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NOTE: WHEN IS AN INDIVIDUAL A CORPORATION?− WHEN THE COURT MISINTERPRETS A STATUTE, THAT'S WHEN!

I. Introduction

The Automatic Stay provision of the Bankruptcy Code [1] is one of the most important facets of the American bankruptcy system. [2] It provides automatic relief for debtors seeking protection from their creditors and a breathing period in which the debtor may collect capital to bring himself back into the world of the solvent. [3] The courts have historically interpreted this provision broadly. [4] Section 362 carves out a remedy for debtors who have been injured by a creditor's violation of the stay. [5] Section 362(h) states in its entirety:

An individual

injured by any wrongful 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. [6]

The use of the term "individual" in section 362(h) has led to a split in the Circuit Courts as to whether a corporate debtor may obtain damages from a creditor who violates the stay or whether "individual" precludes a corporate debtor from such relief. [7] The Supreme Court has never directly decided the proper use of "individual" under the Bankruptcy Code, but it did address the term in *Toibb v. Radloff*, in which it decided that a person may file in chapter 11. [8] In *dicta*, the Court reasoned that the debtor was a person (since Toibb was viewed by the Court as an "individual") under chapter 7, thus he satisfied the statutory requirements for filing in chapter 11. [9]

This Note will examine the application and effect of limiting section 362(h) to non−corporate debtors. Part Two analyzes the two disparate views interpreting section 362(h) and illustrates where the Third and Fourth Circuits' reasoning went awry in their determination that "individual" shall include corporate debtors. Part Three will look at other applications and interpretations of the provision as it applies to trustees and whether they fit under the provision. Part Four will conclude the analysis and theorize why some circuits provide for relief whereas others do not.

II. Analysis of *Chateaugay* and *Cuffee*

A. The Chateaugay Line of Reasoning

Most of those courts that have ruled against allowing a corporate debtor to recover damages under section 362(h) have followed the line of reasoning enunciated in the Second Circuit's decision in *In re Chateaugay Corp.* [10]

The Second Circuit in *Chateaugay* overturned an order by the Honorable Burton Lifland of the Bankruptcy Court for the Southern District of New York [11] that the creditor, Maritime Asbestos Legal Clinic, pay the corporate debtor, LTV Steel Company, Inc., $7,600 in compensatory damages under section 362(h) for willfully violating the automatic stay. [12] The District Court later affirmed this award. [13]

The Second Circuit overturned the district court's ruling basing their decision upon an interpretation of the term "individual" in section 362(h) set forth by the Supreme Court in *U.S. v. Ron Pair Enterprises, Inc*. [14] Under that standard, the interpreting court first looks at the plain meaning of the term "individual," and then determines whether

application of the plain meaning is at odds with the intent of Congress. [15] This decision has the support of the commentators on the subject [16] but not all bankruptcy judges are fond of its result. [17]

1. What is the Plain Meaning of "Individual"?

The Bankruptcy Code defines over 50 terms, [18] unfortunately "individual" is not one of them. Webster's II New College Dictionary defines "individual" as "[a] human being regarded separately from a group or from society…[a]n organism as distinguished from a group or colony…" [19] Black's Law Dictionary defines "individual" as:

…[A] single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, *corporation*, or association; *but it is said that this restrictive signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons*. [20]

Black's does not define "artificial person" but does offer "corporation" as an example of what one might be. [21] Therefore, it might follow that, under the Black's definition a "corporation" may be considered an "individual," albeit only in "proper cases."

2. Use of "individual" in the Bankruptcy Code

The Supreme Court in *Ron Pair* stated that where the Code uses language that is ambiguous, a court construing its meaning should look to see how the same word is used in other parts of the same statute in order to find legislative intent. [22] An in depth review of the use of "individual" throughout the Bankruptcy Code leads one to conclude that the term does not include corporate debtors. [23] Most courts that do not treat the term "individual" as encompassing corporate debtors also note that section 101(41) [24] uses both "individual" and "corporation" to define who may be a "person" under the Code. [25] These courts are also quick to point out that Congress could have simply used the term "person" (which includes both "individuals" and "corporations") instead of using "individual" if it wanted corporate debtors to benefit from relief under section 362(h). [26] Moreover, the Bankruptcy Rules, which govern procedure under title 11, also use "individual" in such a way as to suggest that a corporate debtor would be excluded. [27] The Official Bankruptcy Forms also use "individual" in such a way that would preclude a corporation from the interpretation. [28]

3. Congressional Intent in Enacting § 362(h) in 1984

Section 362(h) was added to the Bankruptcy Code in 1984 when the Federal Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA) [29] was signed into law by President Ronald Reagan on July 10, 1984. [30] This is not a bill that was free of frustration and deadlock in the legislative process. [31] The part pertaining to section 362(h) has commonly been referred to as the Consumer Credit Amendments of 1984. [32] These amendments have made interpreting legislative intent difficult as they were passed in such a rush that very little legislative history accompanied their passage. [33] The entire legislative history for the Consumer Credit Amendments totals a miniscule seven pages. [34] In fact, the Second Circuit in *Chateaugay* states that this lack of legislative history means Congress wanted the terms to be interpreted using their plain meaning. [35]

The lack of legislative history has not impeded some courts from reaching the legislature's intent since the courts look to what the Consumer Credit Amendments were trying to remedy. These amendments had been consistently encouraged by the consumer credit industry since the adoption of the Bankruptcy Reform Act in 1978, which the industry perceived as being adverse to their interests. [36] Consumer Creditors had multiple complaints with the 1978 Code which included: (1) an expansive automatic stay under section 362(h); (2) an overly generous exemption standard under section 522 (allowing debtors to choose between the federal or, in most cases, more lenient state exemptions); (3) the broadened scope of discharge protections under sections 523, 524 and 527; (4) the debtor's unchallenged choice to choose a chapter 7 liquidation over a payment plan under chapter 13; and (5) a lack of any substantive payment plans as a condition of plan confirmation similar to what was required under chapter 13. [37] These creditors were also upset over the Code's refusal to refer to those filing in bankruptcy as "bankrupts;" instead, the Code uses the term "debtor" which carries less of a social stigma than "bankrupt." [38] In fact, several groups that extend credit to consumers testified at the Legislative Hearings to call for a change in the Code, including: the Credit Union National Association, the National Association of Federal Credit Unions, the National Consumer Finance Association,

the American Retail Federation, and the National Retail Merchants Association. [39] Courts that seek to apply the congressional intent of limiting recoverable damages under section 362(h) only to non−corporate debtors often cite to the sentiment at the time of the bill's adoption that consumer debtors were abusing the bankruptcy system. [40] The mood in Congress at the time can best be summed up in the following house speech given by Congressman G.V. Montgomery on the House floor during the BAFJA debates:

Mr. Chairman, for the last couple of years in going home, I have been getting many complaints from the owners of small businesses about the large number of persons taking bankruptcy. It was pointed out to me that a number of these persons taking bankruptcy had good jobs. They could pay their obligations, but it was the easier route to go chapter 7 and take bankruptcy and not worry about their debts. I would like to read part of a letter from a friend of mine who is a minority person and has a small business in my State:

I would like to take this opportunity to again express my concerns about the number of bankruptcies that are taking place in our country and how these bankruptcies have affected small businesses. We have been in business for over 40 years and we have never seen as many people taking bankruptcy and starting right over in business, as we have seen in the last two years. We have been the victim of over $20,000 in losses through bankruptcies during this period.

As one bankruptcy official told me when we went to Louisiana to try and collect for some products we had sold, he looked at me and told me that, that court was there to assist the people that were going bankrupt and not to assist the people who were still in business and when I explained to him how these bankruptcies were affecting our business, his remark was, the profitable thing to do today is to go bankrupt…

Well something is wrong when the bankruptcy laws encourage people to take bankruptcy and then a small businessman goes before the courts and they tell him "[w]e can't help you at all." [41]

During the debates Congressman Jack Brooks added:

It has been estimated that as much as $1 billion of debt is unnecessarily discharged annually under the present bankruptcy system. As a result, consumer credit has become expensive and difficult to obtain. Consumers, especially those of middle and lower income groups, are paying dearly for the laxity we have introduced into our bankruptcy laws. [42]

Thus a major goal of BAFJA was to restrict debtor access to discharge, making it accessible only to those debtors that were in extreme financial difficulty. [43] Section 362(h), in contrast, was seen as a balance to keep the amendments from being all anti−consumer by allowing human debtors to seek a remedy against the consumer creditors that chose to violate the automatic stay. [44] One court specifically noted that the area of the Bankruptcy Code that was particularly ripe for abuse by consumer debtors was relief from the automatic stay. [45]

Section 362(h) is not the only provision of the Consumer Credit Amendments that includes the term "individual." [46] Another argument supporting the line of reasoning that the Consumer Credit Amendments only amend provisions in favor of consumer and not corporate debtors is that it amends chapters 7 and 13 of the Code but not chapter 11 (which is primarily reserved for corporate debtors, although non−corporate debtors may file under it). The case law interpreting these amendments also seem to agree that they do not apply to corporate debtors. [47] Courts following the *Chateaugay* line of reasoning are apt to point out that section 362(h), being enacted in 1984, should not utilize the liberal legislative history of the remainder of section 362 since it was not a part of the original legislation, but rather an amendment which sought to stem abuses of the original amendment. [48]

One argument not raised by the *Chateaugay* line of courts, but one that fits within their reasoning, is that section 362(a), the section which requires the broadest interpretation for the automatic stay, uses the term "entities" in referring to who shall have protection from the stay. [49] The use of "entities" shows the Congressional intent behind the very broad expanse of protection provided by the Automatic Stay. "Entities" encompasses both "persons," "individuals," and "corporations." [50] Bankruptcy Rule 9020(b) provides "[contempt] committed in a case or proceeding pending before a bankruptcy judge … may be determined by the bankruptcy judge only after a hearing on notice…." [51] This rule contains procedural constraints on its use. [52] The bankruptcy judge's power to issue civil

contempt charges against creditors that violate the automatic stay stems from these two provisions. [53]

