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Section 362(h): Applicable to Corporate Debtors

Mary E. Norton

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Section 362(h): Applicable to Corporate Debtors?

Maritime Asbestosis Legal Clinic v. LTV Steel Co., Inc.
(*In re Chateaugay Corp.*)¹

I. INTRODUCTION

When a debtor files a petition in bankruptcy, section 362 of the Bankruptcy Code creates an automatic stay that operates to halt any actions that would affect the bankruptcy estate. Among the actions the automatic stay prevents are foreclosure actions, tort actions against the debtor, setoff of a debt owed to the debtor, or any actions that would "create, perfect or enforce" a lien against the debtor's property.² The automatic stay is triggered when any bankruptcy petition is filed, regardless of whether it is filed under Chapter 7, 11, 12, or 13. The automatic stay protects debtors because it prevents any actions taken against them for a specified period; in essence, giving them room to breathe.³ It also protects creditors by providing for an equitable distribution of the bankruptcy estate so the fast-acting creditors are not the only creditors who can collect their claims.⁴

1. 920 F.2d 183 (2d Cir. 1990) [hereinafter *Chateaugay II*].

2. 11 U.S.C. § 362 (1988).

3. 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.

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598 § 362, 92 Stat 2570, 5840-41 (1978).

4. 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 treated equally. A race of diligence by creditors goes against equal treatment of creditors.

Id.

In 1984, Congress made substantial amendments to the Bankruptcy Code (the "Code").⁵ Included in these amendments was a new provision, section 362(h), which provides the following remedy for stay violations: "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."⁶

Since its addition to the Code in 1984, section 362(h) has sparked debate about its application in certain situations. Section 362(h) presents two major questions: First, what did Congress mean when it referred to an "individual?" Is an individual a natural person, or are corporations (artificial persons) and partnerships also considered individuals? Second, if section 362(h) is not available to a debtor when the automatic stay is violated because the debtor does not qualify as an "individual," is there another remedy available to the debtor for violations of the stay provision?

This Note will address whether corporate debtors qualify as individuals entitled to recover damages for stay violations under section 362(h). In addition, this Note will analyze civil contempt as an alternative when a corporate debtor is denied access by the courts to section 362(h). The Second Circuit in *Chateaugay* believed contempt was the answer for a corporate debtor harmed by stay violations.

II. THE FACTS AND HOLDING

LTV Corporation ("LTV") and some of its affiliates filed a petition for relief under Chapter 11 of the Code on July 17, 1986.⁷ Shortly afterwards, Maritime Asbestosis Legal Clinic ("MALC"), an organization that handles litigation for merchant seamen who were exposed to asbestos while at sea,

5. See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-553, 1984 U.S. CODE CONG. & ADMIN. NEWS (98 Stat) 333.

6. 11 U.S.C. § 362 (1988) (emphasis added). The legislative history of section 362(h) states:

Subsection (h), added by the 1984 amendments, should dispel any doubts as to the sanctions that may be imposed for willful violation of the automatic stay apart from contempt proceedings. Under subsection (h), an individual injured by willful violation of the stay "shall" recover the actual damages suffered, including costs and counsel fees. Additionally, in appropriate circumstances, the court may, in its discretion, award punitive damages. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-553, 1984 U.S. CODE CONG. & ADMIN. NEWS (98 Stat) 333.

7. *Chateaugay II*, 920 F.2d at 183.

filed proofs of claims on behalf of 157 maritime asbestos claimants.⁸ Each claimant sought damages of \$1 million, alleging personal injuries from exposure to asbestos while on LTV owned or operated ships.⁹

In July of 1988, MALC, representing 220 merchant seamen exposed to asbestos, initiated lawsuits in the U.S. District Court for the Eastern District of Michigan.¹⁰ Three of these actions named LTV as a defendant.¹¹ These actions were dismissed once LTV informed MALC that MALC had violated the automatic stay when it filed the lawsuits.¹²

In March of 1989, while LTV's Chapter 11 proceeding was still pending, MALC filed amended complaints for 1373 asbestos plaintiffs with the District Court for the Northern District of Ohio.¹³ Thirty-eight of the amended complaints named LTV as a defendant.¹⁴ When LTV was served with these complaints, it filed a motion with the Bankruptcy Court for the Southern District of New York requesting the court (1) to enjoin prosecution of the 38 amended complaints because they violated the automatic stay, and (2) to award damages against MALC under sections 105(a) and 362(h) of the Bankruptcy Code.¹⁵

The Bankruptcy Court for the Southern District of New York, granted a permanent injunction against the prosecution of the 38 claims.¹⁶ The court also awarded compensatory damages in the amount of \$7,600 after concluding that MALC's initiation of the asbestos actions constituted a willful violation of the automatic stay.¹⁷ Finally, the court held LTV's request for contempt sanctions under section 105(a) in abeyance.¹⁸

8. *Maritime Asbestosis Legal Clinic v. LTV Steel Co., Inc. (In re Chateaugay Corp.)*, 112 Bankr. 526, 527 (S.D.N.Y. 1990) [hereinafter *Chateaugay I*].

9. *Id.*

10. *Chateaugay II*, 920 F.2d at 183.

