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Southeast Bankruptcy Workshop

Consumer: Automatic Stay Violation Issues

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AMERICAN
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SOUTHEAST

Bankruptcy Workshop

The Ritz-Carlton, Amelia Island
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Automatic Stay Violations: State of the Law and Best Practices

AN OVERVIEW OF THE CURRENT STATE OF THE LAW REGARDING VIOLATIONS OF
THE AUTOMATIC STAY AS WELL AS BEST PRACTICES FOR SETTling AND
LITIGATING STAY VIOLATION CLAIMS.

Learning Objectives



Understand the state of the law regarding automatic stay violations.



Ideas for best practices and settlement strategies.

The Automatic Stay

- ▶ The automatic stay is found in 11 U.S.C § 362(a)
- ▶ **(a)** Except as provided in subsection (b) of this section, 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—**(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 a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

Stay Violation

- ▶ The violation is codified in 11 U.S.C § 362(k)
 - ▶ (1) Except as provided in paragraph (2), **an 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.**
 - ▶ (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

Discharge Injunction & Court's Contempt Power

- ▶ 11 U.S.C § 524(a)(2)
 - ▶ **(a)** A discharge in a case under this title—
 - ▶ **(2)** operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
 - ▶ See *In re McLean*, 794 F.3d 1313, 1320 (11th Cir. 2015) holding that § 524(a)(2) prohibits filing a proof of claim for a discharged debt where the objective effect of the claim is to pressure the debtor to repay the debt.
- ▶ 11 U.S.C. § 105(a) gives the Court implied authority to enter an Order of Contempt against a violating creditor:
 - ▶ (a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. 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 an abuse of process
 - ▶ See *In re Hardy*, 97 F.3d 1384 (11th Cir. 1996) Holding that § 105(a) grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are 'necessary and appropriate' to carry out the provisions of the Bankruptcy Code.

Survey of Cases in the Eleventh Circuit

Jove Eng'g, Inc. v. I.R.S., 92 F.3d 1539 (11th Cir. 1996)

- ▶ Seminal 11th Circuit decision
- ▶ § 105 creates a statutory contempt power in bankruptcy proceedings, distinct from the court's inherent contempt powers, for which Congress unequivocally waives sovereign immunity.
- ▶ § 105(a) grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are "necessary or appropriate" to carry out the provisions of the Bankruptcy Code.
- ▶ The automatic stay is "essentially a court-ordered injunction. Any person or entity that violates the stay may be found in contempt of court."
- ▶ A willful violation of the stay occurs when the creditor:
 1. Knew the automatic stay was invoked, and
 2. Intended the actions which violated the automatic stay

Survey of Cases in the Eleventh Circuit

Lodge v. Kondaur Cap. Corp., 750 F.3d 1263 (11th Cir. 2014)

- ▶ Holding: Emotional distress damages fall within the broad term of "actual damages" in § 362(k).
 - ▶ Generalized assertions of emotional distress were insufficient to support claim for actual damages for willful violation of automatic stay.
- ▶ To recover "actual" damages for emotional distress under § 362(k), a plaintiff must
 - ▶ (1) suffer significant emotional distress,
 - ▶ (2) clearly establish the significant emotional distress, and (
 - ▶ 3) demonstrate a causal connection between that significant emotional distress and the violation of the automatic stay.
- ▶ The Lodge Dodge: "In light of the result we reach today, we need not decide whether [debtors] were also required to show financial or physical injury before a court could award emotional distress damages under § 362."

Survey of Cases in the Eleventh Circuit

In re Hardy, 97 F.3d 1384 (11th Cir. 1996)

- ▶ § 105(a) grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are 'necessary and appropriate' to carry out the provisions of the Bankruptcy Code.

In re McLean, 794 F.3d 1313, 1322 (11th Cir. 2015); *Lodge v. Kondaur Cap. Corp.*, 750 F.3d 1263 (11th Cir. 2014)

- ▶ Holding: The test for whether a creditor violates the discharge injunction under 11 U.S.C. § 524(a)(2) is whether the objective effect of the creditor's action is to pressure a debtor to repay a discharged debt, regardless of the legal entity against which the creditor files its claim.