The power to issue civil contempt charges has been a debate in the bankruptcy arena ever since the Supreme Court decided in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* [54] that a broad grant of jurisdiction to non−Article III bankruptcy courts would be unconstitutional. [55] The courts are not in agreement on whether bankruptcy judges have such contempt powers under section 105, although the vast majority deciding the issue has found that such power exists. [56] At least one of those courts in disagreement has changed its mind [57] in light of the adoption of Bankruptcy Rule 9020 and the Supreme Court's decision in *Chambers v. NASCO, Inc.* [58] Of course part and parcel of this argument is whether finding civil contempt would be a "core proceeding" under the Bankruptcy Code. [59] Again, not all courts are in agreement on this point. [60]

Section 105(a) was amended in 1986 to include the following sentence:

No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent any abuse of process. [61]

Many courts have decided that the addition of this language to section 105(a) in 1986 proves that Congress intended the section to act as the statutory basis for civil contempt powers of bankruptcy judges. [62] Those courts allowing for such powers state that because a corporate debtor can obtain relief under section 105(a), they do not need to seek relief from violators of the stay under section 362(h). [63] These courts, however, do not address the differences between section 105(a) damages and section 362(h) damages. There are several marked differences between relief under sections 105(a) and 362(h) as noted by the following chart:

	§ 105(a) Contempt Powers	**§ 362(h) Damages**
Standard of Proof	Must prove conscious violation of Automatic Stay [64]	Violation need not be willful, but requires no showing of specific intent [65]
Judge's Discretion to Impose Damages	Judge has discretion whether to impose damages or not [66]	Damages are mandatory if Stay is violated
Availability of Punitive Damages	No	Yes
Core Proceeding?	Courts split on the issue, with a majority finding such powers do fall within the core proceedings [67]	Yes

As the chart clearly shows, it is much easier to prove a violation of the automatic stay under section 362(h). Moreover, the damages the debtor may collect are much greater because a debtor may collect punitive damages from the creditor for a violation of section 362(h).

B. The Atlantic Business Court Line of Reasoning

In the same year that the Second Circuit stated its interpretation of the scope of section 362(h), the Third Circuit took a much broader approach in *Cuffee v. Atlantic Business and Community Development Corp.* [68] The Third Circuit reasoned that the scope of the automatic stay under section 362 was "undeniably broad" [69] and that a corporate debtor would be viewed as an "individual." [70] It is interesting to note that no where in the *Atlantic Business* decision does the court discuss the Supreme Court's decision in *Ron Pair* which had been decided a year earlier. The Third Circuit mainly hinged its interpretation on the broad reaches of the automatic stay and claims that section 362(h) should be read in conjunction with, and not separate from, the remainder of the provision. [71] The Court quoted the following excerpt from the legislative history that accompanied the adoption of the automatic stay provision:

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 … The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are to be treated equally. [72]

The courts that include corporate debtors under section 362(h) all reason that section 362(h) should be afforded the same broad interpretation as the remainder of the provision since the legislative history for section 362 should extend to all of its subsections. [73] These courts also state that a narrow interpretation of section 362(h), that would preclude corporate debtors, would defeat the purpose of the automatic stay. [74] The majority of these cases were decided pre−*Chateaugay*, so the reasoning of the Second Circuit is not addressed by any of the *Atlantic Business*−line of reasoning courts.

Some of the pro−corporate debtor courts also point to the dearth of legislative history that accompanied BAFJA. [75] They also interpret the plain meaning of "individual" differently than do the *Chateaugay* courts. The pro−corporate debtor courts seem to read the Black's Law Dictionary definition of "individual" as including "artificial persons," including "corporations," [76] whereas the *Chateaugay* courts interpret that definition as including "artificial persons" only in rare circumstances. [77]

Aside from the *Chateaugay* courts' use of legislative history, the availability of an alternate remedy under section 105(a), and congressional intent arguments, the reasoning of the Third and Fourth Circuits' decisions seem to be at odds with the general principles of statutory interpretation. The words of Justice Scalia in his concurrence in *Patterson v. Shumate* [78] are most appropriate in this situation. In *Patterson*, the Court was deciding whether the term "applicable non−bankruptcy law" as used in section 541(a)(1) included state law. [79] Justice Scalia found "mystifying" an interpretation of "non−bankruptcy law" that would include "state law" in light of the fact that the Bankruptcy Code specifically mentioned the term "state law" together with "non−bankruptcy law" in other provisions of the Code. [80] He went on to state:

When the phrase is considered together with the rest of the Bankruptcy Code (in which Congress chose to refer to state law as, logically enough, "state law"), the phenomenon calls into question whether our legal culture has so far departed from attention to text, or is so lacking in agreed upon methodology for creating and interpreting text, *that it any longer makes sense to talk of 'a government of laws, not of men*.' [81]

Justice Scalia expressed concern that the "interpretive methodology" that some courts use in determining the meanings of certain terms in statutes might lead some observers to disagree with the belief that "the symbol of our profession [is] the scales, not the seesaw." [82] It always bears reminding in instances like this that Congress makes the laws, not the courts. [83] The over−inclusive interpretation that the Third and Fourth Circuits give to the term "individual" in light of section 362(h)'s legislative history and the use of the term throughout the Bankruptcy Code, might lead a party to wonder whether the courts' reasoning comes from total judicial arbitrariness or from the bankruptcy laws themselves.

III. Ancillary Readings of § 362(h) – is a Trustee an "Individual"?

Corporate debtors are not the only ones that have met resistance in trying to receive damages under section 362(h) when a creditor has violated the automatic stay. Trustees have also sought to recover damages from violations of the stay. As with corporate debtors, the courts are split as to whether a trustee is an "individual" for the purpose of recovering under section 362(h). [84]

Like the *Chateaugay* courts, some of those courts that deny coverage to trustees cite to a trustee's ability to recover under the bankruptcy court's equitable powers to issue civil contempt damages against a creditor that violates the stay. [85] One of these courts opined that:

while a trustee can be an "individual" if the trustee is a natural person (as opposed to, e.g., a corporate entity), the individual's status as trustee precludes any finding that the trustee suffered any damages as an individual, because any harm suffered in the form of costs and attorney's fees is actually incurred by a thing, *viz.*, the bankruptcy estate, and

not by the trustee as a natural person. [86]

Still, other courts simply find that where a trustee is involved in a corporate debtor's bankruptcy, the trustee is acting as a representative of the corporation's bankruptcy estate. Therefore, since a corporate entity cannot recover under section 362(h) then neither can its representative in bankruptcy. [87] It seems that these courts apply the same reasoning as the *Chateaugay* courts in finding that the plain meaning of the statute precludes inclusion of trustees as those able to recover damages. [88]

Those courts that find coverage for trustees under section 362(h) point to the duties of a trustee as defined by the Bankruptcy Code that allows for damages under the provision. [89] One court has reasoned that where a trustee has expended estate funds in attacking a creditor under section 704(1) [90] for seizing property after the debtor filed for protection under the Bankruptcy Code, a trustee was correctly awarded damages under section 362(h) since:

[if a trustee who is responsible for] recovering such property can't recover his fees from the party that violated the stay, either the estate will be depleted by the amount of the trustee's cost of recovery or trustee won't be reimbursed for these costs. Either of these results is dearly undesirable. [91]

The Northern District of Illinois, in *In re Garofalo's Finer Foods, Inc.*, found it judicially acceptable to extend coverage to the trustee by applying the Supreme Court's rule in *Ron Pair*. [92] The court reasoned that courts should not apply the plain meaning rule under an interpretation of a bankruptcy statute where "the literal application of a statute will produce a result demonstrably at odds with the intentions of the drafters." [93] Oddly enough, the pro−*Chateaugay* courts frequently cite this portion of the *Ron Pair* decision when they state that such an exception to the plain meaning rule does not apply to corporate debtors. The district court in *In re Garofalo's Finer Foods, Inc* reasoned that allowing a trustee to suffer damages in the above−described instance would be at odds with the congressional intent in enacting section 362(h). [94] Courts have not limited the trustees recoveries to just actual damages, some have allowed them to recover punitive damages as well. [95]

IV. Conclusion

The automatic stay is such a fundamental aspect of our Bankruptcy Code that the courts should be in agreement as how to issue punishment when it is violated. The split in the Circuit Courts presents a situation where a corporate debtor in some states may receive a considerable amount more in damages than corporate debtors in other states when they are damaged by a creditor violating the stay. These same disadvantaged corporate debtors are also faced with having to fight separate procedural battles to recover those damages. Whereas one corporate debtor in one state may receive punitive damages under section 362(h) (*i.e.* Virginia or New Jersey) a separate corporate debtor in a different state (*i.e.* California or New York) must depend on the bankruptcy judge's equitable powers under section 105(a) to issue civil contempt damages (which also requires a higher burden of proof and less recovered in damages). Important decisions such as these should not be left to semantics, uniformity is what is required. Perhaps Congress should review section 362(h) to see if modifications to its wording would present a more uniform result in its use. It is very important to note that all Circuit Courts that have decided this issue since the Second Circuit's decision in *Chateaugay* have sided with that court. The same can be said for a large majority of the district courts. But it is also important to note that the holdings of the Third and Fourth Circuits finding corporate debtors covered under section 362(h) are still being followed by the lower courts in those circuits. [96]

The question arises why the Third and Fourth Circuits decided to read corporate debtors into section 362(h) when such strong evidence existed (even at the times those circuits decided) to find otherwise. Maybe it was because the corporations that sought relief were not large corporations that do not require the assistance of the legislature. [97] Maybe these courts believed that they should help the small corporate debtors from large creditors that are familiar with navigating themselves through the bankruptcy procedural system. Perhaps if "small businesses" were added to section 362(h), small unsophisticated corporations would be provided protection under the provision when sophisticated creditors violate the automatic stay. It would not be a new idea to treat businesses unequally in the reorganization process based upon their size. The Bankruptcy Act provided for separate reorganization rules for large public companies and small privately owned businesses. [98]

Whatever the Third and Fourth Circuits reasoning behind their interpretation, it is clear that they failed to read "individual" in section 362(h) as its drafters intended it to be read.

David Swarthout

FOOTNOTES:

[1] 11 U.S.C. § 362 (1994). Back To Text

[2] The legislative history that accompanied the passage of the Bankruptcy Code in 1978 stated:

[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.

