Staying True to Purpose: Including Corporate Debtors Uuder § 362(h) of the Federal Bankrnptcy Code

D. CASEY KOBI*

I. INTRODUCTION

Since the enactment of the 1978 Bankruptcy Reform Act[1] (commonly referred to as the "Federal Bankruptcy Code"), academics and practitioners alike have debated the Federal Bankruptcy Code's purpose[2] and, specifically, how that purpose is to be applied in enforcing the Code's terminology.[3] This debate appears in the application of § 362(h)[4] of the Bankruptcy Code, which is presently the subject of significant controversy and a circuit-court split. Section 362(h) is part of the automatic stay provision of the Federal Bankruptcy Code.[5] When a debtor files a petition in bankruptcy, the automatic stay provides a breathing spell from the collection efforts of creditors by allowing the debtor, under court supervision, to either establish a plan for financial reorganization or to liquidate its assets for distribution to creditors.[6] Because the automatic stay provides fundamental rights to debtors as well as creditors, courts may penalize violators of the stay by awarding damages pursuant to § 362(h) of the Federal Bankruptcy Code.[7]

The issue that federal courts are struggling with is whether corporations can use § 362(h) to recover damages from violators of the automatic stay. The answer turns on the interpretation of the word "individual" as it appears in § 362(h) of the Bankruptcy Code. Some courts hold that § 362(h) can be used by corporate debtors to collect damage awards, while others hold the section applicable only to debtors who are natural persons. At present, six federal circuit courts have considered the issue of whether a corporation is an "individual" under § 362(h). The Second, Eighth, Ninth, and Eleventh Circuits each interpret the term "individual" to include only natural

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* J.D. Candidate, 2001, Indiana University School of Law—Bloomington; B.S., 1997, Kelley School of Business, Indiana University—Bloomington. 1 would like to thank my parents, Neil and Deborah Kobi, and my sister, Colleen Kobi, for their unconditional love and steadfast support. A special thanks is in order for my sister, Janel Kobi, who provided helpful comments on multiple drafts of this Note. Also, 1 would like to thank Professor Kellye Testy for her guidancc in helping me select a topic for this Note and her comments and suggestions on earlier drafts of this Note.

1. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as amended at 11 U.S.C. §§ 101-1330 (1994 & Supp. IV 1998)).

2. For an example of this debate, compare Douglas G. Baird, *Loss Distribution, Forum Shopping, and Bankruptcy: A Reply to Warren,* 54 U. CHI. L. REV. 815, 829-34 (1987), with Elizabeth Warren, *Bankruptcy Policy,* 54 U. CHI. L. REV. 775, 776-79 (1987).

3. *See* Thomas G. Kelch, *An Apology for Plain-Meaning Interpretation of the Bankruptcy Code,* 10 BANKR. DEV. J. 289, 295 (1994).

4. 11 U.S.C. § 362(h) (1994).

5. 11 U.S.C. § 362 (1994 & Supp. IV 1998).

6. *Id.*; *see also* H.R. REP. NO. 95-595, at 34-42 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-98.

7. 11 U.S.C. § 362.

persons.[8] Conversely, the Third and Fourth Circuits each hold that § 362(h) must be interpreted to include corporations.[9] This conflict arises from the courts' inability to apply a uniform definition to the word "individual" as used in § 362(h).

This Note will address whether a corporation is an "individual" entitled to recover damages under § 362(h) of the Federal Bankruptcy Code. Part II of this Note will briefly discuss the evolution and function of the automatic stay. Part III of this Note will (1) analyze the competing circuit courts' interpretations of § 362(h); (2) present the U. S. Supreme Court's standard for interpretation of the Federal Bankruptcy Code and analyze the standard's applicability to § 362(h); (3) address contempt as an alternative remedy when a corporate debtor has been injured by a violation of an automatic stay; and (4) discuss the future application of § 362(h) to corporate entities. Finally, Part IV of this Note will conclude by arguing that § 362(h) should be interpreted to include corporations thereby providing corporate debtors, injured by a violation of a stay, with an adequate remedy under the Federal Bankruptcy Code.

II. BACKGROUND

Legal scholars and historians have traced the origins of American bankruptcy laws back to 118 B.C. Roman law.[10] By the eighteenth century, English bankruptcy laws were well established and emulated by the colonies and later adopted by the states.[11] A general understanding of the historical development of the Federal Bankruptcy Code is helpful in understanding the dilemma § 362(h) poses for corporate debtors. This Part briefly explains the evolution of § 362(h) and the application of the automatic stay under § 362 of the Federal Bankruptcy Code. Additionally, this Part illustrates the conflicting judicial interpretations of § 362(h).

A. Evolution of Federal Bankruptcy Code § 362(h)

When the U.S. Constitution was framed in 1787, Article I, Section 8, Clause 4 gave Congress the power to establish "uniform Laws on the subject of Bankruptc[y]."[12] In 1800, Congress adopted the first American bankruptcy law, which paralleled the English bankruptcy laws of that time.[13] Over the course of the nineteenth century,

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8. Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881, 884 (8th Cir. 1997); Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147 (9th Cir. 1996); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1550-53 (11th Cir. 1996); Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d 613, 618-20 (9th Cir. 1993); Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 184-86 (2d Cir. 1990).

9. Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986).

10. Vern Countryman, *A History of American Bankruptcy Law*, 81 COM. L.J. 226, 226 (1976).

11. *Id.* at 227-29; *see also* Stefan A. Riesenfeld, *The Evolution of Modern Bankruptcy Law*, 31 MINN. L. REV. 401, 421-23 (1947).

12. U.S. CONST. art. I, § 8, cl. 4.

13. Charles J. Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR.

subsequent bankruptcy acts were adopted by Congress and later repealed.[14] Currently, there are two different federally enacted bankruptcy statutes that lawyers and students encounter.

First is the Bankruptcy Act of 1898, which is commonly referred to as the "Bankruptcy Act." Cases filed prior to October 1, 1979, are controlled by the Bankruptcy Act.[15] A significant number of cases decided in the 1980s and 1990s cite to, and directly rely on, the 1898 Act.[16] The second statute relied upon is the Bankruptcy Reform Act of 1978, which is commonly referred to as the "Bankruptcy Code."[17] Cases filed after October 1, 1979, are controlled by the Bankruptcy Code.[18] A number of the Bankruptcy Code's sections are derived from the Bankruptcy Act and have been substantially amended in 1984, 1986, 1988, 1990, and 1994.[19]

Specifically, this Note addresses the current conflict arising from the federal circuit courts of appeals' inconsistent interpretations of § 362(h)[20] of the Federal Bankruptcy Code. Section 362(h), at issue here, was added to the Code by the Bankruptcy Amendments and Federal Judgeship Act of 1984.[21] Since the enactment of § 362(h), federal courts[22] and legal scholars[23] have grappled with the issue of whether a corporate entity can use § 362(h) to recover damages for a violation of an automatic stay.

B. Application of an Automatic Stay Under Federal Bankruptcy Code § 362

The automatic stay, to which § 362(h) pertains, is a central feature of bankruptcy law.[24] After filing a bankruptcy petition, a debtor requires immediate protection from collection attempts by creditors. The automatic stay provided for by § 362 of the Bankruptcy Code provides debtors with a broad stay of litigation, lien enforcement,

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L.J. 325, 344-45 (1991).

14. *Id.* at 350-66. *See generally* Max Radin, *The Nature of Bankruptcy*, 89 U. PA. L. REV. 1, 3-6 (1940).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*; *see also* ROBERT L. JORDAN ET AL., BANKRUPTCY 20 (5th ed. 1999).

20. 11 U.S.C. § 362(h) (1994).

21. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 304, 98 Stat. 333, 352 (codified at 11 U.S.C. § 362(h)).

22. *Compare* Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990) (holding 11 U.S.C. § 362(h) applicable to corporate debtors), *and* Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (same), *with* Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d 613, 618-20 (9th Cir. 1993) (holding 11 U.S.C. § 362(h) not applicable to corporate debtors), *and* Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 184-86 (2d Cir. 1990) (same).

23. *See, e.g.*, WILLIAM L. NORTON, JR., *Violation of Stay 362(h)*, *in* NORTON BANKRUPTCY LAW AND PRACTICE 2d § 36:42 (1997); Peter H. Carroll, III, *Statutory Construction by the Ninth Circuit in Recent Bankruptcy Cases*, 22 CAL. BANKR. J. 262, 267-68 (1995).

24. *Budget Serv.*, 804 F.2d at 292 (citing H.R. REP. NO. 95-595, at 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296, and S. REP. NO. 95-989, at 54-55 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840-41, 5963, 6296-97).

and other actions that attempt to enforce or collect claims.[25] Whether a debtor voluntarily files for reorganization or is involuntarily forced to liquidate assets, she will need time to prepare a plan or to convert the petition. Regardless of the debtor's situation, the creditor's collection efforts must be halted immediately in order to provide for an orderly and even administration of the debtor's financial affairs.[26]

The automatic stay provision provides an immediate and necessary benefit to the debtor. Section 362(a) "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."[27] Also, the automatic stay freezes and maintains the status quo between creditors who are competing for the debtor's assets.[28] Once the bankruptcy petition is filed, one creditor cannot advance his claim over the other creditors.[29] For creditors, the stay provides protection from other creditors. In the absence of the automatic stay, creditors would be able to pursue individual remedies against the debtor's assets. "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

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25. 11 U.S.C. § 362(a).

26. Section 362(a) of the Federal Bankruptcy Code requires that all collection attempts should cease upon the filing of a bankruptcy petition. The filing of a petition operates as a stay of collection activities described in eight numbered subparts of § 362(a). The stayed activities are as follows:

> (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;
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> (2) the enforcement, against the debtor or against property of the estate, of a judgement obtained before the commencement of the case under this title;
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> (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;
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> (4) any act to create, perfect, or enforce any lien against property of the estate;
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> (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;
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> (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
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> (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
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> (8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

Id.

