cir. 1986) (automatic stay protects creditors by preventing a "chaotic and uncontrolled scramble for the debtor's assets").

See, e.g., In re Sechuan City, 96 Bankr. 37, 42 (Bankr. E.D. Pa. 1989) (lessor attempting to shame debtor into paying prepetition rent by posting signs stating that debtor had filed for bankruptcy violated automatic stay); In re Reed, 11 Bankr. 258, 261 (Bankr. D. Utah 1981) (angry creditor violated stay by dumping rotten fish on front lawn of debtor's home).
Therefore, vigorous enforcement of the automatic stay is essential
to deter unjustified creditor actions so that the goals of the Code
may be attained.29

Prior to its amendment in 1984, the Code did not have a pro-
vision to enforce the automatic stay, and courts were forced to rely
solely on their inherent civil contempt power30 to deter creditors
from unauthorized collection attempts.31 Since an automatic stay
arises by operation of law,32 it is viewed as an order of the court.33
As with any court order, a number of coercive,34 remedial civil,35
and criminal36 contempt measures exist to facilitate the adminis-

29 See In re Ronald Perlstein Enters., 70 Bankr. 1005, 1009 (Bankr. E.D. Pa. 1987). In
creating the automatic stay, Congress recognized the debtors' need to devote their limited
financial resources to the development of a plan that treats their similarly classified credi-
tors equitably rather than to the defense of cases brought by creditors outside the bank-
ruptcy court. Id.; see also Hunt, 799 F.2d at 1069 ("purpose of the automatic stay is to
protect creditors in a manner consistent with the bankruptcy goal of equal treatment");

20 See Claussen, 118 Bankr. at 1014. "Bankruptcy courts are loathe to tolerate auto-
matic stay violations . . . . Unless bankruptcy courts vigorously apply Congress' automatic
stay, the Bankruptcy Code would prove meaningless legislation." Id.

31 See, e.g., In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1104 (2d Cir. 1990)
(prior to enactment of § 362(h), bankruptcy courts enforced stay through contempt power);
willful violations of stay exists under contempt power); In re Lile, 103 Bankr. 830, 836
(prior to § 362(h), parties aggrieved by violation of stay invoked remedy of civil contempt).

32 See In re Shafer, 63 Bankr. 194, 197-98 (Bankr. D. Kan. 1986) (ability to enforce
orders through contempt power is necessary to orderly administration of justice and to in-
duce future compliance with court orders).

33 See In re Colon, 114 Bankr. 890, 896 (Bankr. E.D. Pa. 1990) (stay arises automati-
cally by statute without court order); B. Weintraub & A. Resnick, supra note 3 (stay arises
by operation of law and requires no judicial action).

34 See, e.g., Fidelity Mortgage Investors Co. v. Camelia Builders, Inc., 550 F.2d 47, 51
(2d Cir. 1976) (defendants in violation because of knowledge of petition and resulting stay),
cert. denied, 429 U.S. 1093 (1977); Colon, 114 Bankr. at 896 (willful violation of statutory
stay constitutes contempt).

35 See In re Dervaes, 81 Bankr. 127, 129 (Bankr. S.D. Fla. 1987). "Civil contempt is
designed to coerce the contemnor to comply with a court order . . . . The contemnor always
has the ability to purge himself of contempt by obeying the court order." Id. (quoting Wolfe
v. Coleman, 681 F.2d 1302, 1306 (11th Cir. 1982)); see also Shafer, 63 Bankr. at 198
("[c]oercive contempt sanctions are intended to enforce future compliance with court
orders").

36 See Shafer, 63 Bankr. at 198 (remedial contempt sanctions compensate parties in-
jured by noncompliance with court orders); see also In re Davies, 74 Bankr. 406, 411 (Bankr.
N.D. Ohio 1987) (award of attorneys' fees appropriate when violation of stay forces debtor
to resort to courts to enforce its rights); In re Price, 103 Bankr. 989, 996 (Bankr. N.D. Ill.

37 See United States v Revie, 834 F.2d 1198, 1206 (5th Cir. 1987) (criminal contempt
sanctions imposed after defendant's repeated refusal to comply with court orders), cert. de-
tration of justice, to punish the violator, and to compensate the
violated when the order is disregarded.