11. *Id.*

12. *Id.* See 11 U.S.C. § 362 (1988). These actions were related to asbestos actions pending in the United States District Court for the Northern District of Ohio. *Chateaugay II*, 920 F.2d at 183.

13. *Chateaugay I*, 112 Bankr. at 528.

14. *Chateaugay II*, 920 F.2d at 183-84. This number included amended complaints on behalf of the three plaintiffs whose claims had been dismissed from the litigation in the Eastern District of Michigan in 1988. *Id.* at 184.

15. *Id.* at 184. This time LTV did not inform MALC that by filing the amended complaints MALC had violated the automatic stay. *Id.*

16. *Id.*

17. *Id.* The court concluded that the violation of the stay was willful because MALC had knowledge of the bankruptcy proceeding by virtue of the dismissal of the actions in the Eastern District of Michigan. *Chateaugay I*, 112 Bankr. at 528.

18. *Chateaugay II*, 920 F.2d at 184.

MALC appealed the injunction and award of damages to the District Court for the Southern District of New York.¹⁹ MALC asserted that the bankruptcy court's authority to award damages under section 362(h) was not applicable for two reasons. First, section 362(h) authorizes an award of damages to an individual debtor, and LTV, a corporate debtor, was not an individual.²⁰ Second, even if section 362(h) was applicable, damages were not appropriate because MALC's violation of the stay, though reckless,²¹ was not willful since LTV did not prove that MALC intended to violate the stay.²²

The district court concluded that MALC's violation of the automatic stay was willful even though a computer programmer error resulted in the filing of those lawsuits.²³ It further held that LTV, a corporate debtor, could recover damages under section 362(h) even though the statute limited recovery to individual debtors.²⁴

MALC appealed to the Second Circuit Court of Appeals asserting that LTV could not recover damages under section 362(h) because the term "individual" did not encompass corporate debtors.²⁵ The Second Circuit agreed with MALC, holding that section 362(h) was not available to corporate debtors because "individual" did not include corporations under the Code.²⁶ While it took away a remedy with one hand, the Second Circuit provided LTV with another avenue to redress its injury: seeking damages through a civil contempt proceeding.²⁷

19. *Id.* The appeal of the injunction was withdrawn by stipulation of the parties. *Id.*

20. *Chateaugay I*, 112 Bankr. at 528-29.

21. MALC testified that the amended complaints were served on LTV in error as a result of a computer programming error. *Id.* at 528.

22. *Id.* at 529. MALC presented several other reasons for appeal which this Note will not address. *See id.* at 528-29.

23. *Id.* at 530-32.

24. *Id.* at 532-33. The District Court relied on *Budget Serv. Co. v. Better Homes of Va.*, 804 F.2d 289, 292 (4th Cir. 1986). *Chateaugay I*, 112 Bankr. at 532-33. *See infra* notes 28-37 and accompanying text for discussion of *Budget Service*. The district court further cited numerous bankruptcy court decisions supporting this conclusion. *See Chateaugay I*, 112 Bankr. at 533.

25. *Chateaugay II*, 920 F.2d at 184.

26. *Id.* at 184-86.

27. *Id.* at 187. The court stated: "For [non-individual] debtors, contempt proceedings are the proper means of compensation and punishment for willful violations of the automatic stay." *Id.*

III. THE COURTS DEFINE "INDIVIDUAL"

Before *Chateaugay*, only two other United States courts of appeals had decided whether the term "individual" included corporations. Both courts had held that the term "individual" in section 362(h) included a corporation.

In *Budget Service Co. v. Better Homes of Virginia, Inc.*,²⁸ Budget Service, a motor vehicle leasing company, twice attempted to repossess leased vehicles after nonpayment by Better Homes, a corporation. Because Budget Service's repossession attempts occurred after Better Homes had filed a bankruptcy petition, its actions violated the automatic stay.²⁹ Consequently, the bankruptcy court found Budget Service in civil contempt of court and imposed sanctions, and the district court affirmed the bankruptcy court's determination.³⁰

Budget Service appealed, challenging the authority of the bankruptcy court to hold it in civil contempt.³¹ The Fourth Circuit affirmed the district court's decision. The court stated that it did not have to address the contempt issue because the bankruptcy court clearly had authority under section 362(h) to award damages to Better Homes.³²

The court examined the legislative history of the automatic stay³³ and concluded that the term "individual"³⁴ included corporate debtors.³⁵ It supported its conclusion by reasoning that section 362(h) had to be read "in conjunction with the rest of section 362," which did not limit its application to "individuals."³⁶ The court concluded that narrowly defining "individual" as natural persons would frustrate the purpose of the automatic stay because artificial entities such as corporations or partnerships would be denied a remedy for violations of the automatic stay.³⁷ The court essentially interpreted section 362(h) broadly so it was available to all debtors.

The other appellate case that faced this issue before *Chateaugay* was *Cuffee v. Atlantic Business & Community Development Corp. (In re Atlantic*

28. 804 F.2d 289 (4th Cir. 1986).

29. *Id.* at 290. When Better Homes filed its petition in bankruptcy, the automatic stay "went into effect by operation of law." *Id.*

30. *Id.* at 291.