27. H.R. REP. NO. 95-595, at 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97.

28. Interstate Commerce Comm'n v. Holmes Transp., Inc., 931 F.2d 984, 987 (1st Cir. 1991), *vacated on other grounds by* 983 F.2d 1122 (1st Cir. 1993).

29. *See id.*

prevents that."[30]

The scope of the automatic stay is very broad and intends to prevent virtually every creditor from collection efforts.[31] A creditor is not only stayed from pursuing legal and administrative remedies against the debtor,[32] he is also stayed from any efforts attempting to secure payment.[33] Therefore, upon a debtor's filing of a bankruptcy petition, whether voluntarily or involuntarily, the automatic stay of § 362 of the Federal Bankruptcy Code takes effect. The stay applies to all entities and provides for an injunction against litigation, lien enforcement, or other actions taken against a debtor to enforce or collect claims.[34] In addition, the stay prevents many other actions, formal or informal, that might affect property or the estate of the debtor.[35]

C. The Conflict Under Federal Bankruptcy Code § 362(h)

Section 362(h)[36] provides for recovery of damages, costs, and attorney's fees by an individual injured by a violation of the automatic stay.[37] All collection efforts that violate the automatic stay are void even if taken without knowledge of the stay.[38] The statute provides:

> 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.[39]

Further, courts have interpreted "willful violation" to mean "with knowledge," either actual or constructive, that a formal bankruptcy petition has been filed with the court.[40] The standard for the award of damages under § 362(h) is (1) whether the defendant had knowledge of the stay, and (2) whether the actions that violated the

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30. H.R. REP. NO. 95-595, at 340, *reprinted in* 1978 U.S.C.C.A.N. at 6297.

31. *See* 3 COLLIER ON BANKRUPTCY ¶ 362.01 (Lawrence P. King ed., 15 ed. rev. 2000).

32. 11 U.S.C. § 362(a)(1) (1994).

33. *Id.* § 362(a)(6).

34. *Id.*

35. *See* John C. Chobot, *Some Bankruptcy Stay Metes and Bounds*, 99 COM. L.J. 301, 302-04 (1994).

36. 11 U.S.C. § 362(h).

37. Pettitt v. Baker, 876 F.2d 456, 457-58 (5th Cir. 1989); Goichman v. Bloom (*In re* Bloom), 875 F.2d 224, 225 (9th Cir. 1989); Archer v. Macomb County Bank, 853 F.2d 497, 499 (6th Cir. 1988).

38. *E.g.*, Franklin Sav. Ass'n v. Office of Thrift Supervision, 31 F.3d 1020, 1022 (10th Cir. 1994); Raymark Indus. v. Lai, 973 F.2d 1125, 1128 (3d Cir. 1992); Schwartz v. United States (*In re* Schwartz), 954 F.2d 569, 574-75 (9th Cir. 1992); Mar. Elec. Co. v. United Jersey Bank, 959 F.2d 1194, 1204 (3d Cir. 1991).

39. 11 U.S.C. § 362(h) (emphasis added).

40. *See* Univ. Med. Ctr. v. Sullivan (*In re* Univ. Med. Ctr.), 973 F.2d 1065, 1087-89 (3d Cir. 1992); Price v. Rochford, 947 F.2d 829, 831-33 (7th Cir. 1991); Atkins v. Martinez (*In re* Atkins), 176 B.R. 998, 1008 (Bankr. D. Minn. 1994); *In re* Herbst, 167 B.R. 983, 985 (Bankr. N.D. Fla. 1994); Temlock v. Falls Bldg., Ltd. (*In re* Falls Bldg., Ltd.), 94 B.R. 471, 481-82 (Bankr. E.D. Tenn. 1988); Stucka v. United States (*In re* Stucka), 77 B.R. 777, 782-83 (Bankr. C.D. Cal. 1987).

stay were intentional.[41] Courts do not require specific intent to violate the automatic stay.[42] It is therefore irrelevant if a defendant believed in good faith that he had a right to the debtor's assets.[43] Moreover, if the violation is egregious, the debtor may be awarded punitive damages.[44]

The current interpretive conflict between federal circuit courts of appeals is whether a corporation is considered an "individual" under § 362(h) of the Bankruptcy Code. The language of the 1984 Amendment,[45] adding § 362(h) to the Code, confines damages to "individual" debtors.[46] Prior to the Amendment, courts exercised discretion in awarding damages for violations of the automatic stay to individual and nonindividual debtors.[47] Currently, it is unclear whether courts can award damages to corporate debtors under § 362(h). Several courts have considered whether § 362(h) applies to corporations and their trustees or whether its reach is limited to "individuals"—meaning natural persons—as explicitly stated in the statute.

The federal circuit courts of appeals are split when called upon to interpret § 362(h) of the Federal Bankruptcy Code. Some circuit courts of appeal have interpreted § 362(h) to allow corporations and partnerships to recover damages for violations of the automatic stay.[48] However, other circuits have held that the plain language of § 362(h) limits its application to individual debtors.[49] Due to the confusion surrounding the interpretation, coupled with the current circuit-court split, the question of whether a corporate debtor is an individual under § 362(h) of the Federal Bankruptcy Code

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41. *In re Bloom*, 875 F.2d at 227; Meis-Nachtrab v. Griffin (*In re* Meis-Nachtrab), 190 B.R. 302, 306-07 (Bankr. N.D. Ohio 1995).

42. Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1555 (11th Cir. 1996); Kirk v. Shawmut Bank (*In re* Kirk), 199 B.R. 70, 72 (Bankr. N.D. Ga. 1996).

43. Honeycutt v. Rickman (*In re* Honeycutt), 198 B.R. 306, 308 (Bankr. E.D. Ark. 1996); Official Comm. of Unsecured Creditors v. Riviera Med. Dev. Corp. (*In re* S. Bay Med. Assoc.), 184 B.R. 963, 970 (Bankr. C.D. Cal. 1995).

44. 11 U.S.C. § 362(h); Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 328-29 (3d Cir. 1990); Smith v. GTE N., Inc. (*In re* Smith), 170 B.R. 111, 113-15, 119 (Bankr. N.D. Ohio 1994).

45. Under Title III, Subtitle A of the 1984 Consumer Credit Amendments, Congress added subsection (h) to § 362 (the automatic stay provision) of the Federal Bankruptcy Code. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §§ 301-324, 98 Stat. 333, 352-58 (codified at 11 U.S.C. § 362 (1994 & Supp. IV 1998)).

46. 11 U.S.C. § 362(h).

47. *See, e.g.*, *In re* Doan's Truck Repair, Inc., 34 B.R. 180, 183 (Bankr. D. Wyo. 1983).

48. *See In re Atl. Bus.*, 901 F.2d at 329 (finding § 362(h) applicable to corporations and partnerships); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (upholding compensatory and punitive damages and attorney's fees for a violation of a stay as to a corporate debtor).

49. *See* Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881, 884 (8th Cir. 1997) (holding § 362(h) not applicable to corporate debtor); Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147, 1152 (9th Cir. 1996) (refusing to sanction under § 362(h) because the Chapter 7 trustee was not an "individual"); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1551 (11th Cir. 1996) (holding § 362(h) does not include corporations); Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 186-87 (2d Cir. 1990) (holding § 362(h) not applicable to corporate debtor).

is ripe for Supreme Court consideration. This Note will proceed to analyze the competing arguments surrounding the interpretation of § 362(h) while adopting the view that corporate debtors injured by violations of the automatic stay should be provided a legal remedy under the Bankruptcy Code.

III. ANALYSIS

Section 362(h) of the Federal Bankruptcy Code was established to provide a legal remedy for those harmed by a violation of the § 362(a) automatic stay. In setting forth this remedy, Congress created confusion with the use of the term "individual" and its application. This Part will (1) analyze the conflicting circuits' application of § 362(h), (2) consider the U. S. Supreme Court's standard of interpretation for the Bankruptcy Code and its application to § 362(h), (3) address contempt as an alternative remedy, and (4) discuss what the future may hold for § 362(h).

A. Majority Rule: A Corporation Is Not an "Individual" Under § 362(h)

Four circuits have refused to allow corporations to recover damages under § 362(h) of the Federal Bankruptcy Code.[50] The Second Circuit and an increasing number of bankruptcy courts have strictly interpreted the term "individual" to apply only to natural persons. In *Maritime Asbestosis Legal Clinic v. LTV Steel Co. (In re Chateaugay Corp.)*,[51] the debtor, LTV Steel Co. ("LTV"), filed a Chapter 11 bankruptcy petition on July 17, 1986.[52] Maritime Asbestosis Legal Clinic ("MALC") represented 220 merchant seamen with claims pending in federal court in the Eastern District of Michigan which derived from exposure to asbestos during their employment at LTV.[53] Subsequent to LTV's petition for bankruptcy, in March of 1989, MALC continued litigation of tort claims in the Northern District of Ohio naming LTV as a defendant in thirty-eight amended complaints.[54] In response to the complaints, LTV sought an order from the court enjoining the continuation of the actions and an award of compensatory and punitive damages pursuant to § 362(h).[55] The bankruptcy court awarded LTV compensatory damages of $7600 and permanently enjoined MALC from litigation efforts due to a willful violation of the stay under § 362(h).[56] When the district court affirmed the bankruptcy court's ruling, MALC appealed to the Second Circuit arguing that a corporate debtor is not permitted to recover damages under § 362(h).[57]

The Second Circuit overturned the district court's decision, holding that corporations cannot recover damages under § 362(h). The court reasoned that the Bankruptcy Code fails to define "individual" while defining the term "person" in §

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50. *See In re Just Brakes*, 108 F.3d at 884; *In re Del Mission*, 98 F.3d at 1152; *In re Jove Eng'g*, 92 F.3d at 1551; *In re Chateaugay*, 920 F.2d at 186.

51. 920 F.2d 183 (2d Cir. 1990).

52. *Id.* at 183.

53. *Id.*

54. *Id.*

55. *Id.* at 184.