[The] Automatic Stay also provides a creditor protection. Without it certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claims in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

H.R. Rep. No. 95−595, at 340−41, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296−97. Back To Text

[3] The Automatic Stay "is often likened to closing the windows and locking the doors to prevent any property from leaving the newly formed estate…. It prohibits any creditor's attempt to continue to collect from the debtor or the debtor's property and precludes creditors from taking any individual action against the debtor or his estate." Elizabeth Warren and Jay Lawrence Westbrook, The Law of Debtors and Creditors, 3d ed. at 235 (Little, Brown and Company 1996); *see also* Krystal Cadillac Oldsmobile GMC Truck, Inc. v. General Motors Corp. (In re Krystal Cadillac Oldsmobile GMC Truck, Inc.), 142 F.3d 631, 637 (3d Cir. 1998) (discussing purpose and legislative history of § 362(h)); Benedor Corp. v. Conejo Enterprises, Inc. (In re Conejo), 96 F.3d 346, 351−52 (9th Cir. 1996) (discussing same). Back To Text

[4] S*ee* Warren and Westbrook, *supra* note 3, at 236 (stating "the power of the Automatic Stay is *broad*") (emphasis added); *see also* 3 Collier On Bankruptcy ¶ 362.01, at 11 (Lawrence P. King et al., eds., 15th ed. rev. 1997) (stating § 362 provides for *broad stay of "litigation*, lien enforcement, and other actions, judicial or otherwise, that are attempts to enforce or collect pre−petition debts," but this broad interpretation is not unlimited) (emphasis added). For an example of the immediate effect of the Automatic Stay, *see* A & J Auto Sales, Inc. v. U.S. (In re A&J Auto Sales, Inc.), 205 B.R. 676, 677−78 (Bankr. D.N.H. 1996). In *In re A & J Auto Sales, Inc*., the debtor's son filed a chapter 11 petition in Bankruptcy Court at 2:03 p.m. while his father held IRS revenue officers, seeking to conduct a collection proceeding on debtor's assets, at bay. The debtor−father received a phone call from his son at 2:15 p.m. and notified the officers that his assets were now protected by the Automatic Stay and the Bankruptcy Court agreed with the debtor ordering the IRS to return all of the debtor's assets that the IRS had seized after being notified of the filing of the bankruptcy action. Id. Back To Text

[5] *See* 11 U.S.C. § 362(h) (1994). Back To Text

[6] Id. Back To Text

[7] *Compare* Jove Eng'g, Inc. v. I.R.S. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1550 (11th Cir. 1996) (stating corporate debtor could not recover damages under § 362(h)); Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 619 (9th Cir. 1993) (finding corporate debtor as "individual" under § 362(h) would be "inconsistent with statutory construction"); Maritime Asbestos Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.), 920 F.2d 183, 186−87 (2d Cir. 1990) (holding corporate debtor not "individual" under § 362(h), thus could not recover damages under that provision), *with* Cuffee v. Atlantic Bus. and Community Dev. Corp. (In re Atlantic Bus. and Community Dev. Corp.),

901 F.2d 325, 329 (3d Cir. 1990) (stating corporate debtor may receive relief under § 362(h)); Budget Serv. Co. v. Better Homes of Va., 804 F.2d 289, 292 (4th Cir. 1986) (holding corporate debtor is individual under § 362(h)). Back To Text

[8] *See* Toibb v. Radloff, 501 U.S. 157, 166 (1991) (stating that Bankruptcy Code's plain language allows individual debtors to file for relief under chapter 11). Back To Text

[9] *See* id. at 160−61 (reasoning Bankruptcy Code defines "person" as used in title 11 to include an "individual," and "individual" is not one of express entities that are not allowed to file in chapter 11 under 11 U.S.C. § 109(b), thus when Court uses term "individual" it is excluding corporate debtors and only referring to human beings). The Court goes on to cite to the Senate Report that accompanied the passage of chapter 11 which stated, "Chapter 11, Reorganization, is primarily designed for *businesses*, although *individuals* are eligible for relief under the chapter." Id. at 162 (*citing* S. Rep. No. 95−989, at 3 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5789 (1978)) (emphasis added). This might show that even at the inception of the Bankruptcy Code, its drafters would not have included "corporations" and "individuals" to be inclusive of each other. Back To Text

[10] *See* In re Chateaugay Corp., 920 F.2d at 187 (reasoning that even if court was convinced that § 362(h) would better serve Code's purposes if it were applied to all debtors, court could do no more than invite Congress to change result); *see also* A&J Auto Sales, Inc. v. United States (In re A & J Auto Sales, Inc.), 205 B.R. 676, 678 (Bankr. D.N.H. 1996) (declaring court agrees with analysis of *Chateaugay* and its progeny, which rely on plain meaning rule); Elder−Beerman Stores Corp. v. Thomasville Furniture Indus., (In re Elder−Beerman Stores Corp.), 197 B.R. 629, 632 (S.D. Ohio 1996) (stating that court would follow reasoning of Second Circuit in *In re* Chateaugay Corp.); Manlon v. Sanitation Dist. No. 1 of Campbell & Kenton Counties (In re Manlon), 168 B.R. 594, 596 (Bankr. E.D. Ky. 1994) (following decisions of Second and Ninth Circuits because those courts took into account circumstances surrounding enactment of § 362(h) as well as Supreme Court's decision in *United States v. Ron Pair* and those courts performed more analysis as to Code usage of term "individual"). *See generally* Moratzka v. VISA USA (In re Calstar), 159 B.R. 247 (Bankr. D. Minn. 1993); In re Prairie Trunk Ry., 125 B.R. 217 (Bankr. N.D. Ill. 1991); In re Abacus Broadcasting Corp., 150 B.R. 925 (W.D. Tex. 1993); In re United States Abatement Corp., 150 B.R. 381 (Bankr. E.D. La. 1993); In re MCEG Prods., Inc., 133 B.R. 232 (Bankr. C.D. Cal. 1991); Williams v. United Inv. Corp. (In re Williams), 124 B.R. 311 (Bankr. C.D. Calif. 1991). Back To Text

[11] *See* In re Chateaugay Corp., 920 F.2d at 186−87 (overturning bankruptcy court's decision). Back To Text

[12] *See* id. at 184 (noting *Chateaugay's* case history). Back To Text

[13] *See* Maritime Asbestos Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.), 112 B.R. 526, 533 (S.D.N.Y. 1990) (affirming bankruptcy court's decision to award damages under § 362(h) to corporate debtor). Back To Text

[14] 489 U.S. 235 (1989). Back To Text

[15] *See* id. at 242 (stating "[t]he plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters[i]n such cases, the intention of the drafters, rather than the strict language controls") (*quoting* Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982). Back To Text

[16] *See* Arturo G. Hernandez, Note, 11 U.S.C. § 362(h)*:* Congressional Answer To The Bankruptcy Abuse Of Consumer Creditors, 56 Ohio St. L.J. 617, 635 (1995) (concluding "individual" must be defined under Bankruptcy Code as being exclusive of corporate debtors); Mary E. Norton, Note, *Section 362(h): Applicable To Corporate Debtors?*, 56 Mo. L. Rev. 769, 785 (1991) (commenting Second Circuit's decision in *In re Chateaugay Corp*. prevents corporate debtors from receiving damages under § 362(h)); Richard L. Stehl, Note, 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?*, 65 St. John's L. Rev. 1119, 1133 (1991) (concluding scope of § 362(h) does not include corporate debtors). Back To Text

[17] Bankruptcy Judge Conrad in the Southern District of New York commented in *In re* Stockbridge Funding Corp., "[w]hile we disagree with the result in *In re Chateaugay* and its potential application, the legal reasoning is flawless … Moreover we are bound to [its] holding." Stockschlaeder & McDonald, Esqs. v. Kittay (In re Stockbridge Funding Corp.), 145 B.R. 797, 813 (Bankr. S.D.N.Y. 1992). Back To Text

[18] *See* 11 U.S.C. § 101 (1994). Back To Text

[19] Webster's II New College Dictionary 564 (1995). *Webster's* definition goes on to caution that "careful writers and stylists avoid the use of the term *individual* as a substitute for *person*." Id. (emphasis added). Back To Text

[20] Black's Law Dictionary 696 (5th ed. 1979) (emphasis added). Back To Text

[21] *See* id. at 104. Back To Text

[22] *See* United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989) (enunciating that courts reviewing legislative intent should look to other uses of same term within same statute to reach interpretation); *see also* Bance v. Alaska Carpenters Retirement Plan, 829 F.2d 820, 827 (9th Cir. 1987) (stating same); Atwell v. Merit Sys. Protection Bd., 670 F.2d 272, 286 (D.C. Cir. 1981) (stating same); In re First Conn. Small Bus. Inv. Co., 118 B.R. 179, 182 (Bankr. D. Conn. 1987) (stating same). Back To Text

[23] The Code makes multiple references to the term "individual" in such a way that its only intended meaning could be a "natural person." *See* 11 U.S.C. § 101(41) (1994) (defining "person" as including "individual" and "corporation," thus leading one to conclude that these two terms are not interchangeable); *see also* id. § 101(18) (defining "family farmer" as meaning "individual or individual and spouse engaged in a farming operation" − corporations do not have spouses, only persons do); id. § 101(44) (defining "railroad" as mode of travel concerned with transportation of "individuals," reading "corporation" into this definition would be foolhardy); id. § 101(45) (defining "relative" as meaning "individual" related by "affinity or consanguinity"); id. § 109(e) (describing that only "individual" with regular income and such individual's spouse may become debtor under Bankruptcy Code); id. § 321(a) (providing in (a)(1) that "individual" may serve as trustee and in (a)(2) that corporation may serve as trustee in bankruptcy); id. § 342(b) (providing when notice be given where debtor is "individual" with consumer debts). Section 101(8) defines "consumer debt" as meaning "debt incurred by an individual primarily for a personal, family, or household purpose." Id. § 101(8). Corporations do not incur debt for such purposes, thus it may be inferred that when the Bankruptcy Code makes reference to "consumer debt" it does not include corporations. Id. § 346(b)(1) (making numerous references to term "individual" in describing special tax provisions where "individual" is "a partner in a partnership," it would be very difficult to construe corporation as being "a partner in a partnership," although such relationships do occur); id. § 346(j) (providing in (j)(3) that special tax provision should include any net income of "individual" or corporate debtor and in (j)(4) indebtedness of "individual" or corporate debtor shall be forgiven or discharged in certain situations); id. § 365(d)(10) (stating trustee will timely perform all obligations of debtor under unexpired lease of personal property, other than personal property "leased to an individual primarily for personal, family, or household purposes" – it is generally understood that when discussing personal property used for family or household purposes corporations are not to be included). The legislative history for § 503 ("Allowance of administrative expenses") discusses how to allow for administrative expenses where "individual" is sole proprietor. S. Rep. No. 95−989, at 66, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5852*; see also* 11 U.S.C. § 507(a) (1994) (setting out in (a)(3) that unsecured claims only to extent of $4,000 for each "individual" or corporation are earned within 90 days prior to filing will receive priority, (a)(3)(A) goes on to state that priority is given where "wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an 'individual'" – corporations do not require vacation time or sick leave); id. § 507(a)(3) (discussing sales commissions earned by "individual" or by corporation). The notes accompanying the passage of § 507 further assimilate the terms "individual" and persons by stating "[i]n order to reach only those persons most deserving of this special priority, it is limited to 'individuals' whose adjustable gross income does not exceed $20,000." S. Rep. No. 95−989, at 70, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5856; s*ee also* 11 U.S.C. § 522(d)(8) (1994) (discussing life insurance "owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent," leading reader to interpret "individual" as only referring to non−corporate debtor since corporations are typically not viewed as "dependents"). Section 522 goes on to discuss the "wrongful death of an individual" and life insurance purchased to "insure the life of an individual," both of these references can only be