31. *Id.*

32. *Id.* at 291-92.

33. *See supra* notes 3 and 4.

34. The Bankruptcy Code does not define individual. *Budget Serv.*, 804 F.2d at 292.

35. *Id.*

36. *Id.*

37. *Id.*

Business & Community Corp.)³⁸ In that case, the Third Circuit also concluded that section 362(h) was available to corporate debtors.³⁹ In *Atlantic Business*, the debtor operated a radio station on premises it leased under a tenancy at sufferance from James Cuffee.⁴⁰ After the debtor filed bankruptcy, Cuffee attempted to terminate the tenancy by sending notice to Atlantic Business. Also, to evict Atlantic Business Cuffee installed new locks while radio station personnel were in the building.⁴¹ The Third Circuit held that this was a willful violation of the automatic stay and assessed damages against Cuffee under section 362(h).⁴² Stating that section 362(h) "has uniformly been held to be applicable to a corporate debtor," the court relied on *Budget Service* and did not add any new analysis regarding the proper interpretation of section 362(h) and the legislative history of section 362.⁴³

The Eighth Circuit has not addressed this issue; however, bankruptcy courts within the Eighth Circuit have concluded that "individual" does include a corporation.⁴⁴ A few courts have concluded that corporations could not

38. 901 F.2d 325 (3d Cir. 1990).

39. *Id.* at 329. The court stated that "[a]lthough Section 362(h) refers to an individual, the section has uniformly been held to be applicable to a corporate debtor." *Id.* (citing *Budget Serv.*, 804 F.2d at 292).

40. *Id.* at 326.

41. *Id.* at 326-27.

42. *Id.* at 327-29.

43. *Id.* at 329.

44. There are two decisions by the United States Bankruptcy Court for the Western District of Missouri that have allowed corporate debtors to utilize the remedy given to "individuals" under § 362(h). The first, *Jim Nolker Chevrolet-Buick Oldsmobile, Inc. v. Richie* (*In re Jim Nolker Chevrolet-Buick Oldsmobile, Inc.*), 121 Bankr. 20 (Bankr. W.D. Mo. 1990), held that "individual" includes corporate debtors. The court reasoned that "for every wrong there is a remedy," and, because the Eighth Circuit had never decided the issue, the court elected to follow the only two other circuits that had decided the issue, and extend protection to corporate debtors "as well as a flesh-and-blood individual debtor." *Id.* at 22. Interestingly, the court stated it could have reached the same conclusion using its equitable powers under § 105(a) of the Code via a civil contempt order. *Id.* at 22.

The second decision is *In re M & J Feed Mill, Inc.*, 112 Bankr. 985 (Bankr. W.D. Mo. 1990). In this case, the court allowed a corporate debtor to recover damages for a stay violation under § 362(h). *Id.* at 989. Unfortunately, the court failed to address the issue of allowing a corporate debtor to use § 362(h). *Id.* This, however, is not unusual. See *In re B. Cohen & Sons Caterers, Inc.*, 108 Bankr. 482 (Bankr. E.D. Pa. 1989) (permitted corporate debtor to use § 362(h) without discussing whether corporation was included in the definition of "individual"); *In re Santa Rosa Truck Stop, Inc.*, 74 Bankr. 641 (Bankr. N.D. Fla. 1987).

That the Missouri bankruptcy courts would allow corporate debtors to utilize the § 362(h) remedy is not unusual. There are numerous decisions by United States

utilize section 362(h) because the statute limited recovery to individuals.⁴⁵ No appellate court, however, had adopted this reasoning. Against this backdrop, the stage was set for the Second Circuit in *Chateaugay*.

IV. THE INSTANT DECISION

MALC appealed the district court's decision upholding the award of damages under section 362(h) to the United States Court of Appeals for the Second Circuit.⁴⁶ Although MALC initially presented four grounds for appeal, it subsequently conceded three, which left only a single issue for the Second Circuit to decide: whether section 362(h) permits corporate debtors to recover damages for a willful violation of the automatic stay.⁴⁷

The court began its analysis by explaining a basic rule of statutory construction adopted by the United States Supreme Court: "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."⁴⁸

The court noted, however, that this rule does not apply when its application would frustrate the purpose of the statute; rather, in such a situation, the drafters' intention should prevail over the plain meaning of the statute.⁴⁹

After explaining its rule of statutory construction, the court proceeded to analyze section 362(h) and its application to LTV's request for damages. The court began by attempting to define "individual"—something Congress neglected to do⁵⁰—by comparing it with a term that Congress did define—person. The Code defines "person" as an "individual, partnership, and

bankruptcy courts that held that corporate debtors are included in "individual," thus allowing recovery under § 362(h). See *AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.)*, 117 Bankr. 789 (Bankr. S.D.N.Y. 1990); *Mallard Pond Partners v. Commercial Bank & Trust Co. (In re Mallard Pond Partners)*, 113 Bankr. 420 (Bankr. W.D. Tenn. 1990) (Not only was corporation included in "individual," but partnership was also included. *Id.* at 423. The court cited BLACK'S LAW DICTIONARY 913 (revised 4th ed. 1968) because its definition of "individual" stated that there are times when the term "individual" does include artificial persons.); *Schewe v. Fairview Estates (In re Schewe)*, 94 Bankr. 938 (Bankr. W.D. Mich. 1989); *Tel-A-Communications Consultants, Inc. v. Auto-Use (In re Tel-A-Communications Consultants, Inc.)*, 50 Bankr. 250 (Bankr. D. Conn. 1985).