56. *Id.*

57. *Id.* at 184.

101(41)[58] to encompass "individual, partnership, and corporation."[59] In comparing the use of the terms "person" and "individual" in other sections of the Bankruptcy Code, the Second Circuit laid out a theory of statutory interpretation that differentiated between the rights held by natural persons and the rights accorded to corporations.[60] Through a negative inference, the Second Circuit held that only "natural persons" are capable of recovering damages under § 362(h).[61] Further, the court concluded that there is no legislative history that suggests § 362(h) was enacted to apply to "persons" as opposed to only "individuals"; therefore, Congress's intent was to preclude corporations from recovering damages under § 362(h).[62]

Three years later, the Ninth Circuit addressed whether the term "individual," as used in § 362(h) of the Bankruptcy Code, was broad enough to include corporations. In *Johnston Environmental Corp. v. Knight* (*In re Goodman*),[63] the Ninth Circuit Court of Appeals denied corporations the use of § 362(h) to obtain damages against creditors who violated the automatic stay.[64] The Ninth Circuit adopted similar reasoning as the Second Circuit,[65] and highlighted the importance of limiting § 362(h) solely to natural persons.[66]

In *In re Goodman*, the corporate debtor subleased a piece of commercial real estate owned by the Knights.[67] Following closing of the lease agreement, the debtor-tenant filed a Chapter 11 bankruptcy petition, and gave the Knights actual notice of the pending proceedings.[68] When the debtor's use of the real estate resulted in the

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58. 11 U.S.C. § 101(41) (1994).

59. *In re Chateaugay*, 920 F.2d at 184 (quoting 11 U.S.C. § 101(41)).

60. *See id.* at 184-85.

> Although the code does not define "individual," it does define "person" in § 101(35) [sic] to include "individual, partnership, and corporation . . . ." Throughout the code, rights and duties are allocated in some instances to "individuals" and in others to "persons." Section 109, "*Who may be a debtor*," uses "person" in certain situations and "individual" in others. Chapter 13 of the code is available only to an "individual with regular income . . . or an individual with regular income and such individual's spouse . . . ." The text of other code sections demonstrates that Congress used the word "individual" rather than "person" to mean a natural person. To cite but one additional example, § 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." Plainly, the statute here is referring only to human beings; corporations and other legal entities can have no such "affinity or consanguinity" or "step . . . relationship" except in the metaphoric sense, and can in no sense have an "adoptive relationship."

Id. (emphasis in original) (omissions in original) (citation omitted).

61. *Id.* at 186-87.

62. *Id.* at 186.

63. 991 F.2d 613 (9th Cir. 1993).

64. *Id.* at 619.

65. *See supra* text accompanying note 60 (noting the reasoning used by the Second Circuit in *In re Chateaugay*, and adopted by the Ninth Circuit in *In re Goodman*).

66. *See In re Goodman*, 991 F.2d at 620.

67. *Id.* at 615.

68. *Id.*

violation of municipal ordinances and the Knights were faced with possible criminal prosecution, they commenced an unlawful detainer action in state court against all of the tenants, including the debtor.[69] Next, the Knights filed a unilateral stipulation in bankruptcy court in which they attempted to exempt the corporate debtor from the results of the unlawful detainer action filed in state court.[70]

The bankruptcy court rejected the unilateral stipulation and held that the Knights violated the automatic stay that enjoined them from pursuing the unlawful detainer action.[71] However, the court refused the debtor's request for damages under § 362(h), holding that the actions were not willful as required by the Bankruptcy Code.[72] On appeal, the federal district court affirmed the permanent injunction against the Knights but reversed the bankruptcy court's finding that the stay violation was not willful under the Bankruptcy Code.[73] The district court held that the Knights violated § 362(a)[74] and were liable for a damage award under § 362(h). Prior to remand for a determination of damages under § 362(h), the Knights appealed to the Ninth Circuit arguing that a corporate debtor was not capable of recovering damages under § 362(h).[75]

In applying the Second Circuit's interpretation of § 362(h), the Ninth Circuit held that the word "individual" does not include corporations or other artificial entities.[76] The court went further to state that the analysis of other circuit courts, finding that a corporation is an individual, was inconsistent with the principles of statutory interpretation exhibited by the Supreme Court.[77] Concluding, the Ninth Circuit held that the appropriate remedy for a corporation injured by violation of the automatic stay fell under an action for civil contempt.[78] Therefore, the Ninth Circuit distinguished between mandatory damages awarded to corporate debtors under § 362(h) and discretionary damages awarded under the civil contempt-of-court theory.[79]

The Eleventh Circuit, in *Jove Engineering, Inc. v. IRS* (*In re Jove Engineering, Inc.*),[80] adopted the same line of analysis as the Second Circuit, holding that a Chapter 11 corporate debtor was not an individual entitled to relief under § 362(h).[81] In *In re*

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69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *See supra* note 26.
75. *In re Goodman*, 991 F.2d at 615-16.
76. *Id.* at 619. The Ninth Circuit Court of Appeals held:

> We conclude that the Second Circuit's determination in [*In re*] *Chateaugay* is correct: "individual" means individual, and not a corporation or other artificial entity. The Second Circuit's reasoning, which we adopt, is as follows: "We have not located any legislative history to suggest that § 362(h) was meant to apply to 'persons,' rather than being confined to 'individuals.'"

Id. (emphasis in original) (quoting Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 185 (2d Cir. 1990)).

77. *Id.* at 619; *see also* United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242 (1989).
78. *See In re Goodman*, 991 F.2d at 620.
79. *Id.*
80. 92 F.3d 1539 (11th Cir. 1996).
81. *Id.* at 1550.

Jove Engineering, the corporation sought damages from the Internal Revenue Service ("IRS") for a violation of the automatic stay. The district court held that, although the IRS violated the stay, the debtor was not entitled to relief under § 362(h) because the term "individual" is limited to natural persons and does not include corporations or artificial entities.[82] On appeal, the Eleventh Circuit agreed "with the reasoning [of the Second Circuit] in [*In re*] *Chateaugay* and conclude[d] that the district court correctly held that the term 'individual' in § 362(h) does not include a corporation."[83] The *In re Jove Engineering* court went further to state that due to a lack of legislative history, interpreting "individual" to exclude corporate debtors is not at odds with the legislature's intent.[84] Therefore, "we may reasonably assume Congress only intended § 362(h) to benefit natural persons."[85]

The most recent circuit court decision to interpret § 362(h) of the Bankruptcy Code was handed down by the Eighth Circuit in *Sosne v. Reinert & Duree, P.C.* (*In re Just Brakes Corporate Systems, Inc.*).[86] Following the lead of the Second, Ninth, and Eleventh Circuits, the Eighth Circuit held the plain meaning of the word "individual" as used in § 362(h) applies only to individual debtors, not to corporate entities such as Just Brakes.[87] In *In re Just Brakes*, creditors obtained a court order directing pay-out of net proceeds from the foreclosure sale of the corporate debtor's only valuable asset, its registered trademark. In response, the Chapter 7 trustee brought an action seeking to enjoin assignment of the trademark as a fraudulent conveyance and to recover damages from creditors for a violation of the automatic stay.[88] Although notified of the debtor's Chapter 7 filing, the state court allowed the sale of the trademark to proceed and ordered the revenue to be held in escrow until the creditor's rights were established.[89] Nine days later, the creditors petitioned the state court for the proceeds of the trademark and were awarded the net sale price.[90] In response, the trustee brought action to recover the sale proceeds for the estate, arguing that the assignment of the trademark was a fraudulent conveyance and damages should be awarded for violation of the automatic stay under § 362(h). The case was then transferred to the bankruptcy court for resolution.[91]

The bankruptcy court granted a motion for summary judgement in favor of the Chapter 7 trustee. The court found a violation of the stay because the creditors applied the trademark revenues to their pre-petition judgement, knowing that the debtor filed a petition to recover the trademark.[92] In determining the remedy, "the court concluded that it may 'award [c]ompensation and punishment' for willful

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82. *Id.* at 1552-53.

83. *Id.* at 1550 (emphasis in original) (citing Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 185-86 (2d Cir. 1990)).

84. *Id.* at 1551.

85. *Id.*

86. 108 F.3d 881 (8th Cir. 1997).

87. *See id.* at 884.

88. *Id.* at 883.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

violation of the automatic stay in a contempt proceeding"[93] but that further damages are not available to corporate debtors under § 362(h). The bankruptcy court awarded only the trademark proceeds to the Chapter 7 trustee and the district court affirmed that decision.[94] The creditor then appealed to the Eighth Circuit challenging the decision on the grounds that it violated the automatic stay and that the damage award was inappropriate.

On appeal, the Eighth Circuit held the creditors' (appellants') actions "prejudiced the [t]rustee's ability to litigate a competing avoidance claim on behalf of all creditors and was . . . inconsistent with the basic purpose of the automatic stay . . . . [Therefore, t]he bankruptcy court correctly concluded that appellants violated the automatic stay."[95] On the issue of damages, the Eighth Circuit upheld the bankruptcy court's award under the theory of contempt powers.[96] However, the court went further to explicitly state that "§ 362(h) only applies to 'individual' debtors, not corporate entities."[97] The Eighth Circuit expressed its adoption of the Second Circuit's view, explaining that the plain meaning of the word "individual" excludes corporations from recovering damages under § 362(h) of the Federal Bankruptcy Code.[98] Further, the Eighth Circuit rejected all contrary circuit decisions holding that corporate debtors are individuals capable of receiving damage awards under § 362(h).[99]

In sum, the Second, Eighth, Ninth, and Eleventh Circuit Courts of Appeals hold that § 362(h) of the Federal Bankruptcy Code is available only to natural persons.[100] These circuits, which currently represent the majority position, find that the term "individual," as used in § 362(h), does not include corporate entities.[101] The analysis follows the line of reasoning that because the term "individual" is generally used in the Code to suggest natural persons, it should always be interpreted to mean natural persons. An example of the courts' reasoning is as follows: since, under the

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93. *Id.*

94. *See id.* at 884.