Section 362(h), added to the Code by the Bankruptcy Amend-
ments and Federal Judgeship Act of 1984,\textsuperscript{37} supplements the
courts' inherent contempt power;\textsuperscript{38} it permits an individual injured
by a "willful"\textsuperscript{39} violation of the stay to recover compensatory dam-
ages, including attorneys' fees\textsuperscript{40} and, when appropriate, punitive
damages.\textsuperscript{\textsuperscript{41}} Because of the preexisting availability of the civil con-
tempt power as an enforcement measure for the automatic stay,\textsuperscript{42}
courts have disagreed as to the precise reason for the enactment of
section 362(h)\textsuperscript{43} and as to whom its benefits may be extended.\textsuperscript{44}

\textsuperscript{38} See In re Forty-Five Fifty-Five, Inc., 111 Bankr. 920, 923 (Bankr. D. Mont. 1990). Section 362(h) was enacted as "an additional right of individual debtors and [was] not in
tended to foreclose recovery under already existing remedies." 130 Cong. Rec. H1942 (daily
902 F.2d 1098, 1104 (2d Cir. 1990) (section 362(h) gives independent statutory basis apart
from contempt power to sanction violations of stay); In re Wagner, 74 Bankr. 898, 903
(Bankr. E.D. Pa. 1987) ("Congress did not intend to abrogate the right to seek civil con-
tempt"). But see In re Alberto, 119 Bankr. 985, 993 (Bankr. N.D. Ill. 1990) (damages under
\textsuperscript{39} See 11 U.S.C. § 362(h) (1988). It should be noted that courts have interpreted "will-
ful" in various ways. See, e.g., In re Littke, 105 Bankr. 905, 910 (Bankr. N.D. Ind. 1989)
("willful" relates to nature of conduct violating stay, not intent); In re Meinke, Peterson &
Damer, P.C., 44 Bankr. 105, 108 (Bankr. N.D. Tex. 1984) (violation is "willful" when party
acts with knowledge of pending bankruptcy). But see In re B. Cohen & Sons Caterers, Inc.,
\textsuperscript{40} See supra note 4 and accompanying text.
\textsuperscript{41} Some courts and commentators restrict the application of § 362(h) to individuals.
(corporate debtor not "individual" under § 362(h)); In re Brilliant Glass, Inc, 99 Bankr. 16,
18 (Bankr. C.D. Cal. 1988) (§ 362(h) does not apply to corporations); D. Cowans, supra note
2, § 11.3, at 292 (only individuals are protected); 1 R. Ginsberg, Bankruptcy, Text, Stat-
utes, Rules § 3.01(b), at 200 (2d ed. 1989) (questioning courts application of § 362(h)
to corporate debtors). However, a majority of courts have construed § 362(h) to apply to corpo-
rate debtors as well. See, e.g., In re Atlantic Business Community Corp., 901 F.2d 325, 329
(3d Cir. 1990) (section 362(h) applicable to corporate debtors); Budget Serv. Co. v. Better
II. THE EXTENSION OF SECTION 362(h) DAMAGES TO CORPORATE DEBTORS

The Fourth Circuit, in Budget Service, disregarded the plain meaning of the term "individual" in section 362(h) and concluded that a corporate debtor is entitled to protection as an "individual." In In re Atlantic Business, the Third Circuit adopted this view, and subsequent federal courts have extended the statute's benefits even further, stating that the term "individual" means "entity." As one of the broadest terms in the Code, "entity" significantly expands the scope of protection under section 362(h) to include persons, estates, trusts, governmental units, and United States trustees. This expansive approach, adopted by a majority of courts, is based on the legislative history of section 362, as well as a perceived need to read all the subsections of section 362 together.

Noting that the Code does not define the term "individual," courts searched the legislative history of the Bankruptcy Reform Act of 1978 for direction. Consequently, several courts deter-

641, 644 (Bankr. E.D. Wis. 1990) (same).
45 11 U.S.C. § 362(h) (1988); see also supra note 6 (text of § 362(h)).
46 See Budget Serv., 804 F.2d at 329 (section 362(h) not limited to individuals).
47 Atlantic Business, 901 F.2d at 329 ("[a]lthough section 362(h) refers to an individual, the section has uniformly been held to be applicable to a corporate debtor").
50 See In re Atlantic Business Community Corp., 901 F.2d 325, 327-29 (3rd Cir. 1990).
52 See Budget Serv., 804 F.2d at 292 (Code does not define "individual"); In re Jim Nolker Chevrolet-Buick-Oldsmobile, Inc., 121 Bankr. 20, 22 (Bankr. W.D. Mo. 1990) (Congress' failure to define "individual" in Code is one of few instances that legal term of art not properly set out); see also Homer Nat'l Bank v. Namie, 96 Bankr. 652, 654 (W.D. La. 1989) ("individual" not defined in Code); In re La Cache Land Co., 54 Bankr. 629, 631 (E.D. La. 1985) (same).
54 See In re 362(a) was intended to provide a shield, principally for the debtor, to facilitate the concept of fresh start and to enhance prospects for a reorganization. It logically follows that section 362(h) was enacted to buttress that shield by creating a private right of action for those intended beneficiaries of section 362(a) to fully compensate them for their actual damages and reasonable attorney's fees.
minded that Congress intended the automatic stay to be all-encompassing; that is, broad enough to protect all interests in properties of all types of debtors. These courts advocate a broad reading of section 362(h) and believe that a contrary interpretation would conceptually defeat Congress' intent that the comprehensive automatic stay protect not only natural persons, but corporations and other entities as well. From a policy perspective, some courts have suggested that denying corporate debtors the right to seek section 362(h) damages would amount to a violation of the cardinal rule of Anglo-American jurisprudence that "for every wrong there is a remedy."