McMillan v. F.D.I.C., (11th Cir. 1996)

- ▶ Actual damages mean:
 - ▶ "real, substantial and just damages, or the amount awarded to complainant in compensation for [her] actual and real loss or inquiry, as opposed to 'nominal' damages and punitive damages."

Procedure

- ▶ What is a willful violation?
 - ▶ A "willful violation" of the automatic stay occurs when the creditor
 - (1) knew the automatic stay was invoked and
 - (2) intended the actions which violated the stay." *Jove Eng'g, Inc. v. I.R.S.*, 92 F.3d 1539, 1555 (11th Cir. 1996).
- ▶ Best mechanism to bring action?
 - ▶ Adversary Proceeding, often more costly and includes stricter deadlines
 - ▶ Motion for Contempt
- ▶ Jury Trial?
 - ▶ There is no right to a jury trial for claims brought under § 362(k) even though a § 362(k) claim may involve damages and attorney fees. *Tatyana v. Deutsche Bank* (U.S.D.C. W.D.Wash. 2025)

Enforcement by Contempt Power

In re Alexander (Bk S.D. N.Y. 2025) (J. Paek)

- ▶ Court entered an order holding creditor in contempt for violating the automatic stay and awarded actual and punitive damages under § 362(k)
- ▶ The order required payment in 20 days. Creditor failed to pay, and debtor filed a 2nd contempt motion.
- ▶ Creditor argued that the first contempt order was a money judgment which should be enforced by writ of execution under F.R.B.P. 7069 and 9014(c)
- ▶ Held: A sanctions order with a monetary component under § 362(k) is not an ordinary money judgment. Use of the contempt power is an appropriate way to enforce a sanction for misconduct.

Damages for Stay Violations

- ▶ Damages available?
 - ▶ Compensatory damages are available for actual damages including attorney fees; appellate attorney fees included
 - ▶ Emotional damages – See *Lodge v. Kondaur Cap. Corp.*, 750 F.3d 1263 (11th Cir. 2014) Holding that Emotional distress damages fall within the broad term of “actual damages” in § 362(k).
 - ▶ Punitive damages –
 - ▶ See *In re Parker*, 634 F. App’x 770 (11th Cir. 2015) finding punitive damages appropriate to serve the dual purposes of punishing creditor for its indifference to the law and Debtor’s rights and to deter creditor from committing future similar misconduct.
 - ▶ See *In re Tavera* (Bk M.D.Fla.) (J. Vaughn) citing *In re McLean* (11th Cir. 2015) Punitive damages are available in appropriate circumstances when a party acts with “reckless or callous disregard for the law of the rights of others.”

Damages for Stay Violations

Punitive Damages

Five factors to determine whether an award of punitive damages is appropriate:

1. Nature of defendants' conduct
2. Nature and extent of the harm to plaintiff
3. Defendant's ability to pay
4. Motives of defendant
5. Any provocation by debtor

In re Roche (Bk N.D.Ga. 2005)

In re Harrison (Bk N.D.Fla. 2019)

In re Hanby (Bk N.D.Ga. 2022)

Miller v. European Conn. (Bk M.D.Ala. 2021)

Vynogradov v. Buzyukoua (D.C.S.D.Fla. 2021) (J. Ruiz)

Damages for Stay Violations

Attorney Fee Awards

- ▶ *In re Horne*, 876 F.3d 1076 (11th Cir. 2017)
 - ▶ Damages include attorney fees incurred not only stopping the stay violation, but also fees incurred prosecuting the damages action and defending the damages on appeal.
- ▶ *In re Parker*, 634 F. App'x 770 (11th Cir. 2015)
 - ▶ Bankruptcy Court may award attorney fees as actual damages even if debtor has not suffered any other actual damages from the stay violation.
- ▶ *Johnson v. Georgia Highway Exp.*, 488 F.2d 714 (5th Cir. 1974)
 - ▶ Factors for reasonableness of attorney fees for a creditor's willful violation of the automatic stay, pursuant to, are:
 - ▶ (1) the time and labor involved; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases.