95. *Id.*

96. *Id.* at 885.

97. *Id.* at 884.

98. *Id.* at 884-85.

99. *Id.* (rejecting Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990), and holding § 362(h) applicable to corporations); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (awarding compensatory damages, punitive damages, and attorney's fees for a violation of a stay as to a corporate debtor upheld on appeal).

100. *See, e.g., In re Just Brakes*, 108 F.3d at 884 (holding § 362(h) not applicable to corporate debtor); Cal. Employment Dev. Dep't v. Taxcl (*In re* Del Mission Ltd.), 98 F.3d 1147, 1152 (9th Cir. 1996) (refusing to sanction under § 362(h) because the Chapter 7 trustee was not an "individual"); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1551 (11th Cir. 1996) (holding that § 362(h) does not include corporations); Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d 613, 619 (9th Cir. 1993) (holding that a corporation is not an "individual" under § 362(h)); Mar. Asbestosis Legal Clinic v. LTV Steel Co., (*In re* Chateaugay Corp.), 920 F.2d 183, 186-87 (2d Cir. 1990) (holding § 362(h) not applicable to corporate debtor).

101. *See In re Just Brakes*, 108 F.3d at 884; *In re Del Mission*, 98 F.3d at 1150; *In re Jove Eng'g*, 92 F.3d at 1551; *In re Goodman*, 991 F.2d at 619; *In re Chateaugay*, 920 F.2d at 186-87.

Bankruptcy Code, only an "individual" with regular income can file a Chapter 13 bankruptcy petition, only natural persons can use Chapter 13 and corporate debtors must reorganize under Chapter 11.[102] Thus, because the use of the term "individual" in Chapter 13 petitions is interpreted to apply only to natural persons, the word "individual" must be construed the same throughout the Bankruptcy Code.[103]

Further, the majority position also points to § 101[104] of the Bankruptcy Code, which defines "relative" as an "*individual* related by affinity or consanguinity within the third degree."[105] The majority position observes that corporations are not capable of relations by affinity or consanguinity; therefore, the term "individual" must be limited to natural persons. Finally, the majority position also relies upon the absence of legislative history indicating that the term "individual" was intended to refer to corporations; thus, there is no reason why rejection of a broad interpretation would contradict congressional intent.[106] Therefore, the majority rule is that the term "individual," as used in § 362(h) of the Federal Bankruptcy Code, is limited to natural persons and excludes corporations from recovering a remedy for injuries sustained from a violation of the automatic stay.

B. Minority Rule: A Corporation Is an "Individual" Under § 362(h)

Two circuits have allowed corporations to recover damages under § 362(h) of the Federal Bankruptcy Code.[107] Two years after Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984, which included § 362(h), the Fourth Circuit was called upon to decide whether corporations injured by a violation of the automatic stay could recover damages under the Bankruptcy Code. The landmark case, in which the Fourth Circuit was the first to interpret § 362(h), was *Budget Service Co. v. Better Homes of Virginia, Inc.*[108]

In *Budget Service*, Better Homes, the corporate debtor, filed a bankruptcy petition for reorganization under Chapter 11 of the Bankruptcy Code. Consistent with the

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102. The Federal Bankruptcy Code restricts the use of Chapter 13 to "individuals" with regular income who meet the debt limits, whereas, Chapter 11 of the Bankruptcy Code can be used by corporations and partnerships. 11 U.S.C. § 109(e) (1994).

103. *Id.* § 109(d); *see also* Toibb v. Radloff, 501 U.S. 157, 161 (1991).

104. *See* 11 U.S.C. § 101(45).

105. *Id.* (emphasis added); *see also In re Jove Eng'g*, 92 F.3d at 1551 n.11; *In re Chateaugay*, 920 F.2d at 184-85.

106. *See generally In re Just Brakes*, 108 F.3d at 884 (finding § 362(h) not applicable to corporate debtor); *In re Del Mission*, 98 F.3d at 1152 (refusing to sanction under § 362(h) because the Chapter 7 trustee was not an "individual"); *In re Jove Eng'g*, 92 F.3d at 1539 (11th Cir. 1996) (holding that § 362(h) does not include corporations); *In re Chateaugay*, 920 F.2d at 186-87 (holding § 362(h) not applicable to corporate debtor); Ga. Scale Co. v. Toledo Scale Corp. (*In re* Ga. Scale Co.), 134 B.R. 69, 73 (Bankr. S.D. Ga. 1991) (holding § 362(h) damages not available to corporations).

107. *See, e.g.*, Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990) (holding 11 U.S.C. § 362(h) applicable to corporations); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (upholding award of compensatory damages, punitive damages, and attorney's fees for a violation of a stay as to a corporate debtor).

108. 804 F.2d 289 (4th Cir. 1986).

reorganization petition, the debtor continued to operate its business.[109] Budget Service, the creditor, was in the business of leasing motor vehicles. Prior to the bankruptcy petition, the debtor leased three automobiles from the creditor. Once the debtor stopped making its lease payments, the creditor became concerned and resorted to self-help to reclaim the motor vehicles.[110] The creditor went to the debtor's business premises and drove away with one of the leased vehicles. The following day the creditor, accompanied by two employees, returned to the corporate debtor's premises to take possession of the two remaining leased vehicles. The creditor's second attempt at repossession caused a two-hour disruption in the debtor's business.[111] In response to the creditor's repossession of the leased vehicles, the debtor filed a motion in bankruptcy court seeking a contempt order against the creditor for the violation of the automatic stay.[112] The bankruptcy court found for the debtor and held the creditor in contempt for a violation of the stay. The district court affirmed the finding of the bankruptcy court, and the creditor appealed to the Fourth Circuit, challenging the authority of the bankruptcy court to impose a sanction of contempt.[113]

Interestingly, the Fourth Circuit did not decide the issue of whether the bankruptcy court possessed the authority to hold the creditor in civil contempt. Rather, the Fourth Circuit chose to analyze the case under § 362(h) of the Bankruptcy Code.[114] In affirming the district court's decision, the Fourth Circuit held that the bankruptcy court clearly possessed the authority under § 362(h) to award compensatory damages, punitive damages, and attorney's fees to the corporate debtor for a violation of the automatic stay.[115] The court interpreted the word "individual," in § 362(h) to include corporations.[116]

The Fourth Circuit's analysis stated that § 362(h) must be interpreted in conjunction with the rest of § 362 and that its remedies are not limited to "individuals" in the literal sense of natural persons.[117] The court acknowledged that the Bankruptcy Code does not define the word "individual," but went further to find it unlikely "that Congress meant to give a remedy only to individual debtors against those who willfully violate the automatic stay provision of the Code as opposed to debtors which are corporations or other like entities."[118] The Fourth Circuit grounded its analysis on the concept that such a narrow construction of the term "individual" would defeat the purpose of the automatic stay.[119]

Section 362 generally provides for an automatic stay from collection proceedings

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109. *Id.* at 290.
110. *Id.* at 291.
111. *Id.*
112. *Id.*
113. *Id.*
114. *See id.* at 292-93; *see also* Carroll, *supra* note 23, at 269; Peter H. Carroll, III, *Literalism: The United States Supreme Court's Methodology for Construction in Bankruptcy Cases*, 25 ST. MARY'S L.J. 143, 168. (1993).
115. *Budget Serv.*, 804 F.2d at 293.
116. *Id.* at 292.
117. *Id.*
118. *Id.*
119. *Id.*

once a bankruptcy petition is filed.[120] The court noted that the importance of the automatic stay is stated in the legislative history of § 362, which provides:

> 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.[121]

The Fourth Circuit held that due to the importance of the automatic stay, Congress could not have intended remedies for a violation of § 362 to be available only to natural persons. According to the court, a narrow interpretation of the term "individual" discriminates between natural persons and corporate entities, therefore undermining the remedies available to all debtors under § 362.[122] The court reasoned in conclusion that because corporate debtors are entitled to protection under § 362 of the Federal Bankruptcy Code, they are likewise entitled to legal remedies for injuries suffered from violations of § 362.

Four years later, the Third Circuit was called upon to interpret § 362(h) in *Cuffee v. Atlantic Business and Community Development Corp. (In re Atlantic Business and Community Corp.)*.[123] The court adopted the view of the Fourth Circuit and granted relief under § 362(h) to a corporate debtor.[124] The Third Circuit found that § 362(h) "has uniformly been held applicable to a corporate debtor."[125] In *In re Atlantic Business*, the corporate debtor filed a Chapter 11 petition with the bankruptcy court. Following the petition, the debtor continued to operate its radio station.[126] The creditor owned the building, office furnishings, studio equipment, and albums used by the debtor.[127] Subsequent to the debtor's bankruptcy filing, the creditor attempted to repossess the radio station and to evict the debtor from the premises. In response, the trustee for the debtor's estate filed an order requesting the creditor to explain why he should not be held in contempt for violating the stay.[128] The bankruptcy court issued an order restraining the creditor from further interference with the operation of the radio station.[129] However, the creditor continued his efforts to take possession of the station.

In further proceedings, the bankruptcy court found that the creditor willfully violated the stay provisions and awarded compensatory damages, punitive damages, and attorneys' fees under § 362(h). On appeal, the district court affirmed the decision

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120. 11 U.S.C. § 362(a) (1994).

121. *Budget Serv.*, 804 F.2d at 292 (citing H.R. REP. NO. 95-595, at 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296, and S. REP. NO. 95-989, at 54-55 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840-41, 5963, 6296-97).

122. *Id.* at 292 (holding that a narrow construction would defeat the purpose of § 362).

123. 901 F.2d 325 (3d Cir. 1990).

124. *Id.* at 329.

125. *Id.*

126. *Id.* at 326.