A number of courts have further determined that section 362(h) protects creditors as well as debtors, reasoning that if incurred in defending against willful violations of the stay. The discretionary power and authority conferred upon the courts to award punitive damages serves as a deterrent against egregious behavior and flagrant conduct violating the automatic stay. Thus, Congress has fully provided all the shielding needed by the intended beneficiaries of the automatic stay.

Id. 64 See Atlantic Business, 901 F.2d at 327 ("scope of the automatic stay is undeniably broad"); Tel-A-Communications Consultants, 50 Bankr. at 254 (automatic stay intended to give all debtors broad relief from all entities).

65 See Budget Serv., 804 F.2d at 292 (stressing that relief under § 362(h) applies to corporations as well as individuals); Nash Phillips/Copus, 78 Bankr. at 803. "[I]n light of the intent of Code Section 362(a) to give debtors broad relief from all entities it seems highly unlikely that only individual debtors are intended to have a remedy against those who willfully violate the automatic stay. This narrow interpretation is rejected by this Court." Id. One court, finding the limited scope of the term "individual" unreasonable, asserted that a drafting error was the only possible explanation for its use. See In re Bryant, 51 Bankr. 729, 731 (Bankr. N.D. Miss. 1985). "In obvious haste to enact bankruptcy legislation in some fashion at the eleventh hour, the drafters have provided several discriminatory loop holes for the innovative litigant, and, at the same time, have inflicted meaningless requirements as obstacles to legitimate bankruptcy relief." Id. Examining numerous consumer credit amendments, the court questioned why such amendments, although literally applicable to "individuals" only, should not also be extended to corporations. See id. at 731 n.1. The court concluded that to impose such a limitation would be inconsistent with the overall purposes of the Code. See id. But see Chateaugay, 920 F.2d at 185 (no indication of drafting error in history of § 362(h)).

66 See Sabino, Right Without A Remedy—Second Circuit Denies Corporate Debtor Award of Damages Under § 362(h) Against Stay Violator in LTV Bankruptcy, Norton Bankr. L. Adviser, Feb. 1991, at 1 (without § 362(h) nonindividual debtors may be deprived of important deterrent against violations of stay).

67 See In re Jim Nolker Chevrolet-Buick-Oldsmobile, Inc., 121 Bankr. 20, 22 (Bankr. W.D. Mo. 1990). When a creditor acts in violation of the automatic stay, the debtor is entitled to relief from the damages resulting from the violation. See id.

68 See In re Omni Graphics, Inc., 119 Bankr. 641, 644 (Bankr. E.D. Wis. 1990) (section 362(h) includes parties other than debtors); In re Kroh Bros. Dev. Co., 91 Bankr. 525, 539 (Bankr. W.D. Mo. 1988) (debtor not only party who can seek damages under § 362(h)).
Congress had intended the exclusion of creditors, the term “debtor” would have been used instead of “individual.” Moreover, these courts have determined that an expansive interpretation of the section is consistent with the Code’s goal of protecting the interests of creditors. They assert that a creditor whose share of a debtor’s estate is diminished by a violation of the automatic stay by another creditor is “injured” and is thus entitled to compensatory damages under section 362(h). Based on this reasoning, these courts have declared that an extension of the term “individual” is necessary to protect the vast number of corporate creditors.