interpreted as having "individual" refer to non−corporate persons since corporations do not purchase life insurance or suffer wrongful deaths. *See* id. at (d)(11)(B) and (C); *see also* id. § 525(b) (stating private employer may not terminate "individual" or "individual associated with the debtor" – corporations are not employees). Section 727(a)(1) states that a debtor will be granted a discharge unless the debtor "is not an individual." Id. § 727(a)(1). The historical notes that accompany this section provides that when this provision was added in 1978 it was a change from the preexisting law that allowed corporations and partnerships a discharge in liquidation cases. S. Rep. No. 95−989, at 98, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5888. The note goes on to include deceased individuals under the term "individual" as used in the section; as stated above the use of the term "deceased" precludes "corporation" from being read into the use of "individual." Id. The legislative statements that accompanied the adoption of chapter 11 provides that under the Bankruptcy Act provisions were made that distinguished between individuals and corporations. *See* id. at 9 (stating "[i]ndividuals and partnerships may file under Chapter XI … [a] corporation may file under either Chapter X or Chapter XI.…") Id. (emphasis added). Section 1110 defines "air carrier" as "an aircraft capable of carrying 10 or more individuals," this reading obviously excludes "corporation" from "individual." 11 U.S.C. § 1110(a)(2). Section 1129 states that one of the requirements of the court confirming the plan is that "the identity of any individual proposed to serve as … a director, officer, or voting trustee of the debtor…" − corporations do not serve as directors or officers of corporations. Id. § 1129 (a)(5)(A)(i). The notes following § 1129 state that the adoptive reorganization plan must "disclose the identity and affiliations of any individual proposed to serve … as a director, officer … of the reorganized debtor." S. Rep. No. 95−989, at 125, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5911−12. A corporation does not serve as director or officer of a corporation. The notes following § 1129 go on to state a debtor may be permitted to pay pre−petition taxes in cash be they a "corporation, partnership, or an individual…" Id. (emphasis added). The legislature again made this distinction between corporations and individuals later on in discussing parties that are to be assessed a tax in reorganization. Id. Section 1171 discusses "deceased individuals" and the "death of such individual", the usage of "individual" here clearly excludes "corporation" from the interpretation since corporations do not "die," at least not in a literal sense. 11 U.S.C. § 1171(a). Section 1222 states that the plan should designate classes of unsecured claims and one of these classes must be for debts where an "individual is liable on … consumer debt." Id. § 1222(b)(1). Corporations do not accrue consumer debt. Section 1301 also refers to the consumer debts of "individuals." Id. § 1301(a)(1) (stating after filing of bankruptcy action creditor can not seek to collect on "any consumer debt of individual" that is responsible for those debts). The notes following § 1304 advise that § 1304(a) reads that a "self−employed individual who incurs trade credit in the production of income is a debtor engaged in business." S. Rep. No. 95−989, at 140, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5926 (emphasis added). Corporations can not be considered as "self−employed."

There are however several instances in the Bankruptcy Code where "individual" is used and its meaning could be viewed as being ambiguous. *See* 11 U.S.C. § 304 (discussing granting relief to "individuals" in foreign proceeding); id. § 330 (stating in chapter 12 or 13 cases bankruptcy court will allow reasonable compensation to debtor's attorney where such debtor is "an individual"); id. § 524(c)(6)(A) (setting forth effect of discharge on "individual who was not represented by an attorney"); id. § 1123(c) (discussing contents of plan where case concerns "individual" and the plan has been proposed by entity other than debtor). Back To Text

[24] 11 U.S.C. § 101(41) (1994). Back To Text

[25] *See* Mortazka v. VISA USA (In re Calstar), 159 B.R. 247, 259 (Bankr. D. Minn. 1993) (positing "if corporations were 'individuals' there would be no need to specifically include them in the definition of 'persons'"); Georgia Scale Co. v. Toledo Scale Corp. (In re Georgia Scale Co.), 134 B.R. 69, 71 (Bankr. S.D. Ga. 1991) (stating Congress used "individual" in defining "person" to "distinguish natural persons from corporations and partnerships"). Back To Text

[26] *See* In re Georgia Scale, 134 B.R. at 71 (finding Congress could have easily avoided this debate by using "persons" instead of "individual"). Back To Text

[27] The Bankruptcy Rules make multiple references to the term "individual" in such a way that its only intended meaning could be as a "natural person." *See* Fed. R. Bankr. Proc. 1016 (1997) (discussing "individuals" under rule entitled "Death or Incompetency of Debtor"). As stated above, a corporation does not literally "die" nor can they literally be ruled as being an incompetent; *see also* id. R. 2013 (stating that public record of compensation awarded to trustees, examiners, and professionals shall "include the name and docket number of the case, the name of the

individual or firm receiving the fee"). Here the Rules clearly distinguish between individuals and corporations (through the use of the term "firm"); id. R. 2014(b) (expressing who may be employed as attorney, Rules distinguish between regular associate of "partnership, corporation or individual may act as attorney…"); id. R. 4004(c)(1)(a) (stating discharge under chapter 7 is not available for debtors who are not "individuals;" this precludes corporations from discharge but non−corporate debtors are still permitted discharge, thus the term "individual" can not be interpreted as including both corporate and non−corporate debtors); id. at R. 5002(a) (discussing who may be appointed as trustee, Rules prevent "individual [who] is a relative of the bankruptcy judge") (emphasis added); id. R. 7004(b)(1) (providing service must be made upon "an individual other than an infant or incompetent" – corporation can be neither "infant" nor "incompetent" in literal sense); id. R. 9001(9) (defining "regular associate" as "any attorney regularly employed by, associated with, or counsel to an individual or firm"). Back To Text

[28] The Official Bankruptcy Forms make multiple references of "individual" in such a way that its only intended meaning could be as a "natural person." Form 1 makes several references to "individual." 11 U.S.C. Form 1 (1997). Under "Name of Debtor" the form provides that if the debtor is an "individual" debtor must enter its last, first and middle names. Id. Corporations do not have last, first and middle names. Form 1 also asks debtor to check which type of debtor is filing. Id. The form provides separate boxes for "individual" and "corporation" (along with partnership, railroad, commodity broker and other). Id. There are also separate signature boxes for those debtors who are "Individual/Joint" debtors and those that are "Corporation/Partnership" debtors. Id. The Advisory Committee Notes following Form 1 state that the "individual signing on behalf of a corporation … [must be so] authorized…" Form 3 requests the "Names and Social Security numbers of all other *individuals* who prepared or assisted in preparing the documents." Id. Form 3 (1997). Corporations are not issued Social Security numbers; thus individual in this instance can only refer to a non−corporate entity. Form 5 asks the filer of an Involuntary Petition to check either boxes for "Individual," "Partnership," "Corporation Publicly Held," or "Corporation Not−Publicly Held." Id. Form 5 (1997). The Form also requests the individual's first, middle and last name on the petition. Id. Form 7 is a Statement of Financial Affairs and states that "[a]n individual debtor engaged in business as a sole proprietor, partner, family farmer, or self−employed professional, should provide the information on the statement." Id. Form 7. In defining "in business" Form 5 separates a corporate debtor from an individual debtor. Id. (stating "[a] debtor is 'in business' for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is 'in business' for the purpose of this form if…"). Form 7 further separates an individual from a corporation in stating the location and nature of the business. Id. (providing separate lines for individual, partnership, and corporate debtors and requesting listing of all "firms or individuals" that have audited debtor's books within last two years). Form 9 has separate sets of forms for filing a notice of commencement of the case for individual and corporate debtors. Id. Form 9 (stating Form 9A is for "Individual/Joint, No−Asset Case" and Form 9B is for "Corporation/Partnership, No−Asset Case"). Form 111A has three separate signature lines under the General Power of Attorney Form, one for an "individual," another if the Form is being "executed on behalf of a partnership," and yet a third if the Form is being "executed on behalf of a corporation." Id. Form 11A. The same signature lines appear on Form 11B. Id. Form 11B. Form 19 requests the names and Social Security numbers of all individuals that prepared the Certification and Signature of Non−Attorney Bankruptcy Petition Preparer. Id. Form 19. The Application for Search of Bankruptcy Records at Form B−132 requests the "name of individual or business that is the subject of the search." Id. Form B−132. Form B−204 contains separate address lines for filing a proof of claim for "individuals," "partnerships," and "corporations." Id. Form B−204. Converting a case under chapter 7 to a case under chapter 12 in Form B−220B requires separate tests be met in order to satisfy the requirements for chapter 12 for "individuals" and "corporation or partnership." Id. Form B−220B. These same tests appear in Form B−221B for an Order converting case under chapter 11 to case under chapter 12. Id. Form B−221B. Back To Text

[29] The Bankruptcy Amendments and Federal Judgeship Act of 1984 is divided into three titles. Title I pertains to jurisdiction and procedure. Title II provides for additional circuit and district court judges to ease the caseload burden of the present judiciary. Title III actually amends the Bankruptcy Code and is divided into subtitles involving "consumer credit, grain storage facilities, pervasive revisions in the treatment of leases, amendments to wage−earner plans and new provisions relating to rejection of collective bargaining agreements in Chapter 11." Lawrence K. Snider, et al., The Bankruptcy Amendments And Federal Judgeship Act of 1984, 63 Mich. B.J. 775, 776 (1984). Back To Text

[30] *See* Irving A. Breitowitz**,** *New Developments in Consumer Bankruptcies: Chapter 7 Dismissal on the Basis of "Substantial Abuse*," 59 Am. Bankr. L.J. 327, 329 (1985) (recalling BAFJA signing ceremony at White House). Back To Text

[31] *See* In re Weir, 173 B.R. 682, 688 n.15 (Bankr. E.D. Calif. 1994) (quoting floor statements that were made at time of bill's passage). Chairman of Judiciary Committee, Mr. Rodino stated:

Mr. Speaker, today, to the surprise, amazement and relief of many, I am sure, if not all, I raise to take up the result of the conference…

130 Cong. Rec. 20, 224 (June 29, 1984).

Chairman of the subcommittee responsible for bankruptcy legislation, Mr. Edwards:

Mr. Speaker, the conference report on H.R. 5174, Bankruptcy Amendments of 1984, is regrettable, at best. It ignores over a decade of study on this issue and creates a maze for debtors, creditors, and their lawyers who participate in the bankruptcy process. Even more regrettable, we must approve this conference report today, lest we plunge the bankruptcy system into further chaos because of the expiration of the transition provision under the 1978 bankruptcy legislation…

Id. at 225.