127. *Id.*

128. *Id.*

129. *Id.* at 326-27.

of the bankruptcy court.[130] Unsatisfied with the district court decision, the creditor appealed to the Third Circuit, which found that the creditor had willfully violated the stay and, moreover, while acknowledging that § 362(h) applies to corporate debtors, upheld the damage award.[131] The Third Circuit promptly addressed the issue by citing *Budget Service Co. v. Better Homes of Virginia, Inc.*[132] and holding that § 362(h) of the Bankruptcy Code is applicable to corporations.[133] In *In re Atlantic Business*, the Third Circuit did not elaborate on the *Budget Service* holding, nor did the court produce further reasoning that expands on the analysis used by the Fourth Circuit.

The Third and Fourth Circuits correctly look past the literal meaning of the term "individual" used in § 362(h) and conclude that corporate entities are entitled to protection under § 362 of the Federal Bankruptcy Code.[134] This expansive approach, as adopted by the Third and Fourth Circuits, relies upon legislative history and a consideration of all the subsections of § 362 construed together. Bankruptcy courts that adopt this approach point to the breadth of the automatic stay or the legislative history of § 362 as grounds for going beyond the plain meaning of the term "individual" to achieve equitable results and a uniform application of remedies for a violation of the automatic stay.[135] Failing to adopt the Third and Fourth Circuits' line of reasoning and choosing to assume the majority position in effect denies corporate debtors a legal remedy for injuries suffered from violations of the automatic stay. The Second, Eighth, Ninth, and Eleventh Circuits provide to corporations harmed by a violation of a stay no redress under the Federal Bankruptcy Code.

C. Plain Meaning: U.S. Supreme Court's Standard of Interpretation

In *United States v. Ron Pair Enterprises, Inc.*,[136] the Supreme Court adopted a plain-meaning approach to resolving issues of statutory construction arising under the Federal Bankruptcy Code.[137] Since *Ron Pair*, the Court has applied a literal approach to interpretations of the Bankruptcy Code. Statutory interpretation requires the

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130. *Id.* at 327.

131. *Id.* at 328-29.

132. 804 F.2d 289 (4th Cir. 1986).

133. *In re Atl. Bus.*, 901 F.2d at 329.

134. *See id.*; *Budget Serv.*, 804 F.2d at 292.

135. *E.g.*, 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) (following the Third and Fourth Circuits' holding that § 362(h) is applicable to corporations); Uecker v. Davidson (*In re* Bair Island Marina & Office Ctr.), 116 B.R. 180, 185 n.2 (Bankr. N.D. Cal. 1990) (interpreting "individual" to include corporate entity); Mallard Pond Partners v. Commercial Bank & Trust Co. (*In re* Mallard Pond Partners), 113 B.R. 420, 421-23 (Bankr. W.D. Tenn. 1990) (addressing the legislative history of § 362); United States v. Acad. Answering Serv., Inc. (*In re* Acad. Answering Serv., Inc.), 100 B.R. 327, 329 (Bankr. N.D. Ohio 1989) (rejecting argument that corporate debtors should be denied recovery under § 362(h)); Schewe v. Fairview Estates (*In re* Schewe), 94 B.R. 938, 948 (Bankr. W.D. Mich. 1989) (stating that "individual" encompasses corporations); *In re* NWFX, Inc., 81 B.R. 500, 503 n.3 (Bankr. W.D. Ark. 1987) (stating that damages under § 362(h) not limited to "individuals" but applicable to corporate debtors); *see also* Carroll, *supra* note 23, at 270.

136. 489 U.S. 235 (1989).

137. *Id.* at 240-41.

judiciary to construe the text of a statute so as to give effect to the intention of the legislature.[138] Under the doctrine of plain meaning, courts enforce the literal application of a statute without referring to the legislative history when the language itself is capable of only one interpretation.[139] However, when faced with an ambiguous statute, the Court turns to the legislative history to supply meaning to the text.[140] Following *Ron Pair*, the Court's decisions have shifted towards a strict textualist construction of the Bankruptcy Code.[141] The Supreme Court held in *Ron Pair* that the Bankruptcy Code should be construed according to its terms, unless it is clear that Congress's purpose behind the Code would be frustrated by such interpretation.[142] In *Ron Pair*, the issue was whether § 506(b)[143] allowed a creditor to receive post-petition interest for a nonconsensual, oversecured claim.[144] At the time, a split existed among the circuits as to whether § 506(b) permitted a pre-Code practice distinguishing between nonconsensual and consensual liens in allocating post-petition interests.[145] The Court held that post-petition interests were allowed on nonconsensual and consensual, oversecured claims because Congress made no distinction in the statute's text between nonconsensual and consensual liens.[146]

The Court went on to explain: "[I]t is not appropriate or realistic to expect Congress to have explained with particularity each step it took. Rather, as 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."[147] The Supreme Court found the plain language of § 506(b) conclusive as to its meaning. Further, any judicial analysis of the background, purpose, or legislative history would be inappropriate unless "the literal application of [the] statute [would] produce a result demonstrably at odds with the intentions of its drafters."[148] *Ron Pair*, the most recent Supreme Court case to specifically address the interpretation of the Bankruptcy Code, adopted a textualistic approach through a strict application of the plain-meaning rule.

Under § 362(h), the term at issue is "individual." The black letter definition of "individual" is "a single person as distinguished from a group . . . [or] a private or natural person as distinguished from a partnership, corporation, or association . . . . [However,] this restrictive signification is not necessarily inherent in the word, and

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138. Philbrook v. Glodgett, 421 U.S. 707, 713 (1975); Sinclair Refering Co. v. Atkinson, 370 U.S. 195, 202-03 (1962), *overruled in part on other grounds by* Boy's Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235 (1970); United States v. Am. Trucking Ass'n, 310 U.S. 534, 542 (1940); *see also* Carroll, *supra* note 23, at 263.

139. *Ron Pair*, 489 U.S. at 240-41; Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980).

140. *See Ron Pair*, 489 U.S. at 242; *see also* Tenn. Valley Auth. v. Hill, 437 U.S. 153, 174 (1978).

141. *E.g.*, Rake v. Wade, 508 U.S. 464 (1993).

142. *See Ron Pair*, 489 U.S. at 242.

143. 11 U.S.C. § 506(b) (1994).

144. *See Ron Pair*, 489 U.S. at 237.

145. *Id.* at 237-38.

146. *Id.* at 242-43, 245-46.

147. *Id.* at 240-41.

148. *Id.* at 242 (citing Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

. . . it may, in proper cases, include artificial persons."[149] Since the Bankruptcy Code does not define "individual," the majority position holds that the plain meaning of the word refers to natural persons and thus fails to encompass corporate entities.[150] Therefore, following the *Ron Pair* analysis, the majority holds that § 362(h) fails to include corporate debtors because the plain meaning of the statute does not frustrate the congressional intent behind the Bankruptcy Code.[151]

The actual analysis that the majority rule craftily employs is that Congress always uses the word "person" when it seeks to include natural persons as well as corporate entities; however, it uses the term "individual" to limit the application of a statute to natural persons.[152] Because the plain meaning of § 362(h) is so obvious to the Second, Eighth, Ninth, and Eleventh Circuits, they find no need to look at the purpose, background, or legislative history of the Bankruptcy Code. Unless the literal application of § 362(h) produces results demonstrably at odds with the intentions of Congress, courts adopting the majority rule will apply the plain meaning of the statute.[153] In contrast, the Third and Fourth Circuits hold that the plain meaning of § 362(h) fails to present the intentions of its drafters; thus, these circuits apply a more expansive approach based on the purpose and legislative history of § 362.[154]

Legal scholars and judges alike have scrutinized plain-meaning interpretation of statutes.[155] Application of this textual rule assumes that the denotations of words used in statutes are self-evident. Yet, a word is only a symbol, and its interpretation may differ depending on the context in which it is used.[156] Words and phrases may present inconsistent meanings because of the differing backgrounds and customs of the interpreters. Specifically, statutes can appear ambiguous because the meaning of the

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149. BLACK'S LAW DICTIONARY 773 (6th ed. 1990).

150. *E.g.*, Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881, 884-85 (8th Cir. 1997); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1550-53 (11th Cir. 1996); Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d 613, 619-20 (9th Cir. 1993); Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183, 184-86 (2d Cir. 1990); *see, e.g.*, Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147, 1152 (9th Cir. 1996).

151. *In re Jove Eng'g, Inc.*, 92 F.3d at 1550-53; *In re Goodman*, 991 F.2d at 619-20; *In re Chateaugay*, 920 F.2d at 184-86.

152. *In re Jove Eng'g*, 92 F.3d at 1551; *In re Goodman*, 991 F.2d at 619-20; *In re Chateaugay*, 920 F.2d at 184-85.

153. *Ron Pair*, 489 U.S. at 242.

154. Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (upholding on appeal compensatory and punitive damages and attorneys' fees for a violation of a stay as to a corporate debtor); *see* Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990) (finding § 362(h) applicable to corporations and partnerships).

155. *See, e.g.*, U.S. v. Gaubert, 499 U.S. 315, 316 (1991) (stating that statutes must be construed in light of policy objectives intended by Congress); Konrad Zweigert & Hans-Jürgen Puttfarken, *Statutory Interpretation—Civilian Style*, 44 TUL. L. REV. 704, 712-13 (1970) (discussing diminishing usefulness of plain-meaning interpretation); Quintin Johnstone, *An Evolution of the Rules of Statutory Interpretation*, 3 U. KAN. L. REV. 1 (1954) (criticizing plain-meaning interpretation).