III. In re Chateaugay: Restricting the Application of Section 362(h) to Natural Persons

In Chateaugay, the Second Circuit reversed two lower court decisions and held that an injured corporation did not constitute an “individual” entitled to damages under section 362(h). The plaintiff in Chateaugay, Maritime Asbestosis Legal Clinic (“MALC”), representing seamen exposed to asbestos during the course of employment, commenced two separate federal actions in tort against the LTV Steel Company (“LTV”). The first suit, instituted in the Eastern District of Michigan two years after LTV

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60 See Homer Nat'l Bank, 96 Bankr. at 655 (creditor's ability to recover damages under § 362(h) consistent with congressionally stated policy of equal distribution to creditors of debtor's assets); see also Collier, supra note 2, ¶ 362.04 (benefit of stay is creditor protection consistent with bankruptcy goal of equality of distribution).
61 See H.R. Rep. No. 595, supra note 2, at 6296. By preventing creditors from pursuing their own remedies against the property of the debtor, the automatic stay also protects creditors from each other. Id. Since “[b]ankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally,” uncooperative, aggressive creditors will not be able to obtain preference and payment over those creditors working with the debtor toward a successful handling of the bankruptcy. Id.
62 Id. at 183.
had filed a petition for relief in bankruptcy,86 was dismissed by reason of the automatic stay.87 Nevertheless, approximately eight months later MALC filed complaints against LTV in a suit in the Northern District of Ohio.88 Consequently, the bankruptcy court permanently enjoined MALC from further prosecution of the actions89 and awarded compensatory damages to LTV under section 362(h).70 On appeal, the district court affirmed the decision of the bankruptcy court.71 However, the Second Circuit reversed the findings of the lower courts,72 basing its holding on the plain meaning of the statute,73 the consistent use of "individual" in the Code,74 the legislative history of section 362(h),75 and the availability of the court's contempt power to protect corporate debtors.76

A. A Focus on Plain Language and Consistent Interpretation

Judge Mukasey, sitting by designation and writing for a unanimous Second Circuit panel, relied on the plain meaning of the language in the statute77 and concluded that section 362(h) damages were not available to injured corporations.78 Emphasizing that

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86 Id.
87 Id.
88 Id. (complaints were filed against LTV as part of mass tort litigation).
89 Id. at 184.
90 Id. (compensatory damages of $7,600 awarded to debtor corporation).
72 Chateaugay, 920 F.2d at 187. The lower court's orders were reversed to the extent they awarded compensatory damages under § 362(h) and remanded for further proceedings. Id.
73 Id. at 184.
74 Id. at 184-85.
75 Id. at 186.
76 Id. at 187 (for debtors other than natural persons, contempt proceedings are proper channel to punish willful stay violations).
77 See id. at 184. The court focused on the guidelines issued by the Supreme Court for the interpretation of the bankruptcy statute. Id. In United States v. Ron Pair Enters., the Court stressed that "there generally is no need for a court to inquire beyond the plain language of the statute." 489 U.S. 235, 240-41 (1989). The plain meaning should be enforced except in the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of its drafters." Id. at 242 (citation omitted). The court concluded that when "the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" Id. at 241 (citation omitted); see also In re Hooton Co., 43 Bankr. 389, 391 (Bankr. N.D. Ala. 1984) ("individual" generally means human being, as opposed to social group or institution).
78 Chateaugay, 920 F.2d at 187; see also In re First RepublicBank Corp., 113 Bankr. 277, 279 (Bankr. N.D. Tex. 1989) (section 362(h) not available to corporate debtors); In re Brilliant Glass Inc., 99 Bankr. 16, 18 (Bankr. C.D. Cal. 1988) (corporation not "individual"
Congress generally drafts statutes using words in their ordinary meaning,79 the court limited the availability of section 362(h) damages to natural persons.80 Judge Mukasey reasoned that a strict construction is not contrary to the drafters' intent because injured corporate debtors still have a remedy flowing from the courts' civil contempt power.81

An examination of the definitions section of the Code lends support to the Second Circuit’s decision in Chateaugay. Although the Code defines “person” to include “individual, partnership, and corporation,” it supplies no definition for the term “individual.”82 Thus, as a matter of logical construction, if “individual” included “corporation,” there would be no need to specify both terms when defining “person.”83 In addition, the Second Circuit observed that throughout the Code the term “individual” is used to refer to a natural person.84 The Code, for example, defines “relative” as

within meaning of § 362(h)); H. Lebowitz, Bankruptcy Deskbook 245 (2d ed. 1990) (under § 362(h) an “individual” as opposed to definitional “person,” may recover).

79 See Chateaugay, 920 F.2d at 184; see also Homer Nat’l Bank v. Namie, 96 Bankr. 652, 655 (W.D. La. 1989). “It should be generally assumed that Congress expresses its purpose through the ordinary meaning of the words it uses.” Id.