Another key Judiciary Committee figure was Mr. Kastenmeier:

In my view this conference report presents the legislative process at its best and at its worse. I am pleased that we were able to fashion a constitutional, workable bankruptcy court system. On the other hand, the use of the bankruptcy court bill as a vehicle for other reforms, no matter how meritorious, is to be lamented, as my chairman has steadfastly maintained.

Id. at 227. Back To Text

[32] *See* Jove Eng'g Inc. v. I.R.S. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1552 (11th Cir. 1996) (stating § 362(h) was part of Consumer Credit Amendments of 1984); Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 620 (9th Cir. 1993) (stating § 362(h) came into being as part of Consumer Credit Amendments of 1984); Mallard Pond Partners v. Commercial Bank & Trust Co. (In re Mallard Pond Partners), 113 B.R. 420, 422 (Bankr. W.D. Tenn. 1990) (observing that § 362(h) arose out of 1984 legislation). Back To Text

[33] *See* Moratzka v. VISA U.S.A. Direct Marketing Guaranty Trust (In re Calstar), 159 B.R. 247, 260 (Bankr. D. Minn. 1993) (stating that 1984 amendments were response to "cries of the consumer credit lobby which vociferously alleged that individual debtors were abusing the bankruptcy process"); Georgia Scale Co. v. Toledo Scale Corp. (In re Georgia Scale Co.), 134 B.R. 69, 70 (Bankr. S.D. Ga. 1991) (finding difficulty of interpreting § 362(h) stems from paucity of legislative history on amendment); In re Logan, 124 B.R. 729, 733 (Bankr. S.D. Ohio 1991) (observing that legislative history on Consumer Credit Amendments is minimal because Congress passed it quickly with "little attention or forethought"). Back To Text

[34] *See* P.L. 98−353 § 301, Laws of 98th Cong. 2d Sess.; *reprinted in* 1984 U.S.C.C.A.N. 351, 351−57. Back To Text

[35] *See* Maritime Asbestos Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.), 920 F.2d 183, 186 (2d Cir. 1990) (noting "[a]bsent legislative history to explain [§ 362(h)], there is at least reasonable conjecture to support a reading consistent with the plain meaning of the statute, and thereby to confirm our view that we should not go beyond that meaning"). Back To Text

[36] In re Weir, 173 B.R. 682, 685−86 (Bankr. E.D. Calif. 1994) (stating Consumer Credit Amendments were culmination of "intense lobbying" by consumer credit industry between 1978 and 1984); In re Lee, 162 B.R. 31, 33

(Bankr. N.D. Ga. 1993) (denoting consumer credit industry was strong critic of Bankruptcy Reform Act of 1978); In re Busbin, 95 B.R. 240, 242 (Bankr. N.D. Ga. 1989) (observing Consumer Credit Amendments were response to criticism directed at Bankruptcy Reform Act of 1978 by consumer credit industry); *see also* Karen Gross, Preserving a Fresh Start for the Individual Debtor: The Case for Narrow Construction of the Consumer Credit Amendments, 135 U. Pa. L. Rev. 59, 61 (1986) (remarking 1984 amendments were response to "concerted pressure" from consumer credit industry). The legislative history for the 1978 legislation explicitly states its pro−debtor stance. H.R. Rep. No. 95−595, at 4, *reprinted in* 1978 U.S.C.C.A.N. 5963, 5966 (stating "[t]his bill makes bankruptcy a more effective remedy for the unfortunate consumer debtor"). However, the legislative history also states "[t]his is not primarily a debtor's bill, however. The bill codifies rights more clearly than the case law… It defines the protections to which a secured creditor is entitled, and the means through which the court may grant that protection." H.R. Rep. No. 95−595, at 4−5, *reprinted in* 1978 U.S.C.C.A.N. 5963, 5966. So contrary to the beliefs of the consumer credit industry, Congress was not acting in contravention of their concerns. Back To Text

[37] *See, e.g.*, 11 U.S.C. § 365 (1994) (providing that from when case begins until discharge is granted all attempts to collect debts are stopped); *id.*at § 522 (providing that debtor is given choice between uniform system of federal exemptions and exemptions by state law); *see also* Breitowitz, supra note 30, at 328 (enunciating heart of consumer creditors complaints of 1978 Bankruptcy Code which led to 1984 Amendments). To support these statements Breitowitz states that in 1983 alone, over half a million persons sought relief under the Code, the majority of which were consumers claiming to have few or no assets available for creditors. Id. Back To Text

[38] *See* Paul M. Black & Michael J. Herbert, *Bankcard's Revenge: A Critique of the 1984 Consumer Bankruptcy Amendments to the* Bankruptcy Code, 19 U. Rich. L. Rev. 845, 851 (1985) (stating also that consumer creditors were upset by 1978 Code's "substantial restrictions placed on reaffirmation agreements"). Black and Herbert go on to quote the following statement made on the House floor during the debates, "The general term 'debtor' is used … for the ease of reference … and as a means of reducing the stigma attached with the term 'bankrupt.'" Id. (*quoting* H.R. Rep. No. 595, 95th Cong., 1st Sess. 310 (1977)). Back To Text

[39] *See* Gross, supra note 36, at 61 n.4 (listing participants Congress heard from during legislative hearings for BAFJA); *see also* Hearing Before the Subcomm. on Courts of the Senate Comm. on the Judiciary, 98th Cong., 1st Sess. (1983). Back To Text

[40] *See* Stewart v. United States Trustee (In re Stewart), 1999 WL 248547 at * 16, n.8 (10th Cir. 1999) (noting Congress passed 1984 Consumer Credit Amendments as response to increasing number of chapter 7 bankruptcies filed each year by debtors that were deemed as "not needy" by Congress) (citing In re Krohn, 886 F.2d 123, 125−26 (6th Cir. 1989); In re Messenger, 178 B.R. 145, 147 (Bankr. N.D. Ohio 1995) (stating Consumer Credit Amendments were passed in response to increasing number of debtors unnecessarily filing in chapter 7 each year); Pernicario v. Natale (In re Natale), 136 B.R. 344, 351 (Bankr. E.D.N.Y. 1992) (observing Consumer Credit Amendments "were aimed primarily at stemming the use of chapter 7 relief by unneedy debtors") (*quoting* In re Walton, 886 F.2d 981, 983 (8th Cir. 1989)); In re Logan, 124 B.R. 729, 733 (Bankr. S.D. Ohio 1991) (denoting purpose of Consumer Credit Amendments was to eliminate and discourage abuses of bankruptcy laws by consumers); In re Santana, 110 B.R. 819, 821 (Bankr. W.D. Mich. 1990) (noting intention of 1984 Consumer Credit Amendments to Congressionally stop abuses of Bankruptcy Code by non−corporate debtors); In re Patton, 49 B.R. 587, 588 (Bankr. M.D. Ga. 1985) (stating Consumer Credit Amendments of 1984 were reaction to increase in number of consumer bankruptcy filings since 1978 adoption of Bankruptcy Code). Back To Text

[41] Black & Herbert, supra note 38, at 846, n.5 (*quoting* 130 Cong. Rec. H1812 (daily ed. March 21, 1984)). Back To Text

[42] Id. at 845, n.4 (*quoting* 130 Cong. Rec. H1812 (daily ed. March 21, 1984)). Back To Text

[43] *See* id. at 851 (noting one dominant Congressional goal in enacting BAFJA was to prevent those not in financial turmoil from receiving relief under chapter 7 discharge); s*ee also Congress Postpones Action on Bankruptcy Court Reform*, 42 Cong. Quarterly 741 (March 31, 1984) (claiming "[h]ouse bill is designed to curb alleged abuses of bankruptcy law by consumers who could in fact pay off their debts"); Joseph P. Corish & Michael J. Herbert, The

Debtor's Dilemma: Disposable Income As The Cost Of Chapter 13 Discharge In Consumer Bankruptcy, 47 La. L. Rev. 47, 47−48 (1986) (expressing one goal of BAFJA was to "rein in what some creditors saw as an excessive liberty toward debtors in the original Bankruptcy Code"). Back To Text

[44] *See In re* Taylor, 1997 Bankr. LEXIS 1322, at *5 (Bankr. E.D. Ca. June 25, 1997) (stating Congress spoke through § 362(h) by explicitly creating punitive damages remedy for violations of automatic stay); Promover, Inc. v. Scuderi (In re Promover, Inc.), 56 B.R. 619, 623 (Bankr. D. Md. 1986) (stating that § 362(h) provides for punitive damages in cases of misconduct); Moratzka v. VISA U.S.A. Direct Marketing Guarantee Trust (In re Calstar), 159 B.R. 247, 260 (Bankr. D. Minn. 1993) (noting "[w]hile Congress adopted many of the suggestions made by [the consumer credit] lobby, it did so with a jaundiced eye; Congress was concerned about abuse on both sides of the consumer transaction"). Back To Text

[45] *See* In re Busbin, 95 B.R. 240, 242 (Bankr. N.D. Ga. 1989) (interpreting Consumer Credit Amendments as abuses of liberal provisions of Bankruptcy Code, particularly "expansive" automatic stay provision of § 362); *see also* Breitowitz, supra note 30, at 329−30 (noting consumer abuses of broad automatic stay). Back To Text