156. 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 45.02 (5th ed. 1992).

language used by Congress does not coincide with the meaning understood by the public.[157] Nonetheless, in *Ron Pair*, the Supreme Court adopted a plain-meaning method of resolving statutory construction issues arising under the Federal Bankruptcy Code.[158]

Application of the Supreme Court's plain-meaning analysis to § 362(h) would consist of an examination of the statute's text, structure, and composition.[159] This literal analysis requires close attention to the grammatical structure of the statute, a comparison of similar words in the statute, and consideration of the language used throughout the statutory scheme.[160] Section 362(h) would be construed to give effect to each word contained within § 362 as well as the entire Bankruptcy Code. This textualist approach presumes that the same words used more than once possess the same meaning. Further, a plain-meaning analysis of § 362(h) would restrict judicial inquiry into the legislative intent. Through drawing inferences from the structure and composition of § 362(h) and construing its relationship to other parts of the Bankruptcy Code, the plain meaning of the term "individual" would be ascertained without assistance from legislative history or background considerations. Therefore, if the Supreme Court employed plain-meaning analysis to § 362(h), it is likely that the term "individual" would fail to include corporations. Because the literal meaning of the word "individual" refers to natural persons, § 362(h) would not protect corporate debtors from willful violations of the automatic stay.

However, it is unclear if the current Court would adopt a strict textualist approach when interpreting § 362(h).[161] The Rehnquist Court's shift towards plain-meaning analysis has led to inconsistent holdings in bankruptcy cases.[162] With every case turning on each Justice's interpretation of the statutory text, the Court has not established overreaching principles that apply in specific bankruptcy cases.[163] As a result, the current "Rehnquist Court appears to drift from bankruptcy decision to bankruptcy decision. The outcome of any particular case is becoming increasingly difficult to predict."[164] Three categories of recent Supreme Court bankruptcy cases can be identified: (1) cases which purport to follow the plain-meaning approach,[165] (2) cases that fail to describe the Court's methodology,[166] and (3) cases that employ

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157. *See e.g.*, Carroll, *supra* note 23, at 263.

158. *Ron Pair*, 489 U.S. at 240-46.

159. *Id.* at 241-42.

160. *Id.*

161. Dewsnup v. Timm, 502 U.S. 410, 419-20 (1992) (moving *slightly* away from a plain-meaning interpretation of the Bankruptcy Code to *briefly* look at congressional intent and policy-based considerations).

162. *See* Kelch, *supra* note 3, at 293.

163. *See id.*; *see also* Charles J. Tabb & Robert M. Lawless, *Of Commas, Gerunds, and Conjunctions: The Bankruptcy Jurisprudence of the Rehnquist Court*, 42 SYRACUSE L. REV. 823, 880-81 (1991).

164. Tabb & Lawless, *supra* note 163, at 880.

165. Patterson v. Shumate, 504 U.S. 753 (1992); Conn. Nat'l Bank v. Germain, 503 U.S. 249 (1992); Toibb v. Radloff, 501 U.S. 157 (1991); Pa. Dept. of Pub. Welfare v. Davenport, 495 U.S. 552 (1990); United States v. Ron Pair Enters., Inc., 489 U.S. 235 (1989).

166. *E.g.*, Johnson v. Home State Bank, 501 U.S. 78 (1991); Grogan v. Garner, 498 U.S. 279 (1990); United States v. Energy Res. Co., 495 U.S. 545 (1990); Norwest Bank

a non-plain-meaning approach.[167] Although the Court would likely adopt the *Ron Pair* plain-meaning analysis when interpreting § 362(h), skepticism exists as to the interpretive approach each of the Justices would employ.[168]

Plain-meaning analysis, although presently dominating the Supreme Court's construction of the Bankruptcy Code, is inherently flawed. Due to the ambiguities in language, there will be differing interpretations of statutes. Therefore, by focusing on the text alone, the Court fails to develop bankruptcy laws through the formulation and evolution of principles that can contribute to future audience analysis.[169] The Court's current lack of policy analysis actually ignores the importance of bankruptcy principles (for example, the promotion of reorganization) and neglects to guide future application of the Bankruptcy Code.[170] Plain-meaning analysis rejects the use of legislative history or extrinsic sources to interpret § 362(h). This barrier placed between the judicial reader and the legislature causes decisions that contradict the Bankruptcy Code's purpose.[171] The Supreme Court, in the applicatiou of plain-meaning analysis, fails to recognize the policies and purposes of the Bankruptcy Code and is likely to reach conclusions at odds with the true intentions of Congress. However, the relative newness of the Code, the detail with which it is written, the depth of its historical meaning, its complex structure, and its substantive nature (affecting commercial rights) establish the foundation on which the Court employs a plain-meaning construction.[172]

D. Contempt: An Alternative Remedy for Corporate Debtors

As an alternative to recovery under § 362(h), a corporate debtor injured by a violation of the stay may seek a remedy through civil contempt.[173] However, the imposition of a remedy under civil contempt is subject to a stricter standard than is imposed by § 362(h) and does not afford the availability of punitive damages in addition to compensatory damages.[174] Moreover, the bankruptcy courts' power to impose contempt sanctions is subject to more extensive procedural requirements than affording a remedy under § 362(h).[175] Specifically, an action seeking a remedy under

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Worthington v. Ahlers, 485 U.S. 197 (1988); Kelly v. Robinson, 479 U.S. 36 (1986).

167. Nobelman v. Am. Sav. Bank, 508 U.S. 324 (1993); Pioneer Inv. Serv. Co. v. Brunswick Assocs., 507 U.S. 380 (1993); Taylor v. Freeland & Kronz, 503 U.S. 638 (1992); United States v. Nordic Vill., Inc., 503 U.S. 30 (1992); Owen v. Owen, 500 U.S. 305 (1991); Farrey v. Sanderfoot, 500 U.S. 291 (1991); *see also* Kelch, *supra* note 3, at 294.

168. Tabb & Lawless, *supra* note 163, at 880-81.

169. Kelch, *supra* note 3, at 307.

170. *Id.*

171. *See* Kenneth N. Klee & Frank A. Merola, *Ignoring Congressional Intent: Eight Years of Judicial Legislation*, 62 AM. BANKR. L.J. 1, 6 (1988).

172. Kelch, *supra* note 3, at 292.

173. Mountain Am. Credit Union v. Skinner (*In re* Skinner), 917 F.2d 444, 447 (10th Cir. 1990) (holding that automatic stay violators may be punished under civil contempt).

174. *See Recovery of Damages for Willful Violation of the Stay*, 3 COLLIER ON BANKR. ¶ 362.11[3] (Lawrence P. King ed., 15th ed. rev. 1998) [hereinafter *Recovery*].

175. *Id.*; *see In re Skinner*, 917 F.2d at 447; Budget Serv. Co. v. Better Homes of Va., 804 F.2d 289, 293 (4th Cir. 1986).

§ 362(h) is a core proceeding that can be decided by bankruptcy courts.[176] Whereas, civil contempt is treated similar to a noncore proceeding, which is subject to de novo review by the district court.[177] In reality, the relationship between § 362(h) damage awards and contempt as a source of recovery is unclear. The way the two remedies fit together is quite murky and depends on the individual bankruptcy court's and district court's applications.[178]

In 1978, Congress granted broad jurisdiction to newly created bankruptcy courts through the enactment of the Federal Bankruptcy Code.[179] In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*,[180] the Supreme Court faced a challenge to the constitutionality of the Bankruptcy Code based on the claim that it encroached upon the powers of federal courts.[181] The Court held that the Code was unconstitutional because Article III of the U.S. Constitution "bars Congress from establishing legislative courts to exercise jurisdiction over *all* matters related to those arising under the bankruptcy laws."[182] Following the decision, Congress substantially amended sections of the Bankruptcy Code in conformance with Article III of the Constitution and the *Northern Pipeline* decision.

Included in the amendments to the Bankruptcy Code was the modification of two sections that directly address the bankruptcy courts' ability to issue civil contempt orders. First was § 105(a),[183] which was modified to provide:

> The [bankruptcy] court may issue any order, process, or judgement 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.[184]

Second, in response to the *Northern Pipeline* holding, § 157 of Title 28[185] was amended to provide:

> (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

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176. *In re Skinner*, 917 F.2d at 446.

177. *Id.*; *see also Recovery*, *supra* note 174, ¶ 362.11[3].

178. DAVID G. EPSTEIN ET AL., BANKRUPTCY § 3-35, at 170 (1993).

179. 11 U.S.C. §§ 101-1330 (1994 & Supp. IV 1998); *see also* N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 54 (1982) ("The jurisdiction of the bankruptcy courts created by the Act is much broader than that exercised under the former referee system.").

180. 458 U.S. 50 (1982).

181. *Id.* at 56-57.

182. *Id.* at 76 (emphasis added).

183. 11 U.S.C. § 105(a) (1994).

184. *Id.*

185. 28 U.S.C. § 157 (1994). Title 28 deals with practices and procedures for federal courts.

judgements, subject to review under section 158 of this title.[186]

Therefore, § 105(a) gives bankruptcy courts the power to take actions necessary to carry out Title 11[187] provisions, and § 157 of Title 28 gives bankruptcy courts the authority to decide Title 11 bankruptcy proceedings.[188] Courts that impose civil contempt orders for violation of an automatic stay use § 105(a), § 157, or both to award damages.[189]

A great deal of confusion surrounds whether bankruptcy courts possess civil contempt powers, and if so, where those powers originate. Depending on the jurisdiction, bankruptcy courts can (1) issue and enforce civil contempt orders themselves,[190] (2) certify the issue to the district court,[191] or (3) decide the contempt issue and then pass it on to the district court for review and enforcement.[192] In *Burd v. Walters (In re Walters)*,[193] the Fourth Circuit concluded that bankruptcy courts have clear authority to issue and enforce civil contempt orders.[194] Through analyzing § 105(a), the court held Congress could constitutionally grant bankruptcy courts the power to enforce its orders through the use of civil contempt.[195] Other courts have held that bankruptcy courts possess the power to issue and enforce civil core-proceeding contempt orders through analysis of § 157 of Title 28.[196] Classifying civil contempt as a core bankruptcy proceeding under § 157 permits bankruptcy courts to hear, determine, and enter contempt orders independent of district courts.

Other jurisdictions hold that bankruptcy courts must certify the civil contempt issue

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186. *Id.* § 157(a)-(b)(1).

187. 11 U.S.C. §§ 101-1330 (1994 & Supp. IV 1998). Title 11 is the Federal Bankruptcy Code.