80 Chateaugay, 920 F.2d at 187; see also COLLIER, supra note 2, ¶ 101.08 n.1 (corporation not “individual” in Code).

81 See Chateaugay, 920 F.2d at 187; see also Brilliant Glass, 99 Bankr. at 18 (contempt appropriate remedy for impairment of corporate debtor’s reorganization). There exists a split among the circuits, however, as to whether the bankruptcy courts have the power to impose civil contempt sanctions, or whether they must certify a finding to the district courts. Compare In re Skinner, 917 F.2d 444, 447 (10th Cir. 1990) (bankruptcy courts can impose civil contempt sanctions) with In re Sequoia Auto Brokers, 827 F.2d 1281, 1284 (9th Cir. 1987) (bankruptcy courts have no inherent civil contempt authority). While the civil contempt power is not specifically provided for in the Bankruptcy Code, those bankruptcy courts sanctioning civil contempt argue that their authority stems from 11 U.S.C. § 105(a), the “equitable powers” section. See Skinner, 917 F.2d at 447 (bankruptcy courts have no inherent civil contempt power but Congress granted power by statute, 11 U.S.C. § 105); see also First RepublicBank., 113 Bankr. at 279 (bankruptcy court has power under 11 U.S.C. § 105 to impose sanctions for contempt); In re Hulon, 92 Bankr. 670, 675 (Bankr. N.D. Tex. 1988) (same).


84 See Chateaugay, 920 F.2d at 184. “Throughout the code, rights and duties are allocated in some instances to ‘individuals’ and in others to ‘persons.’” Id.; see also In re First RepublicBank Corp., 113 Bankr. 277, 278-79 (Bankr. N.D. Tex. 1989) (Code distinguishes between “corporation” and “individual”).
“[an] individual related by affinity or consanguinity within the third degree . . ., or [an] individual in a step or adoptive relationship within such third degree.” When “individual” is used in such a context, corporations clearly are precluded from its definition. Furthermore, in numerous situations courts construing other sections of the Code have determined that “individual,” as used in those sections, does not include corporations; it is therefore improbable that the congressional drafters deviated from this consistent usage when they framed section 362(h).

B. Section 362(h) As a Consumer Credit Amendment

The Second Circuit correctly noted that any reliance on the legislative history of the Bankruptcy Reform Act of 1978 to interpret section 362(h) would be misplaced since section 362(h) was added to the Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984. While Congress clearly contemplated that the automatic stay provision of the Bankruptcy Reform Act would be all-encompassing, it seems evident that section 362(h) was intended for a more limited purpose. The legislative history of the

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86 See Chateaugay, 920 F.2d at 185.
87 See La Cache Land Co., 54 Bankr. at 631. The Code distinguishes between those who are individuals and those who are corporations within its definition of insiders. Id. (section 101(28) (now section 101(31)). Under section 109(e), corporations are not “individuals” who can file for protection under chapter 13. Id. (citing Forestry Prods., Inc. v. Hope, 34 Bankr. 753, 754 (M.D. Ga. 1983)). Based on these references, the court in La Cache Land concluded that “individual,” as used in § 109(f) (now § 109(g)), does not include corporations. Id.
88 See Chateaugay, 920 F.2d at 185 (“no published legislative history suggesting the possibility of a drafting error or other inadvertence”).
90 See Chateaugay, 920 F.2d at 185-86. Section 362(h) was included as part of the “Consumer Credit Amendments” that contained additions to the Code dealing with “individuals.” Id. at 186.
92 See H.R. Rsr. No. 595, supra note 2, at 6297. Detailing the comprehensive nature of the stay, the House report provided the following:
The commencement or continuation, including the issuance of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case is stayed under paragraph (1). The scope of this paragraph is broad. All proceedings are stayed, including arbitration, license revocation, administrative, and judicial proceedings. Proceeding in this sense encompasses civil actions as well, and all proceedings even if they are not before government tribunals.
Id.
93 See Chateaugay, 920 F.2d at 186. The “legislative history and construction which support broad coverage for the automatic stay imposed by § 362(a) do not necessarily apply
1984 Act is sparse,\textsuperscript{84} and the Second Circuit therefore emphasized that section 362(h) was enacted under the “Consumer Credit Amendments” subsection of the Act,\textsuperscript{85} concluding that the title of the subsection indicated that Congress was addressing the concerns of natural persons.\textsuperscript{86}

Furthermore, the Second Circuit determined that holding section 362(h) applicable only to natural persons would not in any way conflict with other Code provisions.\textsuperscript{87} The court reasoned that Congress, after enacting the automatic stay provision along with the rest of the Code in 1978, might well have chosen to take a step-by-step approach to expanding the remedies for violations.\textsuperscript{88} Given this scenario, it is entirely plausible that Congress sought first to protect natural persons, since they are less likely than sophisticated corporations to be aware of their rights under the bankruptcy laws and are thus more vulnerable to violations of the stay by unscrupulous creditors.\textsuperscript{89}