[46] *See* 11 U.S.C. § 301(f) (1984) (setting forth requirements to become debtor in bankruptcy); id. § 302(b) (stating when clerk must give written notice to "individual" with consumer debts); id. § 304(h) (stating "individual" injured by willful violation of stay shall recover actual damages and possibly punitive damages); id. § 316(1) (1984) (designating classes of unsecured claims if "individual" is liable for consumer debts). Back To Text

[47] Section 362(h) is not the only provision that has spurned controversy. *See* Yamaha Motor Corp. U.S.A. v. Shadko, Inc., 762 F.2d 668, 670 (8th Cir. 1985) (stating Congress in adopting § 523, dealing with exceptions to discharge, "did not intend the term 'corporate debtor' to be used interchangeably with the term 'individual debtor,' as such a construction would render meaningless employment by Congress of the term 'individual'"); In re Roxy Real Estate Co., 170 B.R. 571, 574 (Bankr. E.D. Pa. 1993) (interpreting § 109(g)); In re Jartran, Inc., 87 B.R. 525, 528 (N.D. Ill. 1988) (interpreting same); In re LaCache Land Co., 54 B.R. 629, 631 (E.D. La. 1985) (interpreting § 109(f) [which later became § 109(g) in 1986] and adding "family farmer" as possible "corporation" if certain requirements are met). Back To Text

[48] *See* Jove Eng'g, Inc. v. I.R.S. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1552 (11th Cir. 1996) (stating § 362(h) was added to Bankruptcy Code after rest of § 362 had been enacted, so legislative history that encourages broad interpretation of automatic stay provision is not applicable); Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.), 920 F.2d 183, 186 (2d Cir. 1990) (noting legislative history requiring broad interpretation of automatic stay does not necessarily apply to § 362(h)); Georgia Scale Co. v. Toledo Scale Corp. (In re Georgia Scale Co), 134 B.R. 69, 72 (Bankr. S.D. Ga. 1991) (commenting legislative history of § 362(a) "is not indicative of Congressional intent in enacting § 362(h)"). Back To Text

[49] *See* 11 U.S.C. § 362(a) (1994) (providing in part "… a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, *applicable to all entities,* of…" and then goes on to list acts from which the stay shall protect debtor) (emphasis added). Back To Text

[50] *See* id. § 101(15) (defining "entity" to include "person, estate, trust, governmental unit, and United States trustee"). Recall that 11 U.S.C. § 101(41) defines "person" as including "individual, partnership, and corporation, but does not include governmental unit." Id. § 101(41). Back To Text

[51] Fed. R. Bankr. P. 9020(b) (1997). Back To Text

[52] For example, Rule 9020 only allows a bankruptcy judge to make a determination that contempt has been committed when the contempt is committed in the judge's presence. If the contempt is committed outside of the judge's presence then the judge may only act after notice and a hearing (stating the essential facts that led to the contempt). *See* Fed. R. Bankr. P. 9020 (1997). *See also* Kiker v. United States (In re Kiker), 98 B.R. 103, 108−09 (Bankr. N.D. Ga. 1988) (finding bankruptcy court has civil contempt powers); 1 Norton Bankruptcy Law & Practice § 13:5, at 7−9 (William

L. Norton, Jr. et al. eds., 2d ed. 1997). Back To Text

[53] *See* In re Prairie Trunk Ry., 125 B.R. 217, 222 (Bankr. N.D. Ill. 1991) (noting bankruptcy judge may issue contempt order against creditor for violating automatic stay); *see also* First Republican Corp. v. NCNB Texas Nat'l Bank (In re First Republic Bank Corp.), 113 B.R. 277, 279 (Bankr. N.D. Tex. 1989) (stating bankruptcy judge has power under § 362(h) and Bankruptcy Rule 9020 to impose sanctions for contempt); In re Hulon, 92 B.R. 670, 675 (Bankr. N.D. Tex. 1988) (noting court has power under 11 U.S.C. § 105 and Bankruptcy Rule 9020 to hear and decide requests for contempt, but that it is serious sanction). Back To Text

[54] 458 U.S. 50, 87 (1982). Back To Text

[55] *See* 28 U.S.C. § 1471(b) (1976). The Supreme Court in *Northern Pipeline* held that "the Bankruptcy Act of 1978 carries the possibility of an unwarranted encroachment [upon the judicial power of the United States, which our Constitution reserves for Article III courts]. Many of the rights subject to adjudication by the Act's bankruptcy courts … are not of Congress' creation." Northern Pipeline, 458 U.S. at 84; *see also* 2 Collier On Bankruptcy, supra note 4, ¶ 105.04, at 58 (stating since *Northern Pipeline* decision, courts have had to contend with potential civil contempt powers of bankruptcy judges). Back To Text

[56] *See* Sosne v. Reinert & Dupree, P.C. (In re Just Brakes Corporate Sys., Inc.), 108 F.3d 881, 885 (8th Cir. 1997) (recognizing existence of serious question whether bankruptcy courts have contempt powers after 1984 amendments, but Eighth Circuit recognizes such broad equitable powers to remedy violation of automatic stay); *see also* Burd v. Walters (In re Walters), 868 F.2d 665, 669 (4th Cir. 1989) (finding "a court of bankruptcy has authority to issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code"); In re French Bourekas, Inc., 175 B.R. 517, 525 (Bankr. S.D.N.Y. 1994) (recognizing all courts have inherent civil contempt powers); Federation of Puerto Rican Orgs. Of Brownsville, Inc. v. Howe, 157 B.R. 206, 211 (E.D.N.Y. 1993) (noting it unlikely that "Congress would have granted a bankruptcy judge the power to issue a final order without the power to compel compliance"); In re Shuma, 124 B.R. 668, 674 (Bankr. W.D. Pa. 1991) (stating bankruptcy judge has inherent civil contempt powers); In re Georgia Scale Co., 134 B.R. 69, 72 (Bankr. S.D. Ga. 1991) (*citing In re* Esposito, 119 B.R. 305, 306−07 (Bankr. M.D. Fla. 1990)); In re Schatz, 122 B.R. 327, 330 (N.D. Ill. 1990) (concluding bankruptcy judges are statutorily authorized to enforce their orders); In re Kiker, 98 B.R. at 108−09, (finding bankruptcy court has civil contempt power); Kemira, Inc. v. Miller (In re Lemco Gypsum, Inc.), 95 B.R. 860, 864 (Bankr. S.D. Ga. 1989), rev'd on other grounds, 910 F.2d 784 (11th Cir. 1990) (noting court has power to punish "contempt of its authority"); Miller v. Mayer (In re Miller), 81 B.R. 669, 676 (Bankr. M.D. Fla. 1988) (noting "it is clear that there is ample authority to exercise civil contempt power based on § 105 of the Bankruptcy Code" and stating bankruptcy court has inherent power of civil contempt under § 105(a)); In re Prairie Trunk Ry., 125 B.R. at 222 (holding "civil contempt proceedings arising out of core matters are themselves core matters … [t]herefore, the Bankruptcy Court below had the power to enter monetary sanctions against appellant for civil contempt") (*citing* Mountain Am. Credit Union v. Skinner (In re Skinner)), 917 F.2d 444, 448 (10th Cir. 1990); *contra* Plastiras v. Idell (In re Sequoia Auto Brokers, Ltd.), 827 F.2d 1281, 1281 (9th Cir. 1987) (denying bankruptcy court contempt power); United States Lines, Inc. v. GAC Marine Fuels, Ltd. (In re McLean Indus.), 68 B.R. 690, 695 (S.D.N.Y. 1986) (holding bankruptcy court has civil contempt power under its inherent power and § 105); Omega Equip. Corp. v. John C. Louis Co. (In re Omega Equip. Corp.), 51 B.R. 569, 574 (D.D.C. 1985) (noting bankruptcy judge can only issue contempt orders where they are deemed related to bankruptcy proceeding). Back To Text

[57] The Ninth Circuit overturned its decision in In re Sequoia Auto Brokers Ltd., 827 F.2d 1281, that bankruptcy judges do not have civil contempt powers, in Caldwell v. Unified Capital Corp. (In re Rainbow Magazine), 77 F.3d 278, 285 (9th Cir. 1996). The Ninth Circuit changed its opinion after the adoption of Bankruptcy Rule 9020 and the Supreme Court's decision in Chambers v. NASCO, Inc., 501 U.S. 32 (1991). Back To Text

[58] 501 U.S. 32, 46, (1991) (holding lower courts may impose sanctions since such power is inherent in their authority and thus cannot be limited by statute). The Court reasoned "[I]t is true that the exercise of the inherent power of lower federal courts can be limited by statute and rule, for '[t]hese courts were created by act of Congress.' Nevertheless, 'we do not lightly assume that Congress has intended to depart from established principles' such as the scope of a court's inherent power." Id. at 47, (*quoting Ex parte* Robinson, 19 Wall. 505, 511, 22 L.Ed. 205 (1874) *and* Weinberger v.