Survey of Awards for Stay Violations by Bankruptcy Courts Within the 11th Circuit

Awards for Stay Violations in 11th Circuit

In re Lyubarsky, 615 B.R. 924 (Bk S.D. Fla. 2020) (Chief J. Isicoff)

- ▶ Two-day trial on Motion to Enforce Stay, Sanctions for Fraud and Contempt for Willful Violation of Stay ("Sanctions Motion")
- ▶ Facts: Creditor and Creditor Attorney met with Debtor's Counsel and stated that \$250k due by date certain or would disclose information about Debtor's assets that were not on the Debtor's schedules.
- ▶ Settlement Discussion or Stay Violation?
 - ▶ All the courts that have adopted this "**post-petition settlement**" **exception** have the same standard – **if the negotiations are coercive, if threats are made, if the debtor is harassed, the discussions are violations of the automatic stay.**
 - ▶ Court reviewed the specific facts and testimony in making a determination that this was a stay violation. I.e. Meeting in person rather than by telephone or written communication, contemporaneous evidence of recounting the incident
- ▶ Held: Creditor and its attorney willfully violated the stay by making \$250,000 payment demand *coupled* with a threat; Creditor and its attorney were jointly and severally liable for the damages under general principals of Agency Law

Awards for Stay Violations in 11th Circuit

In re Lyubarsky (con't)

Emotional Distress:

- ▶ Debtor - Emotional distress damages were not warranted for debtor who was upset by creditor's and its attorney's stay violation; insufficient evidence.
- ▶ Joint Debtor - Emotional distress damages of \$27,524.75 were appropriate for joint debtor who suffered from anxiety as result of creditor's and its attorney's stay violation;
 - ▶ Joint Debtor suffered from anxiety and received disability payments for anxiety
 - ▶ Joint Debtor's psychiatrist testified that panic attacks worsened
 - ▶ Actual Damages for emotional distress of \$20 for financial damages
 - ▶ No legal yardstick by which to measure reasonable compensation for emotional distress, Judge considered **egregious nature of demand** and how other courts have calculated damages for emotional distress
 - ▶ "There is no mathematical formula for calculating damage awards for emotional distress...leave damages to the 'gut' of the jury or judge"
 - ▶ Court awarded emotional distress damages of \$25,000.00 plus \$20.00

Awards for Stay Violations in 11th Circuit

In re Lyubarsky (con't)

Attorney's Fees:

- ▶ Attorney fee award: \$85,150.00 in attorney fees and \$5,584.50 (-2045.70) in attorney expenses
- ▶ Reviewed factors for reasonableness of attorney fees for a creditor's willful violation of the automatic stay, pursuant to *Johnson v. Georgia Highway Exp.*, 488 F.2d 714 (5th Cir. 1974).
- ▶ Creditor argued that not entitled to fees b/c Debtors did not pay for work associated w/ the Sanctions Motion
- ▶ Judge held fact that **Debtors not paying is irrelevant and Pro bono or uncompensated fees do not bar an award**

Awards for Stay Violations in 11th Circuit

In re Lyubarsky (con't)

Punitive Damages

- ▶ Punitive damages award of \$236,518.50 was appropriate for creditor's and its attorney's stay violation.
- ▶ An award of punitive damages should be gauged by the gravity of the offense and set at a level...to punish and deter"
- ▶ "Amount of punitive damages is **largely left to the discretion of the bankruptcy court.**"
- ▶ Judge applied a punitive damages multiplier of 2 of what the Debtors' ultimate actual damages are
- ▶ Actual damages of \$118,259.25 x 2 = Punitive Damages of \$236,518.50