C. Standards Differ for Individual Debtors and Corporate Debtors

Despite the Second Circuit’s decision to limit the protections of section 362(h) to natural persons,\textsuperscript{100} a bankruptcy court still has the ability to protect corporate debtors under its civil contempt

\textsuperscript{84} See id. at 186.
\textsuperscript{86} See Chateaugay, 920 F.2d at 186.
\textsuperscript{87} Id. “[A] reading of § 362(h) in conformity with its plain meaning is not illogical, or inconsistent either with the automatic stay provisions of § 362(a) or with the rest of the code.” Id.
\textsuperscript{88} Id.
\textsuperscript{89} See id.; see also In re Price, 103 Bankr. 989, 992 (Bankr. N.D. Ill. 1989) (“Congress expressed special concern for the inexperienced and frightened debtor”), aff’d, 130 Bankr. 259 (N.D. Ill. 1991).
\textsuperscript{100} Chateaugay, 920 F.2d at 186-87.
However, since the rights guaranteed to individuals under the Code differ from those guaranteed to corporations, the ability of individuals and corporations to recover damages due to violations of the automatic stay should also differ.

The Code entitles a corporation to a “breathing spell” in order to reorganize its affairs; it does not grant a “fresh start” in the form of a total discharge of the corporation’s debts. Consequently, a creditor’s overzealous acts do not “injure” the debtor in a practical sense unless they financially diminish the debtor’s estate by reducing the recovery of other creditors or interfere with the debtor’s business activities by impairing the corporate reorganization.

A creditor ignoring the automatic stay is subject to civil contempt proceedings and may be liable for punitive damages if bad faith is demonstrated. Despite suggestions to the contrary by

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101 Id. For debtors other than natural persons, “contempt proceedings are the proper means of compensation for willful violations of the automatic stay.” Id. at 187.
102 See infra notes 104-05 and accompanying text.
103 See Chateaugay, 920 F.2d at 186. “In Crysen/Montenay, we held that the remedial purpose of § 362(h) warranted a standard that made it easier to impose sanctions pursuant to that subsection than pursuant to contempt proceedings.” Id. (citation omitted); see also In re Crysen/Montenay Energy Co., 902 F.2d 1098, 1104-05 (2d Cir. 1990) (section 362(h) allows less stringent standard to determine “imposition of sanctions in bankruptcy cases”).
104 See In re Lile, 103 Bankr. 830, 836 (Bankr. S.D. Tex. 1989) (stay provides business with chance to propose plan of reorganization without interference from creditors); see also supra note 17 and accompanying text (discussing chapter 11 reorganization).
105 See 11 U.S.C. § 727(a)(1) (1988). Under the Code, corporations are not entitled to discharge in a liquidation case, which is reserved for individual debtors. See id.; see also B. WEINTRAUB & A. REINSCH, supra note 3, § 1.02(1)(b).
107 See In re Miller, 22 Bankr. 479, 481 (D.C. Md. 1982). Automatic stay provisions are viewed as orders of the court, and a willful violation is contemptuous. See id.; see also In re Computer Communications, Inc., 824 F.2d 725, 731 (9th Cir. 1987) (violators of automatic stay held in contempt and damages awarded to debtor for actual loss suffered).
108 See, e.g., Mercer v. D.E.F., Inc., 48 Bankr. 562, 565 (Bankr. D. Minn. 1985) ($5000 punitive damages awarded against creditor for repossession of stereo equipment in violation of stay); In re Victoria Grain Co., 45 Bankr. 2, 6 (Bankr. D. Minn. 1984) (creditor's knowledge of stay is only determination necessary to award punitive damages for violation); Au-
some courts and commentators,\textsuperscript{109} it is clear that section 362(h) does not supplant, but merely supplements, the courts' inherent contempt powers.\textsuperscript{110} The contempt powers are discretionary in nature\textsuperscript{111} and are similar in purpose to section 362(h) in that they may be used to deter violations of the automatic stay\textsuperscript{112} and to compensate those injured by a violation of a court order or injunction.\textsuperscript{113}

Although the imposition of civil contempt sanctions is supposedly not dependent upon state-of-mind,\textsuperscript{114} bankruptcy courts have long been reluctant to wield their civil contempt power in penalizing violations of the automatic stay absent a showing of willful and malicious behavior.\textsuperscript{115} The courts have expressed concern that such use of their contempt powers could chill vigorous representation and undermine the adversarial system.\textsuperscript{116} Thus, it appears possible that Congress enacted section 362(h) to counter this judicial re-


\textsuperscript{109} \textit{See In re Jim Nolker Chevrolet-Buick-Oldsmobile, Inc.}, 121 Bankr. 20, 22 (Bankr. W.D. Mo. 1990) (questioning why two circuit courts extended § 362(h) to corporations); \textit{see also} P. Murphy, supra note 2, § 6.19. "Whether ... [§362(h)] is intended to be a complete substitute for other remedies is not clear." \textit{Id.}

\textsuperscript{110} \textit{See supra} note 38 and accompanying text.