45. See *First Republicbank Corp v. NCNB Tex. Nat'l Bank (In re First Republicbank Corp.)*, 113 Bankr. 277 (Bankr. N.D. Tex. 1989); *In re Brilliant Glass, Inc.*, 99 Bankr. 16 (Bankr. C.D. Cal. 1988) (contempt was an appropriate remedy).

46. *Chateaugay II*, 920 F.2d at 184.

47. *Id.*

48. *Id.* (citing *United States v. Ron Pair Enters.*, 489 U.S. 235 (1989)).

49. *Chateaugay*, 920 F.2d at 184.

50. *Id.* See 11 U.S.C. § 101 (1988).

corporation."⁵¹ The court then illustrated examples in the Code where individuals and persons are given different rights.⁵²

The court concluded that under the plain meaning rule, "individual" connoted a natural person; consequently, a corporation could not avail itself of the damages remedy available to individuals under section 362(h).⁵³ The court recognized, however, that the other circuits that had addressed the issue allowed section 362(h) to benefit corporate debtors.⁵⁴ These circuits reasoned that "[b]ecause the automatic stay under [section] 362(a) applies to all debtors, it is unlikely that Congress meant in [section] 362(h) to award damages for violating the stay only to individual debtors."⁵⁵

In *Chateaugay*, the Second Circuit rejected this reasoning as inappropriate. The court reasoned that following the plain meaning rule did not frustrate the intent of the drafters because under its analysis, debtors that were precluded from recovering under section 362(h) could use civil contempt to recover damages for a willful violation of the automatic stay.⁵⁶ Therefore, the Third and Fourth Circuits should not have expanded the definition of individual to include corporations.⁵⁷ In further support of its holding, the court noted that section 362(h) was added to the Code in 1984 as part of the Consumer Credit Amendments, which relate solely to natural persons.⁵⁸

V. ANALYSIS

The Second Circuit emphasized that it was required to follow the rule of statutory construction adopted by the Supreme Court in *United States v. Ron Pair Enterprises*.⁵⁹ *Ron Pair* stated two rules that courts interpreting statutes must follow: (1) if the statute has a plain meaning, it must be followed, unless affording the statute its plain meaning would frustrate its purpose; and (2) in such cases, the intent of the drafters should prevail over the plain meaning of the statute.⁶⁰

51. 11 U.S.C. § 101(35) (1988).

52. *Chateaugay II*, 920 F.2d at 184-85.

53. *Id.* The court noted the absence of legislative history to indicate a "drafting error or other inadvertence." *Id.* at 185. See *supra* note 6.

54. *Chateaugay II*, 920 F.2d at 185. See *supra* notes 28-45 and accompanying text.

55. *Chateaugay II*, 920 F.2d at 185.

56. *Id.* at 187.

57. *Id.* at 185-86. See *supra* notes 33-37 & 43 and accompanying text.

58. *Chateaugay II*, 920 F.2d at 186.

59. 489 U.S. 235 (1989).

60. *Id.* at 240-41.

A. *Individual Does Not Include Corporation*

The first question is whether the term "individual" has a plain meaning. After an examination of section 101,⁶¹ the "Definitions" section of the Code, it is apparent that when Congress used the word "individual" it did not mean to include a corporation.⁶² The Second Circuit provided a number of examples to illustrate that a corporation and an individual are different entities. First, section 101(35) defines "person" to include individuals, corporations, and partnerships.⁶³ Thus, "person" is essentially an umbrella term, encompassing both natural persons (individuals) and fictitious persons (corporations and partnerships). Second, various Code sections give rights to persons, while others give rights solely to individuals.⁶⁴ Third, section 109, entitled "Who may be a debtor," refers to persons in some instances and to individuals in others.⁶⁵ Additionally, Chapter 13 is "available only to an 'individual with regular income . . . or an individual with regular income and such individual's spouse.'"⁶⁶ It is well settled that Chapter 13 is not available to corporations. Finally, section 101(39) defines "relative" as an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree."⁶⁷ Without legislative history indicating that Congress meant to use the term "person" rather than "individual" in section 362(h), the court refused to substitute the definition of person for that of individual.⁶⁸

In a case decided before *Chateaugay*, the United States Bankruptcy Court for the Northern District of Texas used the same line of reasoning as the Second Circuit, but cited additional examples to illustrate that a corporation is not an individual.⁶⁹ For example, sections 101(30)(A) and (B) distinguish persons who are insiders of the debtor (1) when the debtor is an individual and (2) when the debtor is a corporation.⁷⁰ Moreover, section 101(17)⁷¹ of the Code defines a family farmer as an "individual or individual and spouse." Based on the above, the *Chateaugay* court concluded that "individual" does

61. 11 U.S.C. § 101 (1988).

62. *Id.*

63. *Chateaugay II*, 920 F.2d at 184.