Total judgment: \$354,777.00

Awards for Stay Violations in 11th Circuit

In re Tavera, 645 B.R. 299 (Bk M.D. Fla. 2022) (J. Vaughn)

- ▶ Sanctions against creditor totaling \$2,000 were appropriate for willful stay violations
- ▶ Respondent was debtor's landlord on debtor's townhouse and lived in the townhouse next door
- ▶ Chapter 7 debtor-tenant filed a Motion for Sanctions against creditor-landlord for violating stay
- ▶ Judge reviewed the established facts and timeline of actions
- ▶ Judge held that creditor violated stay by:
 - ▶ Posting notice that debtor and other occupants would receive a 24-hour notice from sheriff to leave premises;
 - ▶ Posting notice demanding payment of past-due or return of possession of the property;
 - ▶ Offering to drop any criminal charges against debtor in exchange for returning possession;
- ▶ Judge also held that debtor failed to establish that
 - ▶ Creditor violated stay by interfering with her internet service or cameras;
 - ▶ Emotional distress damages were appropriate for creditor's willful stay violations;

Awards for Stay Violations in 11th Circuit

In re Tavera (con't)

Actual Damages

- ▶ Debtor's burden to prove actual damages

Emotional Distress:

- ▶ None awarded because debtor presented no corroborating evidence. Debtor also failed to establish a causal connection.
- ▶ To recover damages for emotional distress for creditor's willful violation of automatic stay, at minimum, debtor must suffer significant emotional distress, clearly establish significant emotional distress, and demonstrate causal connection between significant emotional distress and violation of automatic stay.

Awards for Stay Violations in 11th Circuit

In re Tavera (con't)

Attorneys Fees:

- ▶ Debtor was pro se and had no attorney fees.
- ▶ "To preserve the integrity of the automatic stay, the Court may award **nominal damages** when a debtor is unable to demonstrate actual damages under 362(k)."
- ▶ Court awarded \$500 for the eviction tacking, \$500 for the wrongful entry, \$500 for "offering to drop forgery charges," and \$500 for re-opening the eviction and 4 texts (\$100 per offense)

Punitive Damages:

- ▶ No Punitive Damages - "both parties are in the wrong, but only debtor is protected by the stay."
- ▶ Punitive damages are available in appropriate circumstances when a party acts with "reckless or callous disregard for the law or rights of other." Further, punitive damages are only appropriate "where a party has acted with sufficient notice concerning the legal import of its offending actions."

Awards for Stay Violations in 11th Circuit

In re Hamby, 646 B.R. 865, 868 (Bankr. N.D. Ga. 2022) (J. Bonapfel)

- ▶ Defendant was a “buy here, pay here” car dealer that conducted a post-petition repo with knowledge of the chapter 13
- ▶ Debtor filed an A.P. (complaint for turnover). Defendant ignored the turnover order.
- ▶ Defendant did not appear at trial
- ▶ Actual damage award: \$1,133.46 for personalty in the repossessed vehicle
- ▶ Debtor did not “establish quantification of actual monetary amount” for loss of work and requirement to purchase another vehicle

Awards for Stay Violations in 11th Circuit

In re Hamby (con't)

Attorney Fees and Punitive Damages

- ▶ Attorney fee award: \$3,000.00 (10 hours at \$300 per hour)
- ▶ “Fee is reasonable if not low”
- ▶ Punitive damages: \$14,732.53 which is the amount defendant sought to collect. Court also enjoined defendant from collecting any debt from debtor. Court also ordered turnover of the repossessed vehicle.
- ▶ Officer/owner of defendant held jointly and severally liable for authorizing, directing and participating in the stay violation.