\textsuperscript{111} \textit{See} 18 U.S.C. § 401 (1988). "A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as ... [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." \textit{Id.; see also} Keys v. United States, 314 F.2d 123, 123 (9th Cir. 1963) (punishment for contempt is within the discretion of the court and will only be reversed for abuse of discretion); Delaware Valley Citizens' Council for Clean Air v. Pennsylvania, 551 F. Supp. 827, 831 (D.C. Pa. 1982) ("court has broad discretion in fashioning ... remedy for civil contempt").

\textsuperscript{112} \textit{See In re Dervaes}, 81 Bankr. 127, 129 (Bankr. S.D. Fla. 1987) (civil contempt used to coerce contemnor to comply with court order).

\textsuperscript{113} \textit{See In re Davis}, 74 Bankr. 406, 411 (Bankr. N.D. Ohio 1987) (award of attorneys' fees appropriate when creditor's violation of stay forces debtor to resort to court). Costs and attorneys' fees incurred as a result of needless litigation are the most common sanctions imposed by the courts upon findings of civil contempt. \textit{See Humphrey, Sanctions Against the Creditor's Attorney in Non-Reorganization Bankruptcy Proceedings}, 6 Bankr. Dev. J. 481, 484 (1989); R. Aaron, supra note 4.

\textsuperscript{114} \textit{See NLRB v. Ralph Printing & Lithographing Co.}, 433 F.2d 1058, 1062 (8th Cir. 1970) (civil contempt not dependent on state of mind), \textit{cert. denied}, 401 U.S. 925 (1971).

\textsuperscript{115} \textit{See Humphrey, supra} note 113, at 482.

\textsuperscript{116} \textit{Id.} "The judicious and niggardly use of sanctions is viewed by courts as necessary to propagate vigorous advocacy. Sanctions are 'intended to encourage greater care, candor, and responsible conduct by litigants' without chilling creative and ardent representation." \textit{Id.} (citations omitted); \textit{see also In re Crysen/Montenay Energy Co.}, 902 F.2d 1098, 1104 (2d Cir. 1990) (contempt involves maliciousness).
straint and to provide a damages remedy to natural persons in rec-
ognition of the fact that they are most susceptible to violations of
the stay by creditors.\textsuperscript{117}

Individuals, as opposed to corporations, occupy a much more
guarded position in the hierarchy of debtors in that they are guar-
anteed a "fresh start" under the Code.\textsuperscript{118} Regardless of which
bankruptcy option the individual chooses, wage-earner\textsuperscript{119} or liq-
duation,\textsuperscript{120} the Code, which focuses on the individual's well-being
and financial rehabilitation,\textsuperscript{121} offers the individual a homestead
exemption\textsuperscript{122} in addition to numerous personal exemptions.\textsuperscript{123} In
comparison, such niceties are not provided to the corporate
debtor,\textsuperscript{124} which must reorganize its affairs and make payments to
its creditors or face corporate death, that is, a cessation of business
and a liquidation of the entity's assets.\textsuperscript{125}

The Second Circuit's suggestion that Congress may have en-
acted section 362(h) to fortify the rights of the individual debtor\textsuperscript{126}
is consistent with the "fresh start" approach for individuals.\textsuperscript{127}
When individual debtors are injured by willful violations of the au-
tomatic stay, their "fresh start" is delayed,\textsuperscript{128} and a private cause