Romero−Barcelo, 456 U.S. 305, 313, (1982). The creditor in *In re Rainbow* argued that the holding in *Chambers* only applied to the powers of Article III courts and not bankruptcy courts created by Congress under Article I, but the Ninth Circuit disagreed and held that *Chambers* applied to all federal courts. In re Rainbow, 77 F.3d at 285. Back To Text

[59] Core proceedings are defined:

Core proceedings include, *but are not limited to*:

A. matters concerning the administration of the estate;
B. allowance or disallowance of claims against the estate…;
C. counterclaims by the estate against persons filing claims against the estate;
D. orders in respect to obtaining credit;
E. orders to turn over property of the estate;
F. proceedings to determine, avoid, or recover preferences;
G. motions to terminate, annul, or modify the automatic stay;
H. proceedings to determine, avoid, or recover fraudulent conveyances;
I. determinations as to the dischargeability of particular debts;
J. objections to discharges;
K. determinations of the validity, extent, or priority of liens;
L. confirmations of plan;
M. orders approving the use of lease or property, including the use of cash collateral;
N. orders approving the sale of property other than property from claims brought by the estate against persons who have not filed claims against the estate; and
O. other proceedings affecting the liquidation of the assets of the estate…

28 U.S.C. § 156(a)(2) (1994) (emphasis added). Back To Text

[60] *See* Mountain Am. Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 447−48 (10th Cir. 1990) (noting civil contempt proceedings arise out of core matters and are themselves core matters); In re Walters, 868 F.2d at 669 (holding contempt in this instance was "core proceeding"); Texaco, Inc. v. Sanders (In re Texaco), 182 B.R. 937, 944 (Bankr. S.D.N.Y. 1995) (recognizing importance for bankruptcy judge to have power to enforce own orders and thus core proceeding); Stockschlaeder & McDonald, Esqs. v. Kittay (In re Stockbridge Funding Corp.), 145 B.R. 797, 803−04 (Bankr. S.D.N.Y. 1991) (noting civil contempt is core proceeding since bankruptcy court has power to enforce compliance with its orders); Haile v. New York State Higher Educ. Servs. Corp., 90 B.R. 51, 54 (W.D.N.Y. 1988) (finding contempt proceedings as core matter under 28 U.S.C. § 157 and stating that: (1) § 157(b)(1) gives bankruptcy judge authority under title 11, (2) all "core proceedings" arise out of title 11, and (3) § 157(b)(2) sets forth non−exclusive list of core proceedings, of which contempt is not included); Kellog v. Chester, 71 B.R. 36, 37 (N.D. Tex. 1987) (noting power to hold contempt proceedings of bankruptcy judge are core proceedings); In re Cordova Gonzalez, 99 B.R. 188, 191 (Bankr. D.P.R. 1989) (stating same); In re Shafer, 63 B.R. 194, 197 (Bankr. D. Kan. 1986) (holding "a civil contempt proceeding to enforce the automatic stay imposed by 11 U.S.C. § 362 is a core proceeding" under Code); In re L.H. & A. Realty, Inc., 62 B.R. 910, 911 (Bankr. D. Vt. 1986) (finding of contempt "is part and parcel of the core proceeding itself"). *But see* Griffith v. Oles (In re Hipp), 895 F.2d 1503, 1517−18 (5th Cir. 1990) (holding criminal contempt not to be "core" proceeding but reserving opinion on civil contempt for later date); Continental Airlines, Inc. v. Hillblom, 61 B.R. 758, 773 (S.D. Tex. 1986) (finding contempt proceeding is not "core proceeding" and contempt orders are inconsistent with constitutional limitations of non−Article III Bankruptcy Judges); Tele−Wire Supply Co. v. Presidential Fin. Corp. (In re Indus. Tool Distribs., Inc.), 55 B.R. 746, 752 (N.D. Ga. 1985) (holding bankruptcy judge should certify fact to district court for appropriate answer). Back To Text

[61] 11 U.S.C. § 105(a) (1994). Back To Text

[62] *See* Matthews v. United States (In re Matthews), 184 B.R. 594, 598 (Bankr. S.D. Ala. 1995) (finding court can levy damages on violating creditor when it combines its powers under § 105 with its inherent contempt power); In re Duggan, 133 B.R. 671, 673 (Bankr. D. Mass. 1991) (holding civil contempt charges are expressly granted to

bankruptcy judge in § 105(a)); Dubin v. Jakobowski (In re Stephen W. Grosse, P.C.), 84 B.R. 377, 386 (Bankr. E.D. Pa. 1989) (noting addition of language to § 105(a) lays to rest any doubt that Congress intended bankruptcy judges to have civil contempt powers); *see also* 2 Collier, supra note 4, ¶ 105.04[1][b], at 59−60. Back To Text

[63] *See* Jove Eng'g, Inc. v. I.R.S. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1552 (11th Cir. 1996) (noting corporations need to seek damages from violation of stay under § 105(a) contempt and not § 362(h)); In re Chateaugay Corp., 920 F.2d 183, 187 (2d Cir. 1990) (stating "contempt proceedings are the proper means of compensation and punishment" when corporate debtors suffer willful violations of stay); Crysen/Montenay Energy Co. v. Esselen Assocs., Inc. (In re Crysen/Montenay Energy Co.), 902 F.2d 1098, 1104−05 (2d Cir. 1990) (holding § 362(h) was intended as additional remedy for individual debtors, apart from remedy of civil contempt); Colon v. Hart (In re Colon), 114 B.R. 890, 985 (Bankr. E.D. Pa. 1990) (stating same);Wagner v. Ivory (In re Wagner), 74 B.R. 898, 902 (Bankr. E.D. Pa. 1987) (*citing* remarks of Rep. Rodino, 130 Cong. Rec. H1942 (daily ed. March 26, 1984), that § 362(h) "is an additional right of individual debtors and not intended to foreclose recovery under already existing remedies"). Back To Text

[64] *See* California Employment Dev. Dep't v. Taxel (In re Del Mission Ltd.), 98 F.3d 1147, 1152 (9th Cir. 1996) (observing damages under § 105(a) are discretionary); Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 620 (9th Cir. 1991) (stating bankruptcy court should exercise discretion in determining whether to sanction creditor for civil contempt when creditor violates automatic stay); In re Stockbridge Funding Corp., 145 B.R. at 805 (setting forth two requirements for finding civil contempt in Southern District of New York as being: (1) creditor must have knowledge of specific, precise order of bankruptcy court; and (2) creditor must knowingly violate that order of bankruptcy court). These requirements are the same in the Second, Third, Fourth and Ninth circuits. *See, e.g.*, Putnam v. Rymes Heating Oils, Inc. (In re Putnam), 167 B.R. 737, 740 (Bankr. D.N.H. 1994) (*citing* In re Goodman, 991 F.2d at 618, In re Crysen/Montenay Energy Co., 902 F.2d at 1105, In re Atlantic Bus. and Community Dev. Corp., 901 F.2d 325, 329 (3d Cir. 1990) and Budget Serv. Co.v. Better Homes of Va., Inc., 804 F.2d 289, 290 (4th Cir. 1986)); *see also* In re Smith and Son Septic and Sanitation Serv., 88 B.R. 375, 379 (Bankr. D. Utah 1988) (stating bankruptcy court should exercise its civil contempt power only to control cases and proceedings "in the most egregious of circumstances"); Tel−A−Communications Consultants, Inc. v. Auto−Use (In re Tel−A−Communications Consultants, Inc.), 50 B.R. 250, 253 (Bankr. D. Conn. 1985) (noting "[u]nlike sanctions for civil contempt which merely require, as a condition precedent, that a specific and definite court order be violated by a party that has knowledge of the court's order, sanctions under section 362(h) require the conduct of the offending party to be willful"). Back To Text

[65] *See* In re Del Mission Ltd, 98 F.3d at 1152 (observing damages under § 362(h) are mandatory); Havelock v. Taxel (In re Pace), 67 F.3d 187, 191 (9th Cir. 1995) (ruling willful violation of stay under § 362(h) does not require "specific intent" to find violation of automatic stay); In re Goodman, 991 F.2d at 620 (stating § 362(h) damages are mandatory and intent of creditor violating automatic stay is irrelevant); In re Atlantic Bus. and Community Dev. Corp., 901 F.2d at 290 (noting § 362(h) does not require specific intent on part of creditor to find them in violation of automatic stay and creditor's good faith is irrelevant); In re Heafitz, 85 B.R. 274, 281−82 (Bankr. S.D.N.Y. 1988) (holding under § 362(h) bankruptcy court may assess damages even when there has been inadvertent violation of automatic stay). *But see* In re Everett, 127 B.R. 781, 784 (Bankr. E.D.N.C. 1991) (holding punitive damages awarded under § 362(h) if creditor's actions are "sufficiently egregious"); In re M&J Feed Mill, Inc., 112 B.R. 985, 991 (W.D. Mo. 1990) (*citing In re* Knaus, 889 F.2d 773, 776 (8th Cir. 1989)) (stating punitive damages will be awarded where creditor's conduct is "egregious" and "intentional"); Wagner v. Ivory (In re Wagner), 74 B.R. 898, 902−03 (Bankr. E.D. Pa. 1987) (stating Congress intended § 362(h) to supplement and clarify contempt remedy and that state of mind required for both proceedings should be same). Back To Text

[66] *See* supra note 65. Back To Text

[67] *See* supra notes 64 and 65 (noting split in courts regarding core proceeding status of § 105(a) civil contempt proceedings). Back To Text

[68] Cuffee v. Atlantic Bus. & Community Dev. Corp. (In re Atlantic Bus. & Community Dev. Corp.), 901 F.2d 325 (3d Cir. 1990). Back To Text

[69] *See* In re Atlantic Bus. & Community Dev. Corp., 901 F.2d at 327 (stating automatic stay provision of Bankruptcy Code was intentionally broad and would encompass all debtors). *See generally* Advanced Ribbons & Office Prod., Inc. v. U.S. Interstate Distrib., Inc. (In re Advanced Ribbons & Office Products), 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991) (stating protections afforded by stay provisions of Bankruptcy Code may be broad but are also focused on application to debtors and their estates); Nevada Nat'l Bank v. Casgul of Nev., Inc. (In re Casgul of Nev., Inc.), 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982) (noting protections of stay focused on debtor, property of debtor, and property of estate). Back To Text

[70] *See* In re Atlantic Bus. & Community Dev. Corp., 901 F.2d at 328 (positing that § 362(h) has "uniformly been held to be applicable to a corporate debtor" when creditor has violated automatic stay); *see also* Budget Serv. Co. v. Better Homes of Va., 804 F.2d 289, 292 (4th Cir. 1986) (finding individual not limited to literal sense, but extends to corporations); Crysen/Montenay Energy Co. v. Esslen Assoc. (In re Crysen/Montenay Energy Co.), 902 F.2d 1098, 1105 (2d Cir. 1990) (citing *Budget Serv. Co.*, 804 F.2d at 292, for proposition that individual includes corporate debtor). Back To Text

[71] *See* In re Atlantic Bus. & Community Dev. Corp., 901 F.2d at 327 (observing § 362(h) should be read in conjunction with rest of provision and thus is entitled to same broad interpretation); *see also* In re Crysen/Montenay Energy Corp., 902 F.2d at 1104 (discussing § 362(h)); Budget Serv. Co., 804 F.2d. at 292 (stating § 362(h) must be read in conjunction with rest of § 362). Back To Text

[72] In re Atlantic Bus. & Community Dev. Corp., 901 F.2d at 327 (*quoting* H.R. Rep. No. 595 at 340, 95th Cong., 2d Sess. 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 6296). Back To Text