Awards for Stay Violations in 11th Circuit

In re Miller, No. 20-81129-BPC, 2021 WL 4448535 (Bankr. M.D. Ala. Sept. 28, 2021) (J. Creswell)

- ▶ Defendant “buy here, pay here” car dealer sold debtor a vehicle for \$9,000.00 and received trade in and cash of \$7,000.00 (\$2,000 debt)
- ▶ Defendant conducted post-petition repo
- ▶ Chapter 13 debtor filed an A.P. (complaint for willful stay violation)
- ▶ Defendant failed to answer or appear at the damages trial
- ▶ Damages evidence: debtor incurred \$2,140.00 in repairs on vehicle and \$1,800.00 in transportation cost (\$150.00 for 12 weeks)
- ▶ \$5,183.75 attorney fees and \$25.80 in expenses

Awards for Stay Violations in 11th Circuit

In re Miller (con't)

Damages Award:

- ▶ Court awarded value of lost equity in vehicle (\$7,200.00)
- ▶ Court awarded attorney fees and expenses: \$5,209.55
- ▶ Court awarded \$1,800.00 in transportation expenses
- ▶ Court did not award damages for emotional distress because there was no evidence of these damages introduced at the hearing
- ▶ Punitive damages award: \$1 x multiplier – actual damages of \$14,209.55 resulted in a \$15,000.00 punitive damage award

Awards for Stay Violations in 11th Circuit

In re Kennedy, No. 19-64620-WLH, 2023 WL 3011246, (Bankr. N.D. Ga. Apr. 19, 2023) (J. Hagenau)

- ▶ Following a foreclosure, debtor held a possessory interest in a residence
- ▶ Chapter 13 debtor filed an A.P. (complaint for an injunction and damages resulting from the foreclosure and eviction)
- ▶ Court granted summary judgment for defendant on the foreclosure because the debtor had no ownership interest in the real estate and the foreclosure did not affect debtor's mere possessory interest
- ▶ Defendant violated the stay by causing process server to serve the dispossessory post-petition

Awards for Stay Violations in 11th Circuit

In re Kennedy (con't)

Damages:

- ▶ Normally, the testimony of the plaintiff alone is not sufficient to establish significant emotional distress and a plaintiff must provide corroborating evidence
- ▶ Corroborating evidence may include expert testimony (medical) or non-experts (family members, friends, co-workers)
- ▶ Court denied damages for emotional distress because debtor's testimony was "generalized evidence of worry"
- ▶ \$13,000.00 attorney fee award did not include time spent on the bankruptcy case and adversary not related to the willful stay violation
- ▶ No punitive award because defendant's conduct "not sufficiently egregious"
- ▶ Defendant's good faith belief that it had a right to take the actions is irrelevant to whether defendant acted willfully
- ▶ Malice is not required

Awards for Stay Violations in 11th Circuit

In re Schullo, No. 18-04551-TOM-13, 2024 WL 922859, (Bankr. N.D. Ala. Mar. 4, 2024)(J. Mitchell)

- ▶ Debtor scheduled Apex (a roofing company) in his chapter 13 and confirmed a plan
- ▶ Apex filed a proof of claim for \$12,882.52
- ▶ Apex filed a lien and garnished post-petition. Apex also dunned debtor post-petition (3 letters and at least 6 phone calls)
- ▶ Debtor filed an A.P. Apex defaulted and did not appear at the damages hearing
- ▶ The Court: “Debtors problems with Apex appear to be partially a result of his own actions.” (Debtor used roof insurance money for bills and did not remit to Apex)

Awards for Stay Violations in 11th Circuit

In re Schullo (con’t)

- ▶ \$194 actual damages (amount garnished from account post-petition)
- ▶ \$50 for distress and worry caused by post-petition collection efforts (“comprised of \$25.00 for post-petition calls and \$25.00 for 3 collection letters”)
- ▶ Lost wages of \$150.00
- ▶ Attorney fees and expenses: \$4,000.00
- ▶ Total damages: \$4,394.00
- ▶ Punitive award: \$2,500.00
- ▶ Court did not use “multiplier terminology” but punitive award is 56% of actual damages

Awards for Stay Violations in 11th Circuit

In re Taylor, No. 23-40472-JJR7, 2023 WL 6471634
(Bankr. N.D. Ala. Oct. 4, 2023) (J. Robinson)