64. *Id.*

65. *Id.*

66. *Id.* at 185. Obviously, only natural persons can have spouses.

67. *Id.* at 185-86. Consanguinity has no application in the corporate world.

68. *Id.* at 186.

69. *First Republicbank Corp. v. NCNB Tex. Nat'l Bank (In re First Republicbank Corp.)*, 113 Bankr. 277 (Bankr. N.D. Tex. 1989).

70. *Id.* at 278-79.

71. 11 U.S.C. § 101(7) (1988).

have a plain meaning of a natural person, which therefore precludes corporations from being considered an individual for purposes of section 362(h).⁷²

Under the Supreme Court's statutory construction analysis laid down in *Ron Pair*, the next step is to determine if defining "individual" as a natural person frustrates the drafters' purpose for enacting section 362.⁷³ The Second Circuit concluded that it did not because there was another remedy available to the corporate debtor for violations of the automatic stay: civil contempt.⁷⁴ Provided all debtors have a remedy for stay violations, the purpose of the stay—to protect both debtors and their creditors⁷⁵—is met because there is disincentive to violate the automatic stay.⁷⁶ In *Chateaugay*, the Second Circuit concluded that because the purpose of the statute was not frustrated, the plain meaning of the statute controlled. Thus, the term "individual" in section 362(h) does not include a corporation.⁷⁷

The Second Circuit's argument is well reasoned and extremely persuasive. Whether or not the second prong of the *Ron Pair* test⁷⁸ is met, however, depends on if corporate debtors can obtain redress against creditors who violate the automatic stay.⁷⁹ Provided bankruptcy courts have authority to use civil contempt citations, the second prong of the *Ron Pair* test is met and the plain meaning of the term "individual" in section 362(h) is applied. If, however, bankruptcy courts do not have authority to use civil contempt,

72. *Chateaugay II*, 920 F.2d at 186.

73. See *supra* note 60 and accompanying text. It is noteworthy that *Budget Service*, which held that corporate debtors were individuals for purposes of § 362(h) was decided prior to *Ron Pair*, which instructed courts on proper construction of the Code. *First Republicbank*, 113 Bankr. at 279.

74. See *supra* note 56 and accompanying text. The *First Republicbank* court reached the same conclusion.

75. See *supra* notes 3 & 4 and accompanying text.

76. The court reasoned that generally the stay provisions applied to all debtors. Because § 362(h) was added later, as part of the Consumer Credit Amendments (numerous amendments relating solely to individuals), it was possible that Congress was particularly concerned with violations of the stay where the debtor was an individual. *Chateaugay II*, 920 F.2d at 186. For example, a creditor may be more inclined to violate the stay of an individual debtor because a corporation is likely more aware of its rights in bankruptcy than an individual. *Id.*

77. *Id.* at 185-87. The court concluded: "In the face of the statute's plain meaning and without evidence of a contrary legislative intention, even if we thought 11 U.S.C. § 362(h) (1988) would better serve the Code's purposes by being applied to all debtors, we could do no more than invite Congress to change the result." *Id.* at 187.

78. See *supra* note 60 and accompanying text.

79. See *infra* notes 81-122 and accompanying text.
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then the purpose of the automatic stay is frustrated. Thus, the interpretation of section 362(h) upheld in *Atlantic Business* and *Budget Service* would be correct because, under this interpretation, the purpose of the statute is achieved.⁸⁰

B. Contempt as a Remedy

In the 1978 Bankruptcy Act, Congress granted broad jurisdiction to the newly created bankruptcy courts.⁸¹ In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*,⁸² the Supreme Court faced a challenge to the constitutionality of 1978 Act based on the argument that it encroached upon the powers of article III courts.⁸³ In a lengthy opinion, a plurality⁸⁴ held that the 1978 Act was unconstitutional because "Art. III bars Congress from establishing legislative courts to exercise jurisdiction over all matters related to those arising under the bankruptcy laws."⁸⁵

In response to *Northern Pipeline*, Congress made substantial amendments to Code provisions. Among the Code sections changed were section 105(a),⁸⁶ which gives bankruptcy courts the authority to take any steps

80. The Third and Fourth Circuits would permit any debtor to use § 362(h) to recover damages for stay violations. See *supra* notes 28-43 and accompanying text.

81. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 54 (1982) ("[T]he Act grants the new courts jurisdiction over all 'civil proceedings arising under title 11 [the Bankruptcy title] or arising in or related to cases under title 11.'" (citing 28 U.S.C. § 1471(b) (Supp. IV 1976)) (emphasis in original). The Act also expressly granted to Bankruptcy Courts the authority to hold parties in contempt of court. See *infra* note 98.

82. 458 U.S. 50 (1982). The facts that gave rise to *Northern Pipeline* are as follows: Northern Pipeline filed bankruptcy in 1980. Because the Act allowed bankruptcy courts to decide matters related to the Bankruptcy Code, Northern Pipeline also filed suit in bankruptcy court seeking damages for breach of contract, breach of warranty, coercion, misrepresentation, and duress. *Id.* at 56. Marathon motioned to dismiss, claiming the 1978 act was unconstitutional because it "conferred Art. III judicial power upon judges who lacked life tenure and protection against salary diminution;" therefore, the bankruptcy court lacked subject matter jurisdiction over the second suit. *Id.* at 56-57.