\textsuperscript{117} See supra note 99 and accompanying text.
\textsuperscript{118} See B. Weintraub & A. Resnick, supra note 3, § 1.02(1)(a) (primary purpose of
bankruptcy is to give honest debtor new opportunity in life without pressure of
indebtedness).
\textsuperscript{120} Id. §§ 701-766.
\textsuperscript{121} See H.R. Rep. No. 595, supra note 2.
\textsuperscript{122} See 11 U.S.C. § 522(d)(1) (1988). A debtor is permitted to exempt up to $7500 in
value of the property used as a residence. Id.
\textsuperscript{123} See, e.g., id. § 522(d)(2) (exemption of $1200 for motor vehicle); id. § 522(d)(3) (ag-
gregate $4000 exemption for household and personal property); id. § 522(d)(4) ($500 exemption
for jewelry); id. § 522(d)(6) ($750 tools of the trade exemption); id. § 522(d)(9) (exemption
for professionally prescribed health aids).
\textsuperscript{124} See D. Cowans, supra note 2, § 8.3 (exemptions are available to individual debtor,
not partnerships or corporations).
\textsuperscript{125} See 11 U.S.C. § 1112(b) (1988). A court, on request of a party in interest, and after
notice and a hearing, may convert a reorganization case to a liquidation case if it is within
the best interests of creditors. See id. The statute lists some examples that may be deemed
cause for conversion: continuing loss to the estate and absence of likelihood of rehabilita-
tion; failure to effectuate a reorganization plan; and indulgence in unreasonable delay that
injures creditors. See id.
\textsuperscript{126} See Chateaugay, 920 F.2d at 186.
\textsuperscript{127} See Ballam, Kelly v. Robinson: An Erosion of the Fresh Start Concept for Debtors
in Bankruptcy, 32 St. Louis U.L.J. 103, 103 (1987) (primary goal of Code is to wipe debtor's
financial slate clean).
\textsuperscript{128} See In re Barbour, 77 Bankr. 530, 531 (Bankr. E.D.N.C. 1987). In Barbour, a dis-
charged debtor's "fresh start" was impeded when a former creditor filed a lawsuit seeking to
of action thus arises under section 362(h) for actual damages, costs, attorneys’ fees,\textsuperscript{129} and, when appropriate, punitive damages.\textsuperscript{130} Based on the wording of the statute, the sanctions under section 362(h) have been held to be mandatory.\textsuperscript{131} Furthermore, no finding of civil contempt is required to invoke section 362(h).\textsuperscript{132} In fact, although the courts have been reluctant to penalize unintended violations of the stay with their contempt powers,\textsuperscript{133} section 362(h) has been invoked to sanction even inadvertent transgressions.\textsuperscript{134}

CONCLUSION

The automatic stay provision is generally considered one of the most important within the Code and, as such, must be fiercely guarded. Although section 362(h) was enacted to fortify this provision, the scope of its applicability has puzzled the courts. While a majority of courts have allowed injured corporate debtors to recover damages under section 362(h), the Second Circuit has properly limited its applicability to natural persons. A close examination of the plain wording of section 362(h) and its legislative history, coupled with the courts’ ability to protect both debtor and creditor corporations with civil contempt sanctions, reveal the wisdom of the Second Circuit’s decision.

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recover a debt discharged in bankruptcy. \textit{Id.} Although the debtor proved only $200 in damages, the court awarded $500 to the debtor plus attorneys’ fees for the hindrance of his “fresh start.” \textit{Id.}


\textsuperscript{130} \textit{Id.; see also Chateaugay,} 920 F.2d at 186 (applying plain meaning rule to § 362(h) which provides that individuals may recover punitive damages when appropriate).

\textsuperscript{131} \textit{See In re Inslaw, Inc.,} 83 Bankr. 89, 165 (Bankr. D.D.C. 1988), \textit{aff’d as modified,} 113 Bankr. 802 (D.D.C. 1989). “By using the words ‘shall recover,’ Congress intended that the award of actual damages, costs and attorneys’ fees is mandatory and not within the discretion of the Court.” \textit{Id.; see also In re Forty-Five Fifty-Five, Inc.,} 111 Bankr. 920, 923 (Bankr. D. Mont. 1990) (relief provided under § 362(h) mandatory); \textit{In re Lile,} 103 Bankr. 830, 836 (Bankr. S.D. Tex. 1989) (same). \textit{But see In re Tel-A-Communications Consultants, Inc.,} 50 Bankr. 250, 253 (Bankr. D. Conn. 1985) (mere violation of stay not enough for sanctions under § 362(h); need willful conduct).

\textsuperscript{132} \textit{See Budget Serv. Co. v. Better Homes, Inc.,} 804 F.2d 289, 293 (4th Cir. 1986).

\textsuperscript{133} \textit{See In re Houchens,} 85 Bankr. 152, 154 (Bankr. N.D. Fla. 1988) (unintentional violation of stay not contemptuous). \textit{But see In re Shafer,} 63 Bankr. 194, 198 (Bankr. D. Kan. 1986) (“[a]ccidental, inadvertent or negligent conduct can be grounds for imposing civil contempt sanctions”).