- ▶ Defendant leased a residence to debtor
- ▶ the stay violations before filing this proceeding
- ▶ Debtor filed chapter 13 and proposed to cure and assume the lease
- ▶ “Landlord ignored the automatic stay...and continued to pursue the eviction despite repeated notification by debtor’s counsel via telephone calls, emails and letters” to landlord and its attorney in the eviction case.
- ▶ “The flagrant violation of the stay caused debtor significant anxiety, worry, and distress”

Awards for Stay Violations in 11th Circuit

In re Taylor (con’t)

Damages:

- ▶ Physical manifestations of the emotional distress included “depression, worry, anger, anxiety, embarrassment, and loss of sleep.” This was compounded by debtor’s job as a truck driver which required sleep and focus to perform safely
- ▶ Court awarded actual damages of \$10,000.00 for emotional distress. [opinion does not cite to corroborating evidence]
- ▶ Attorney fees and expenses awarded in full: \$5,722.50
- ▶ Court awarded total punitive damages requested: \$5,000.00
- ▶ No discussion of a multiplier: punitive award = 32%

Awards for Stay Violations in 11th Circuit

Matter of Banks, No. AP 19-05172-LRC, 2020 WL 5807520, (Bankr. N.D. Ga. Sept. 29, 2020) (J. Ritchey Craig)

- ▶ Chapter 7 trustee filed an A.P. against Wells Fargo and the Dept. of Housing and Urban Development.
- ▶ Trustee made efforts to sell debtor's residence based on a title report and pay-off statement from Wells Fargo which evidenced equity in the property.
- ▶ Through a later title report, Trustee learned of a post-petition loan modification and junior security deed to HUD.
- ▶ Trustee filed an A.P. to avoid the post-petition transactions and for damages.

Awards for Stay Violations in 11th Circuit

Matter of Banks (con't)

- ▶ Trustee is an estate representative not entitled to damages as an "individual" under § 362(k)
- ▶ Court may award damages under § 105 to trustees and corporations for stay violations
- ▶ HUD sovereign immunity defense failed except as to punitive damages (see § 106(a)(3))
- ▶ Result: Court denied HUD's Motion to Dismiss

Best Practices and Settlement Strategies

- ▶ “Nuisance suits”
 - ▶ Are these even prevalent anymore?
 - ▶ Resolve as quickly as possible to minimize litigation/attorney costs by reaching out prior to filing suit
 - ▶ Relationships among bar members eliminating?
 - ▶ Reduced due to creditor's improving processes and procedures?
- ▶ Pro Se
 - ▶ Misunderstandings
 - ▶ Delaying collection efforts
 - ▶ Sovereign Citizen Arguments
- ▶ Loss Mitigation
 - ▶ May be used as a settlement strategy
 - ▶ Lower interest rate/arrange on back end to avoid litigation of violation of automatic stay
- ▶ Settlement vs. Heavy Litigation
 - ▶ Cost/Attorneys
 - ▶ Fighting if there is a belief there is/there isn't a stay violation

Recent Caselaw

In re Klemkowski and Online Payments

664 B.R. 681 (D. Md. 2024)

Appeal – denied and remanded 2025 WL 81513

- ▶ Findings: A debtor's prepetition agreements, as well as her rights under those agreements, generally become property of the bankruptcy estate.
- ▶ The Creditor's decision to unilaterally restrict the Debtor's right to access the online portal was an exercise of control over estate property akin to a contract termination and, thus, violated the automatic stay
- ▶ Debtor's estate included the “Online Access Agreement”
- ▶ There was no basis for an award of monetary damages for Creditor's stay violation – was not established by Debtor or sought by Debtor.
- ▶ The action taken by the Creditor in violation of the automatic stay was void

Recent Caselaw

In re McCormick (Bk M.D.Ga. 2025) (J. Laney)

- ▶ Mortgage Co. advertised debtor's residence for foreclosure
- ▶ Debtor's attorney notified mortgage co. of the chapter 13
- ▶ Newspaper ad continued to run. Property continued to appear for foreclosure sale via Zillow
- ▶ Debtor filed an A.P. for violation of stay
- ▶ Held: Failure to remove the foreclosure ad and online ad prior to the advertised sale does not constitute a violation of the automatic stay.