83. *Id.* at 56-57.

84. Brennan, J. wrote the plurality opinion and was joined by Marshall, Blackmun, and Steven JJ. *Id.* at 1. Rehnquist and O'Connor, JJ. concurred in the judgement, but limited the holding to the facts of *Northern Pipeline*. *Id.* White, Burger, and Powell JJ., dissented. *Id.*

85. *Id.* at 76. The court stated that it was impermissible to remove judicial power from an article III court and vest it in a non-article III adjunct. *Id.* at 87.

86. 11 U.S.C. § 105 (1988) is entitled "Power of Court" and provides:

necessary to carry out title 11 provisions, and section 157 of title 28,⁸⁷ which gives bankruptcy courts the power to decide title 11 cases including core proceedings arising under title 11. Courts that have denied corporate debtors the remedy of section 362(h) have used one or both of these provisions to support the theory that a bankruptcy court has the authority, either by statute or constitution, to find a creditor who violates the automatic stay in civil contempt and to enforce the contempt order by imposing damages on the violating creditor.⁸⁸

In *In re William L. Magwood, III*,⁸⁹ the United States Court of Appeals for the District of Columbia raised important questions regarding the authority of a bankruptcy court to use contempt: whether there is statutory authority for a bankruptcy judge to issue a citation for contempt; whether this statutory authority is constitutional; and whether the bankruptcy courts' use of contempt

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title

. . . .

. . . (c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

Id.

87. 28 U.S.C. § 157 (1988) is entitled "Procedures" and provides:

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, *but are not limited to*—

(A) matters concerning the administration of the estate;

. . . .

Id. (emphasis added).

88. See *infra* notes 103-09 and accompanying text.

89. 785 F.2d 1077 (D.C. Cir. 1986).

power is constitutional.⁹⁰ Courts have attempted to answer these questions in the cases since 1984, and have reached differing conclusions.

Civil contempt citations are used to "coerce compliance with the court's order or to compensate an injured party for losses sustained because of the contemptuous behavior. The sanctions in a civil contempt must not be punitive."⁹¹ While article III courts have inherent contempt power, article I courts do not.⁹² There is a great deal of confusion surrounding whether bankruptcy courts have civil contempt powers.⁹³ Opinions vary from jurisdiction to jurisdiction.⁹⁴ Thus, it is necessary to examine the competing arguments set forth in these recent decisions.

The Fourth Circuit concluded that bankruptcy courts have clear statutory authority to issue civil contempt orders in *Burd v. Walters (In re Walters)*.⁹⁵ The court reached its conclusion after examining section 105⁹⁶ of the Code, stating that it saw no reason not to give the statute its plain meaning.⁹⁷ The Fourth Circuit reasoned that because Congress had conferred contempt powers upon the bankruptcy courts at one time,⁹⁸ it was not inconsistent that it would do so on another occasion.⁹⁹

90. *Id.* at 1078 n.1. The court was able to duck the questions it raised by finding that the contempt sanctions were improper. *Id.*

91. *Id.* at 1081.

92. *Plastiras v. Idell (In re Sequoia Auto Brokers, Ltd., Inc.)*, 827 F.2d 1281, 1284 (9th Cir. 1987) (citation omitted).

93. The same is true regarding criminal contempt. *See, e.g., Griffith v. Oles (In re Hipp)*, 895 F.2d 1503, 1509-21 (5th Cir. 1990) (exercise of criminal contempt by bankruptcy court is not authorized); *Sequoia*, 827 F.2d at 1284 (no inherent (constitutional) authority for exercise of either criminal or civil contempt); *Tele-Wire Supply Corp. v. Presidential Financial Corp., Inc. (In re Indus. Tool Distribs., Inc.)*, 55 Bankr. 746, 748 (N.D. Ga. 1985) (bankruptcy courts lack statutory authority to determine criminal contempt). *Contra* FED. R. BANKR. 9020, *see infra* text accompanying note 118 (appears to authorize bankruptcy judges to determine contempt without distinguishing between criminal or civil); *Bratton v. Mitchell (In re Bratton)*, 117 Bankr. 430, 437 (W.D. Ark. 1990) (if criminal contempt involves imprisonment, must follow Rule 9020); *Yaquinto v. Greer*, 81 Bankr. 870, 881 (N.D. Tex. 1988) (had Rule 9020 (as amended in 1987) been effective and followed when this criminal contempt was entered, would have upheld); *In re Wright*, 75 Bankr. 414, 416 (M.D. Fla. 1987) (when entering criminal contempt, must follow Rule 9020).

94. *See infra* notes 95-122 and accompanying text.

95. 868 F.2d 665 (4th Cir. 1989).

96. *See supra* note 86 for the text of § 105.

97. *Walters*, 868 F.2d at 669.

98. *See* 11 U.S.C. § 1481 (repealed 1978).

99. *Walters*, 868 F.2d at 669.