188. 11 U.S.C. § 105(a) (1994); 28 U.S.C. § 157.

189. Mountain Am. Credit Union v. Skinner (*In re* Skinner), 917 F.2d 444, 447-48 (10th Cir. 1990) (using both); Burd v. Walters (*In re* Walters), 868 F.2d 665, 669 (4th Cir. 1989) (using § 105(a)); *In re* Xavier's of Beville, Inc., 172 B.R. 667, 672 (Bankr. M.D. Fla. 1994) (using § 105(a)); Fry v. Today's Homes (*In re* Fry), 122 B.R. 427, 430 (Bankr. N.D. Okla. 1990) (using § 105(a)); *In re* InCor, Inc., 113 B.R. 212, 217 (D. Md. 1990) (using § 157); *In re* Lee Way Holding Co., 104 B.R. 881, 885-86 (Bankr. S.D. Ohio 1989) (using § 157).

190. *In re Skinner*, 917 F.2d at 446, 448-49; *In re Walters*, 868 F.2d at 669; Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292-93 (4th Cir. 1986); AP Indus. v. SN Phelps & Co. (*In re* AP Indus.), 117 B.R. 789, 802-03 (Bankr. S.D.N.Y. 1990); Dubin v. Jakobowski (*In re* Stephen W. Grosse, P.C.), 84 B.R. 377, 386-88 (Bankr. E.D. Pa. 1988); Gibbons v. Haddad (*In re* Haddad), 68 B.R. 944, 948 (Bankr. D. Mass. 1987).

191. Plastiras v. Idell (*In re* Sequoia Auto Brokers Ltd.), 827 F.2d 1281, 1288-89 (9th Cir. 1987).

192. Brown v. Ramsay (*In re* Ragar), 3 F.3d 1174, 1177 (8th Cir. 1993); *see In re* Washtenaw/Huron Inv. Corp. No. 8, 160 B.R. 74, 79 (Bankr. E.D. Mich. 1993).

193. 868 F.2d 665 (4th Cir. 1989).

194. *Id.* at 669.

195. *Id.* at 670.

196. Mountain Am. Credit Union v. Skinner (*In re* Skinner), 917 F.2d 444, 447-49 (10th Cir. 1990); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986); AP Indus. v. SN Phelps & Co. (*In re* AP Indus.), 117 B.R. 789, 797 (Bankr. S.D.N.Y. 1990); Dubin v. Jakobowski (*In re* Stephen W. Grosse, P.C.), 84 B.R. 377, 386 (Bankr. E.D. Penn. 1988); Gibbons v. Haddad (*In re* Haddad), 68 B.R. 944, 948 (Bankr. D. Mass. 1987).

to the federal district court for that court's judge to decide. For example, the Ninth Circuit in *Plastiras v. Idell (In re Sequoia Auto Brokers Ltd.)*[197] found that there was no express or implied statutory authority allowing bankruptcy judges to exercise contempt powers.[198] Thus, in that circuit, bankruptcy courts do not possess jurisdiction over civil contempt proceedings. The court failed to find § 105(a) as a source of civil contempt power because it was overly broad.[199] However, the *In re Sequoia Auto Brokers* decision did not preclude a finding of contempt in a bankruptcy proceeding. According to the Ninth Circuit, the bankruptcy court must certify the contempt issue to the federal district court for decision and enforcement.[200]

Alternatively, in some jurisdictions, bankruptcy courts decide the issue of contempt and then pass it on to the district court for review and enforcement.[201] These district court decisions rely on Federal Rule of Bankruptcy Procedure 9020[202] when analyzing contempt determinations made by bankruptcy judges.[203] Bankruptcy Rule 9020 establishes a procedure for courts to deal with contempt. It provides that the bankruptcy judge may summarily determine actions of contempt committed in the direct presence of the bankruptcy court.[204] Other actions of contempt may be

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197. 827 F.2d 1281 (9th Cir. 1987).

198. *Id.* at 1288-89.

199. *Id.* at 1290.

200. *Id.* at 1291.

201. Brown v. Ramsey (*In re* Ragar), 3 F.3d 1174, 1178-79 (8th Cir. 1993); Mutual Benefit Life Ins. Co. v. Pinetree, Ltd. (*In re* Pinetree, Ltd.), 876 F.2d 34, 36-38 (5th Cir. 1989); *see In re* Washtenaw/Huron Inv. Corp. No. 8, 160 B.R. 74, 79 (Bankr. E.D. Mich. 1993).

202. Federal Rule of Bankruptcy Procedure 9020, as promulgated by the U.S. Supreme Court, provides as follows:

> (a) Contempt Committed in Presence of Bankruptcy Judge. Contempt committed in the presence of a bankruptcy judge may be determined 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 criminal 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 . . . .
>
> (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 objections prepared in the manner provided in Rule 9033(b). If timely objections are filed, the order *shall* be reviewed [de novo by the district court] as provided in Rule 9033.

FED. R. BANKR. P. 9020 (emphasis added).

203. *See e.g.*, Mataya v. Kissinger (*In re* Kissinger), 72 F.3d 107 (9th Cir. 1995).

204. FED. R. BANKR. P. 9021(a).

determined by the bankruptcy judge following a hearing on notice.[205] Under Rule 9020, a bankruptcy judge's order of contempt has the same force as an order entered by the district court judge unless, within ten days of the order, the party held in contempt files objections, in which case the district court will review the order de novo.[206] Thus, Rule 9020 gives bankruptcy courts power to deal with contempt; however, the bankruptcy judge's findings are subject to district court review.

The damage remedy under § 362(h) for violation of a stay is fairly new. It was added to the Federal Bankruptcy Code in 1984.[207] Prior to 1984, an award of damages for injuries suffered from a violation of a stay was usually grounded in the court's civil contempt power.[208] The existence of contempt power is important; however, much confusion surrounds its relation to § 362(h) when a court provides damages for violation of an automatic stay. For example, some courts use discretionary contempt power to award damages to corporate debtors, while others use § 362(h), granting mandatory relief to corporations injured by violation of a stay.[209] Although civil contempt power provides an alternative to § 362(h), courts infer a higher standard of proof when issuing a contempt order. Courts have noted that, to support a finding of contempt, the moving party must establish by clear and convincing evidence that an automatic stay was in effect, the defendant knew of the stay, and the defendant purposefully violated the stay.[210] This standard of proof exceeds that of "willful violation" as established under § 362(h).[211] Adding to the confusion is the continuous speculation as to whether civil contempt damages are an equal remedy to the recovery provided for under § 362(h).[212]

Some courts have acknowledged the major differences between the use of civil contempt orders and the use of § 362(h) to compensate injured corporate debtors. The Ninth Circuit recognizes that, unlike § 362(h), civil contempt orders are discretionary; thus, courts are not required to award relief through contempt even when corporations

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205. *Id.* 9021(b).

206. *Id.* 9021(c); *see also In re Kissinger*, 72 F.3d at 108.

207. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 304, 98 Stat. 333 (codified as 11 U.S.C. § 362(h) (1994)).

208. EPSTEIN ET AL., *supra* note 178, § 3-35, at 170.

209. *Compare* Mut. Benefit Life Ins. Co. v. Pinetree, Ltd. (*In re* Pinetree, Ltd.), 876 F.2d 34, 36 (5th Cir. 1989) (applying civil contempt power to award damages for violation of a stay), *with* Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986) (awarding compensatory damages, punitive damages, and attorneys' fees for a violation of a stay as to a corporate debtor under § 362(h)).

210. *In re* Berryhill, 127 B.R. 427, 429 (Bankr. N.D. Ind. 1991); Lakefield Tel. Co. v. N. Telecomm., Inc., 696 F. Supp. 413, 423 (E.D. Wis. 1988); Rototron Corp. v. Lake Shore Burial Vault Co., 553 F. Supp. 691, 699 (E.D. Wis. 1982), *aff'd*, 712 F.2d 1214 (7th Cir. 1983).

211. *See* 11 U.S.C. § 362(h) (1994); *see also* Univ. Med. Ctr. v. Sullivan (*In re* Univ. Med. Ctr.), 973 F.2d 1065, 1087-88 (3d Cir. 1992); Price v. Rochford, 947 F.2d 829, 831 (7th Cir. 1991); Atkins v. Martinez (*In re* Atkins), 176 B.R. 998, 1008 (Bankr. D. Minn. 1994); *In re* Herbst, 167 B.R. 983, 985 (Bankr. N.D. Fla. 1994); Temlock v. Falls Bldg., Ltd. (*In re* Falls Bldg., Ltd.), 94 B.R. 471, 481 (Bankr. E.D. Tenn. 1988); Stucka v. United States (*In re* Stucka), 77 B.R. 777, 783 (Bankr. C.D. Cal. 1987).

212. *See* WILLIAM L. NORTON, JR., 2 NORTON BANKRUPTCY LAW & PRACTICE §§ 36:42-:44 (2d ed. 1997).

qualify for damages.[213] This distinction is critical to corporations who are injured by a violation of an automatic stay. Under the contempt theory of damages, courts have full discretion to deny a request for a civil contempt order against stay violators and thereby refuse to provide a legal remedy to corporate debtors. Therefore, failure to allow corporate entities relief under § 362(h) leaves injured corporate debtors at the mercy of the judge's discretion. This lack of predictability is exactly the concern that led the Third and Fourth Circuits to find that the term "individual" included corporations and thus provide corporate debtors with a legal remedy.[214] Although civil contempt may provide an alternative remedy to § 362(h) damages, contempt fails to provide a uniform result; rather, it gives judges full discretion as to relief measures. If there is no uniform system to deter creditors from violating the automatic stay, violations will become the norm.