More City of Chicago

In re Cordova, 668 B.R. 413 (Bankr. N.D. Ill. 2025)

- ▶ Plaintiffs allege that they are resident of Chicago who each had their vehicles impounded by the city for unpaid vehicle infraction fines.
- ▶ Each plaintiff filed chapter 13. Approximately 57 plaintiffs sought class certification.
- ▶ Undisputed that the city demanded an upfront lump sum payment, often over \$1,000, and treatment of the city's claim as fully secured in exchange for turnover of the vehicles.
- ▶ Held: Class action certification granted.
- ▶ Determination of the superiority requirement: "The city has shown a propensity to fight these issues vigorously, including on appeal, where it achieved a modicum of success"
- ▶ The city's arguments against class certification "underscore what may be its tactics if this matter is not certified – to make individual recovery so burdensome and expensive that the city might win a war of attrition"



Faculty

Reka Beane is an associate at McCalla Raymer Leibert Pierce, LLP in Roswell, Ga., where she leads the Florida bankruptcy team and is also the chair of the firm's Bankruptcy Litigation Committee. She represents secured creditors, equityholders and investors in cases pending under all bankruptcy chapters. Ms. Beane has focused her practice solely on creditors' rights since 2008. She began her practice at one of the largest creditors' rights firms in Florida. She also had her own practice, which focused on assisting creditors' rights firms in developing strategies and litigating contested matters at hearings and trials. Ms. Beane received both her B.A. and J.D. from the University of Florida.

Leon S. Jones is a partner and co-founder of the law firm of Jones & Walden, LLC in Atlanta and concentrates his practice in the areas of bankruptcy, creditor rights and general business litigation. Before forming Jones & Walden, LLC, he worked at such Georgia firms as the Macon office of Arnall, Golden & Gregory; Burton & Anderson; and Lawson, Davis, Pickren & Seydell. Mr. Jones has served as lead counsel in numerous commercial trials and evidentiary hearings. He also has extensive experience in post-judgment collection matters. In addition to his law practice in the courts of the State of Georgia, Mr. Jones has litigated in the U.S. Bankruptcy Courts for the Northern, Middle and Southern Districts of Georgia. He has lectured extensively regarding bankruptcy and related litigation, and he speaks often to various trade groups on issues involving bankruptcy-related topics. Mr. Jones has a particular focus on individual chapter 11 cases and fraudulent-transfer law. Mr. Jones received his B.A. in 1985 in economics and political science from the University of Georgia, and his J.D. in 1998 from the University of Georgia School of Law, where he served as executive chairman of the Moot Court Board, as a member of the Grey's Inn Moot Court Team and as a member of the Jessup Competitive Moot Court Team. He also served on the editorial board of the *Georgia Journal of International and Comparative Law*. He also was selected as a member of the Order of Barristers and the Joseph Henry Lumpkin American Inn of Court.

Travis Emil Menk is a partner in the Charlotte, N.C., office of Brock & Scott, PLLC in its Bankruptcy Department. He has practiced in the areas of litigation, foreclosure, creditor bankruptcy, collections, forfeiture, REO, residential and commercial real estate, insurance subrogation, insurance defense, and general and corporate business law. Mr. Menk received his B.S. in management science and engineering in 2003 from Stanford University, and his J.D. *cum laude* in 2006 from the University of Illinois.

Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI's Board of Directors, NCBJ, IWIRC, TMA and the Bankruptcy Section of the Atlanta Bar Association, and she has been a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017, and she served on the program's steering committee from 2022-23, the publications committee in 2023 as the judicial chair for ABI's Southeast Bankruptcy Workshop in 2024. She received her B.A. in political science from the University of Florida

in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.

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