The court then decided whether Congress could constitutionally give contempt power to the bankruptcy courts. The starting point was *Northern Pipeline*.¹⁰⁰ The court distinguished *Northern Pipeline* because that case involved the bankruptcy court's jurisdiction over a state-created right.¹⁰¹ In *Walters*, the right involved was a right created by Congress.¹⁰² The court quoted the plurality in *Northern Pipeline*:

[W]hen Congress creates a statutory right, it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform specialized adjudicative tasks related to that right. Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created.¹⁰³

The court reasoned that because Congress can create the right, it follows that Congress can constitutionally grant an article I court the power to enforce its orders through the contempt power.¹⁰⁴ The court held that the exercise of contempt power by a bankruptcy court was "incidental to Congress' power to define the right it has created."¹⁰⁵

Other courts have focused on whether contempt for violation of the automatic stay is a core proceeding under section 157 of title 28, and overwhelmingly hold that it is.¹⁰⁶ Characterizing contempt as a core proceeding is essential because section 157 of title 28 permits bankruptcy judges to hear, determine, and enter appropriate orders for all cases arising under title 11.¹⁰⁷ When section 157 is coupled with section 105(a), which permits judges to enter any order necessary to execute the provisions of title

100. See *supra* notes 81-87 and accompanying text.

101. See *supra* note 82.

102. *Walters*, 868 F.2d at 670.

103. *Id.* (citing *Northern Pipeline*, 458 U.S. at 83).

104. *Walters*, 868 F.2d at 670.

105. *Id.*

106. See *Mountain America Credit Union v. Skinner (In re Skinner)*, 917 F.2d 444, 448 (10th Cir. 1990); *Budget Serv. Co. v. Better Homes of Va., Inc.*, 804 F.2d 289, 292 (4th Cir. 1986); *Haile v. New York State Higher Educ. Serv. Corp.*, 90 Bankr. 51, 54 (W.D.N.Y. 1988); *AP Indus., Inc. v. SN Phelps & Co. (In re AP Indus., Inc.)*, 117 Bankr. 789, 798 (Bankr. S.D.N.Y. 1990); *Dubin v. Jakobowski (In re Stephen W. Grosse, P.C.)*, 84 Bankr. 377, 386 (Bankr. E.D. Pa. 1988); *Gibbons v. Haddad (In re Haddad)*, 68 Bankr. 944, 948 (Bankr. D. Mass 1987); *United States Lines, Inc. v. GAC Marine Fuels Ltd. (In re McLean Indus.)*, 68 Bankr. 690 (Bankr. S.D.N.Y. 1986).

107. See *supra* note 87.

11,¹⁰⁸ the provisions offer a persuasive argument that Congress impliedly conferred contempt powers on bankruptcy courts.¹⁰⁹

Further, a few courts have upheld orders of contempt by the bankruptcy courts without discussing the statutory or the constitutional authority for doing so.¹¹⁰ Conversely, one held that an assertion of contempt power by the bankruptcy courts is unconstitutional.¹¹¹

The Ninth Circuit, in *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd., Inc.)*,¹¹² declined to decide the constitutional issue, but held there was neither express nor implied statutory authority for bankruptcy courts to exercise contempt powers. The court was not convinced that because bankruptcy judges were given jurisdiction over core proceedings¹¹³ that contempt was included in those powers.¹¹⁴ It did not consider section 105 a source of contempt power because it was too broad.¹¹⁵ Interestingly, the Ninth Circuit's holding does not preclude a finding of contempt: according to the court, the bankruptcy judge merely had to certify the issue to the district court for that judge to decide.¹¹⁶

Courts also rely on Rule 9020¹¹⁷ to uphold civil contempt determinations made by bankruptcy courts. The United States Supreme Court promulgates the Rules of Bankruptcy Procedure.¹¹⁸ In 1987, Rule 9020 was amended to include the following:

(a) Contempt Committed in Presence of Bankruptcy Judge. Contempt committed in the presence of a bankruptcy judge may be determined

108. See *supra* note 86.

109. See *Skinner*, 917 F.2d 444 at 447; *Haile*, 90 Bankr. at 54; *Grosse*, 84 Bankr. at 385-86; *Kellogg v. Chester*, 71 Bankr. 36, 37 (Bankr. N.D. Tex. 1987).

110. See *In re Elias*, 98 Bankr. 332, 337 (Bankr. N.D. Ill. 1989); *Schewe v. Fairview Estates (In re Schewe)*, 94 Bankr. 938, 946 (Bankr. W.D. Mich. 1989) (would have upheld contempt sanctions if contempt had been appropriate).

111. See *Tele-Wire Supply Co. v. Presidential Financial Corp., Inc. (In re Industrial Tool Distribs., Inc.)*, 55 Bankr. 746 (N.D. Ga. 1985).

112. 827 F.2d 1281 (9th Cir. 1987).

113. See 28 U.S.C. § 157(b)(1)(2) (1988).

114. *Sequoia*, 827 F.2d at 1289.

115. *Id.* at 1290.

116. *Id.* at 1291. See also *In re Brilliant Glass, Inc.*, 99 Bankr. 16, 18 (Bankr. C.D. Cal. 1988); *Omega Equip. Corp. v. John C. Louis Co., Inc. (In re Omega Equip. Corp.)*, 51 Bankr. 569 (D. D.C. 1985).