[73] *See* Budget Service Co., 804 F.2d at 292 (observing § 362(h) should be read in conjunction with remainder of automatic stay provision and that its "sanctions are not limited to relief of an 'individual' in the literal sense"); Jim Nolker Chevrolet−Buick−Oldsmobile, Inc. v. Richie (In re Jim Nolker Chevrolet−Buick−Oldsmobile, Inc.), 121 B.R. 20, 22 (Bankr. W.D. Mo. 1990) (stating same); Mallard Pond Partners v. Commercial Bank & Trust Co. (In re Mallard Pond Partners), Mann v. Marine Bank West (In re Omni Graphics), 119 B.R. 641, 644 (Bankr. E.D. Wis. 1990) (stating same); 113 B.R. 420, 423 (Bankr. W.D. Tenn. 1990) (stating same); United States v. INSLAW, Inc. (In re INSLAW, Inc.), 113 B.R. 802, 820 (D.D.C. 1989) (stating same); Homer Nat'l Bank v. Namie, 96 B.R. 652, 655 (W.D. La. 1989) (stating same); Schewe v. Fairview Estates (In re Schewe), 94 B.R. 938, 948 (Bankr. W.D. Mich. 1989) (stating same); Beverly Plaza Assoc. v. Saul (In re Kroh Bros. Dev. Co.), 91 B.R. 525, 539 n.3 (Bankr. W.D. Mo. 1988) (stating same); Utah State Credit Union v. Skinner (In re Skinner), 90 B.R. 470, 474 n.2 (D. Utah 1988) (stating same); In re Randy Homes Corp., 84 B.R. 799, 802 (Bankr. M.D. Fla. 1988) (stating same); In re NWFX, Inc., 81 B.R. 500, 503 n.3 (Bankr. W.D. Ark. 1987) (stating same); Nash Phillips/Copus, Inc. v. El Paso Floor, Inc. (In re Nash Phillips/Copus, Inc.), 78 B.R. 798, 803 (Bankr. W.D. Tex. 1987) (stating same); Wagner v. Ivory (In re Wagner), 74 B.R. 898, 903 n.12 (Bankr. E.D. Pa. 1987) (stating same). *See generally* Tel−A−Communications Consultants, Inc. v. Auto−Use (In re Tel−A−Communications Consultants, Inc.), 50 B.R. 250, 254 (Bankr. D. Conn. 1985) (stating "reading of section 362(h) suggests no basis for such a narrow construction"). Back To Text

[74] *See* id. Back To Text

[75] *See* In re Mallard Pond Partners, 113 B.R. at 423 (quoting 2 Collier on Bankruptcy ¶ 362.12, at 362−79 (Lawrence P. King et al. eds., 15th ed. 1988) (stating "[t]he reasons for this statutory addition have not been stated and hence the reasons for limiting its benefits to individuals and for making the recovery mandatory are not entirely clear. Nonetheless these rigidities in the statute are unlikely to prove troublesome since entities other than individuals should be entitled to protection under [this section]"); s*ee also* In re Tel−A−Communications Consultants, Inc., 50 B.R at 254. Back To Text

[76] *See* In re Mallard Pond Partners, 113 B.R at 423 (stating "[a]s a noun, this term denotes a single person as distinguished from a group or class, and also, very commonly, a private or natural person as distinguished from a partnership, corporation, or association; *but it is said that this restriction signification is not necessarily inherent in the word, and that it may, in proper cases, include artificial persons*") (emphasis added). Back To Text

[77] *See* supra Section II(A). Back To Text

[78] 504 U.S. 753, 767 (1992) (Scalia, J., concurring) (acknowledging his approval with majority's methods in determining when state law, as opposed to federal, should be applied in bankruptcy proceeding). Back To Text

[79] Id. at 757−58. Back To Text

[80] Id. at 766. Back To Text

[81] Id. (emphasis added). Back To Text

[82] Id. at 767 Back To Text

[83] *See* Badaracco v. C.I.R., 464 U.S. 386, 398 (1984) (stating "courts are not authorized to rewrite a statute because they deem its effect susceptible of improvement"); Caminetti v. United States, 242 U.S. 470, 485 (1917) (providing "the sole function of the courts is to enforce [the statue] according to its terms"); United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assoc. (In re Timbers of Inwood Forest Assoc.), 793 F.2d 1380, 1384 (5th Cir. 1986) (stating that judges "must be governed by congressional intent as set forth in the Bankruptcy Code"). Back To Text

[84] *Compare* In re Pace, 67 F.3d 187, 193 (9th Cir. 1995) (stating trustee can not be construed to be "individual" under § 362(h)), *and* McRoberts v. S.I.V.I (In re Bequette), 184 B.R. 327, 335 (Bankr. S.D. Ill. 1995) (observing § 362(h) provides remedies for debtors and creditors but not trustees), *with* Martino v. First Nat'l Bank of Harvey (In re Garofalo's Finer Foods, Inc.), 186 B.R. 414, 439 (N.D. Ill. 1995) (positing trustee may recover under § 362(h)), and Shimer v. Fugazy (In re Fugazy), 124 B.R. 426, 431 (S.D.N.Y. 1991), *appeal dismissed for lack of jurisdiction*, 982 F.2d 769, 778 (2d Cir. 1992) (holding trustee able to recover damages under § 362(h)). Back To Text

[85] *See* In re Pace, 67 F.3d at 193 (observing trustee's remedy can be found under § 105(a) and not § 362(h)); *see also* United States v. Arkinson (In re Cascade Roads, Inc.), 34 F.3d 756, 767 (9th Cir. 1994) (finding damages not otherwise available to corporate debtor for creditor's willful violation of automatic stay were available under § 105(a) as sanction for civil contempt); Mountain Am. Credit Union v. Skinner (In re Skinner), 917 F.2d 444, 447 (10th Cir. 1990) (stating "the weight of authority supports our holding that section 105(a) empowers bankruptcy courts to enter civil contempt orders" and that compensating "a debtor for injuries suffered as a result of a creditors violation of automatic stay, is both necessary and appropriate"). Back To Text

[86] In re Pace, 67 F.3d at 193. Back To Text

[87] *See* 11 U.S.C. § 362(h) (1994); *see also* Elder−Beerman Stores, Corp. v. Thomasville Furniture Indus., (In re The Elder−Beerman Stores Corp.), 197 B.R. 629, 632 (S.D. Ohio 1996) (basing its decision that individual excludes corporations on legislative history and meaning given to term individual in § 101(41) of Code); Sosne v. Reinert & Duree, P.C. (In re Just Brakes Corp. Sys.), 175 B.R. 288, 291−92 (Bankr. E.D. Mo. 1994), *aff'd*, 108 F.3d 881 (8th Cir. 1997) (observing limit to application of § 362(h)); Johnston Envtl. Corp. v. Knight (In re Goodman), 991 F.2d 613, 616 (9th Cir. 1993) (affirming bankruptcy court decision that individual does not include corporation under 11 U.S.C. § 362(h)). Back To Text

[88] *See* In re Bequette, 184 B.R. at 335 (stating court derived its reasoning from *In re Goodman*, 991 F.2d at 613, and *In re* Chateaugay, 920 F.2d 183, 187 (2d Cir. 1990) which held no damages available for trustee under § 362(h)). Back To Text

[89] *See* In re Garofalo's Finer Foods, Inc., 186 B.R. at 439 (stating trustee may recover damages under § 362(h) since trustee has suffered loss by following his obligation under § 704(1) to recover property wrongfully seized by creditor after bankruptcy petition had been filed); In re Just Brakes Corp. Sys., 108 F.3d at 884 (accepting equitable power of court to discipline violators of automatic stay). *But see* In re Pace, 67 F.3d at 1175 (asserting that while *Garofalo* allows trustee to fit definition of "individual," loss in form of attorney's fees and costs "is actually incurred by a thing, *viz.*, the bankruptcy estate"). Back To Text

[90] *See* 11 U.S.C. § 704(1) (stating "[t]he trustee shall collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest"); Jove Eng'g, Inc. v. I.R.S. (In re Jove Eng'g, Inc.), 92 F.3d 1539, 1554 (11th Cir. 1996) (finding corporate debtor may seek relief that is "necessary or appropriate" for creditor's civil contempt); In re Just Brakes Corp. Sys., 108 F.3d at 885 (reasoning that although trustee for corporate entity may not recover actual and punitive damages, they may be entitled to equitable relief for creditors "willful" violation of automatic stay). Back To Text

[91] In re Garofalo's Finer Foods, Inc., 186 B.R. 414, 439 (N.D. Ill. 1995). Back To Text

[92] United States v. Ron Pair Enterprises, Inc., 489 U.S. 235, 242 (1989). Back To Text

[93] *See* In re Garofalo's Finer Foods, Inc., 186 B.R. at 439. Back To Text

[94] *See* id. at 439 (holding that not allowing trustee not to recover under § 362(h) would be adverse to intent of Congress in passing BAFSJA). Back To Text

[95] *See* In re M&J Feed Mill, Inc., 112 B.R. 985, 990 (W.D. Mo. 1990) (awarding punitive damages to trustee under § 362(h) stating such damages may be awarded where violation is "willful and there is a finding of appropriate circumstances which constitute egregious, intentional misconduct on the violator's part"). Back To Text

[96] *See* In re Palumbo Family Ltd. Partnership, 182 B.R. 447, 471 (Bankr. E.D. Va. 1995) (applying § 362(h) to partnership). Back To Text

[97] *See* In re Goodman, 991 F.2d 613, 619 (9th Cir. 1993) (noting corporate debtors are more sophisticated than individual debtors and thus more likely to know what their rights are under Bankruptcy Code); In re Chateaugay, 920 F.2d 183, 186 (2d Cir. 1990) (stating non−corporate debtors are "less likely than corporations to be aware of their rights under the automatic stay"). Back To Text

[98] *See* Toibb v. Radloff, 501 U.S. 157, 167 (1991) (Stevens, J., dissenting). Under the Bankruptcy Act, chapter X was meant for reorganization of public companies and chapter XI was for rehabilitation of small and privately owned businesses. The drafters of the Bankruptcy Code sought to prohibit the confusion that these two provisions caused since under Bankruptcy Act considerable litigation ensued concerning whether the debtor belonged under chapter X or chapter XI since "public company" was never defined in the Act. The Bankruptcy Code combined debtors under chapters X and XI to eliminate the need for this type of litigation. Id.; *see also* S. Rep. No. 95−989, at 9, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5795 (stating same). Back To Text