117. FED. R. BANKR. 9020.

118. *United States Lines, Inc. v. GAC Marine Fuels Ltd. (In re McLean Indus., Inc.)*, 68 Bankr. 690, 697 (Bankr. S.D.N.Y. 1986) (The court noted that the Supreme Court amended Rule 9020 after its decision in *Northern Pipeline.*)

summarily by a bankruptcy judge. The order of contempt shall recite the facts and shall be signed by the bankruptcy judge and entered of record.

(b) Other Contempt. Contempt committed in a case or proceeding pending before a bankruptcy judge, except when determined as provided in subdivision (a) of this rule, may be determined by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the contempt charged and describe the contempt as criminal¹¹⁹ or civil and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose.

...

(c) Service and Effective Date of Order; Review. The clerk shall serve forthwith a copy of the order of contempt on the entity named therein. The order shall be effective 10 days after service of the order and shall have the same force and effect as an order of contempt entered by the district court, unless, within the 10 day period, the entity named therein serves and files with the clerk objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order shall be reviewed as provided in Rule 9033 [de novo standard of review].

While Rule 9020 expressly authorizes bankruptcy courts to *determine* contempt, the Advisory Committee Note to the 1987 Amendment to Rule 9020 notes that "[t]his rule, as amended, recognizes that bankruptcy judges may not have the power to *punish* for contempt."¹²⁰ Some courts, however, have rejected this theory¹²¹ and have used this rule alone or coupled with

119. Note that the rule indicates that bankruptcy courts can determine criminal contempt. This Note solely addresses civil contempt.

120. FED. R. BANKR. 9020 advisory committee's note.

121. See *In re Kennedy*, 80 Bankr. 673 (Bankr. D. Del. 1987) in which the court expressly rejected the theory that bankruptcy courts do not have contempt enforcement powers.

It would be anomalous that this court should not have the power to enforce obedience to that kind of judgment and order by civil contempt but merely find the disobeying party in contempt and report it to the District Court.

The anomaly is apparent. The Rule provides that the Bankruptcy Court has the right to determine contempt but not the power to punish. Such a determination could be an exercise of futility in the event no timely objection is entered to the determination. The reason for that being that under Bankruptcy Rule 9020(c) no objection to a finding of contempt means no review of facts. If there was a finding of contempt, it is hard to believe that the contemnor would file an objection which could very likely result in punishment being imposed when, if no objection is imposed, he is home free. There would be a public record that a contempt was found but nothing happens if there is no objection.

section 105(a) of the Code and section 157 of title 28 to determine and enforce contempt orders.¹²²

VI. CONCLUSION

The Second Circuit's decision in *Chateaugay* followed the Supreme Court's *Ron Pair* statutory construction directive, and the court's plain meaning analysis is sound. The purpose of the statute—protecting both the debtor and creditor by preventing violations of the automatic stay¹²³—is not frustrated by this interpretation because a corporate debtor can pursue civil contempt against a creditor who violates the automatic stay. The final determination, however, is that the Second Circuit's holding in *Chateaugay* is correct only if bankruptcy courts have the authority to determine and enforce contempt, or in the alternative, have the authority to determine contempt and then pass the matter to the district court for enforcement.¹²⁴ Although passing the matter to the district court is not as efficient as the bankruptcy court directly enforcing the contempt, it will provide a disincentive to a creditor of a corporate debtor who is considering violating the automatic stay because the remedy of section 362(h) is only available to "individual" debtors.¹²⁵ As the preceding section indicates, bankruptcy courts either decide and enforce contempt themselves, decide the contempt issue and pass it to the district court for review and enforcement, or certify the issue to the district court. In any instance, corporate debtors *should* have redress against creditors who violate the automatic stay.

Corporate debtors may, however, still be disadvantaged by the *Chateaugay* decision even if its creditors are found in civil contempt. Section 362(h) allows individuals to recover punitive damages for violations of the automatic stay. To recover punitive damages, a corporate debtor would have

Id. at 673-74.

122. *See, e.g.,* Kellogg v. Chester, 71 Bankr. 36, 39 (N.D. Tex. 1987); *In re Hulon*, 92 Bankr. 670, 675 (Bankr. N.D. Tex. 1988); *Dubin v. Jakobowski (In re Stephen W. Grosse, P.C.)*, 84 Bankr. 377, 386-87 (Bankr. E.D. Pa. 1988); *In re Kennedy*, 80 Bankr. 673 (Bankr. D. Del. 1987).

123. *See supra* notes 3-4 and accompanying text.

124. Resolution of this issue, including whether bankruptcy courts can constitutionally exercise contempt power, has been the subject of numerous court opinions and is beyond the scope of this Note.

125. *But see supra* note 121 which indicates that a finding of contempt by a bankruptcy court will not affect a contemnor's actions unless the bankruptcy courts have enforcement powers.

to initiate criminal contempt proceedings.¹²⁶ It is not certain whether bankruptcy courts have the authority to determine criminal contempt.¹²⁷

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126. Criminal contempt is used to punish for "disobedience of a court order." *In re Kennedy*, 80 Bankr. 674, 675 (Bankr. D. Del. 1987).

127. *See supra* note 93 and accompanying text.