E. The Future of § 362(h): Corporate Debtors Are Entitled to Legal Remedies

In the custom of nearsighted legislation, Congress neglected to define the application of § 362(h) to corporate debtors.[215] In response, six circuits have specifically addressed whether § 362(h) applies to corporations. Two circuits have found that the language of § 362(h) includes corporate entities, whereas four circuits hold that it applies only to natural persons.[216] Within the five circuits yet to address the issue, the district courts are split as to the application of § 362(h) to corporations.[217] Because of the many discrepant judicial interpretations of § 362(h),

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213. Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d 613, 619-20 (9th Cir. 1987); *see* Mataya v. Kissinger (*In re* Kissinger), 72 F.3d 107, 108 (9th Cir. 1995).

214. *See* Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990); *Budget Serv.*, 804 F.2d at 292.

215. *See* 11 U.S.C. § 362(h). This is not unexpected considering that legislators can win or lose their seats depending on their fiscal policy.

216. *See In re Atl. Bus.*, 901 F.2d at 329 (finding § 326(h) applicable to corporations and partnerships); *Budget Serv.*, 804 F.2d at 292 (holding § 326(h) applicable to corporate debtors). *But see* Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881, 884-85 (8th Cir. 1997) (finding § 362(h) not applicable to corporate debtor); Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147, 1151-52 (9th Cir. 1996) (refusing to sanction under § 362(h) because the Chapter 7 trustee was not an "individual"); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539, 1552 (11th Cir. 1996) (finding that § 362(h) does not include corporations); Mar. Asbestosis Legal Clinic v. LTV Steel Co., (*In re* Chateaugay Corp.), 920 F.2d 183, 185-86 (2d Cir. 1990) (finding § 362(h) not applicable to corporate debtor).

217. *See* Martino v. First Nat'l Bank of Harvey (*In re* Garofalo's Finer Foods), 186 B.R. 414, 439 (N.D. Ill. 1995) (holding that corporate entity is an "individual" for the purposes of § 362(h)); Mann v. Marine Bank W. (*In re* Omni Graphics, Inc.), 119 B.R. 641, 644 (Bankr. E.D. Wis. 1990) (finding that the term "individual" as used in § 362(h) includes corporations). *But see* McRoberts v. S.I.V.I. (*In re* Bequette), 184 B.R. 327, 335 (Bankr. S.D. Ill. 1995) (holding that § 362(h) is limited to natural persons and is not available to corporations); United States v. Midway Indus. Contractors (*In re* Midway Indus. Contractors), 178 B.R. 734, 738 (Bankr. N.D. Ill. 1995) (holding § 362(h) is not applicable to corporate debtors). For example, within the Seventh Circuit, bankruptcy courts and district courts alike are split on the issue of

the future is unclear. Currently, a corporate entity injured by a violation of an automatic stay faces unpredictable results from a judicial remedy. The present uncertainties facing injured corporate debtors include whether § 362(h) applies, whether civil contempt applies, and whether the corporate debtor will receive a legal remedy when injured by a "willful violation" of the law. These lingering uncertainties undermine the intended purpose of § 362(h).

Section 362(h) is designed to deter violators and to compensate those injured by violations of the automatic stay.[218] It is therefore irrelevant whether the victim is a natural person or corporate entity. The purpose of § 362(h) will be destroyed if creditors can violate the automatic stay without suffering repercussions under the Bankruptcy Code. For this reason, remedial measures must be taken to provide a uniform remedy to corporations who are injured by a violation of the Federal Bankruptcy Code. Two viable alternatives exist: (1) the U.S. Supreme Court should address the issue, or (2) Congress should amend the Bankruptcy Code to make specific their intentions as to the applicability of § 362(h). Either way, the confusion surrounding the interpretation of § 362(h) and its relation to civil contempt must be addressed. To date, enormous amounts of time and money have been invested in litigating the applicability of § 362(h) of the Federal Bankruptcy Code. Under the status quo, the forecast for the future is continued heavy litigation. However, a swift stroke of judicial activism or legislative responsiveness will implement an efficient and uniform application of § 362(h), thereby reducing litigation.

The Federal Bankruptcy Code possesses two primary purposes: first, to uphold order in the face of a debtor's inability to pay debts and second, to rehabilitate debtors by providing a fresh start.[219] The automatic stay was one of the primary provisions enacted to allow parties in a bankruptcy proceeding to achieve both of these goals. Further, Congress identified the importance of the automatic stay as "one of the fundamental debtor protections provided by the bankruptcy laws."[220] The automatic stay not only protects corporate debtors, but it also provides corporate creditors with protection.[221] The purpose of § 362(h) is to deter violators and provide damages to those who are injured by a violation of the stay. Therefore, since the automatic stay provided for in § 362(a) protects corporate entities from unlawful debt collections, it makes sense to provide corporate debtors, injured by stay violators, a legal remedy under § 362(h) of the Bankruptcy Code. Those courts which fail to apply § 362(h) to corporate entities in effect deny corporate debtors legal remedies under the Federal Bankruptcy Code and raise an unwarranted green light to creditors.

As the honorable Judge Learned Hand once stated, "There is no surer way to misread any document than to read it literally."[222] Judge Hand's maxim is particularly apt in describing judicial interpretation of the term "individual" as it appears in § 362(h). It is likely the case that Congress failed to consider the usage of the word

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whether § 362(h) is applicable to corporate debtors.

218. *See* 11 U.S.C. § 362(a).

219. COMM'N ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 93-137, pt. 1, at 84 (1973).

220. H.R. REP. NO. 95-595, at 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296.

221. *See* 11 U.S.C. § 362(a).

222. Guiseppi v. Walling, 144 F.2d 608, 624 (2d Cir. 1944) (Hand, J., concurring).

"individual" when haphazardly drafting § 362(h). This is evinced by the lack of legislative history addressing the application of § 362(h) coupled with the Bankruptcy Code's failure to define the word "individual."[223] For these reasons, § 362(h) must be read in conjunction with the rest of § 362. In so doing, the imposition of sanctions will not be limited to "individuals" in the literal sense. Because § 362 provides automatic stay protection to corporations, it is highly likely that Congress intended a legal remedy for corporations injured by a violation of a § 362 stay. It is unlikely that Congress intended to give a remedy only to "individual" debtors as opposed to both corporate entities and natural persons. Such a narrow construction of the word "individual" defeats the purpose of § 362, and, therefore, § 362(h) must be interpreted to include corporate debtors.

To solve of the confusion surrounding § 362(h), Congress should amend the Bankruptcy Code. By simply replacing the word "individual" with "person,"[224] Congress would thereby allow corporate entities to recover remedies for injuries suffered as a result of violations of an automatic stay. If Congress does not intend to provide legal remedies to corporations, the purpose of § 362 as applied to corporate debtors is defeated.[225] Although civil contempt *may* provide an alternative remedy, imposition of these sanctions is subject to a stricter standard than is § 362(h) and does not afford the availability of punitive damages in addition to compensatory damages.[226] Because of inadequate legal remedies available to aggrieved corporate entities,[227] Congress must amend § 362(h) to uniformly apply to corporate debtors.

Conversely, if Congress neglects to address the confusion surrounding § 362(h), the issue is ripe for the U.S. Supreme Court. In addressing the issue, the Court may base its decision on the plain meaning of the statute, its social purpose, the legislature's intent, a dynamic interpretation, a common-law type of case analysis, or some combination of approaches.[228] Under its strategy of construction in *Ron Pair*, it is likely that the Court will embrace a plain-meaning approach[229] to resolving this current issue arising under the Federal Bankruptcy Code. However, it is possible that

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223. *See* Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d. 183, 184-85 (2d Cir. 1990).

224. *See* 11 U.S.C. § 101(41). Section 101(41) of the Bankruptcy Code defines "person" to include "individual, partnership, and corporation." *Id.*

225. What purpose does § 362 serve if violators of an automatic stay are not held responsible for their actions?—none. Creditors who violate a stay against a corporate debtor must be held legally responsible under § 362(h) of the Federal Bankruptcy Code.

226. *Recovery, supra* note 174, ¶ 362.11[3].

227. *See, e.g.*, Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881 (8th Cir. 1997); Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147 (9th Cir. 1996); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539 (11th Cir. 1996); Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d. 613 (9th Cir. 1993); Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183 (2d Cir. 1990). All of these cases held that § 362(h) is not applicable to corporations.

228. *See* 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION §§ 45-49 (5th ed. 1992); William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. PA. L. REV. 1479, 1481-87 (1987).

229. United States v. Ron Pair Enters., Inc., 489 U.S. 235, 242-43 (1989); *see also supra* Part III.C.

a majority of the Court will deliver itself from this elementary method of judicial interpretation and apply a policy-based analysis of § 362(h) through which a conceptual structure can be established for future cases. The further application of a narrow, plain-meaning analysis will do nothing more than produce unintelligible, unjustified rationales. This current Supreme Court trend of textualism in bankruptcy jurisprudence rejects policy considerations necessary for a proper application of § 362(h).

However, even if the Court applies the *Ron Pair* analysis to the construction of § 362(h), all hope may not be lost for corporate debtors under plain-meaning interpretation. In *Ron Pair*, the Court states that the plain meaning of the statute is conclusive "'except in the rare case [in which] the literal application . . . will produce a result demonstrably at odds with the intention of the drafters.'"[230] In such an instance, "the intention of the drafters, rather than the strict language, controls."[231] Because the Bankruptcy Code does not define the word "individual," there is no sure way for the Court to know the true intention of the drafters. Moreover, the absence of legislative history addressing § 362(h) suggests the likelihood of a legislative drafting error.[232] The argument can be made that the intention of the drafters is unknown; therefore, a literal application of § 362(h) cannot produce a result clearly in compliance with the intention of the drafters. In this situation, a literal application of the term "individual" produces a result demonstrably at odds with the legislature's intentions. Subsequently, under the *Ron Pair* analysis, the intention of the drafters rather than the strict language controls.[233] To ascertain the intention of Congress, the Court must analyze the legislative history of § 362(a)[234] and the policy considerations surrounding the automatic stay. In so doing, the Court should find that such a narrow construction of § 362(h) would defeat the purpose of the automatic stay and thus should construe the word "individual" to include corporations.

As it stands, the future of § 362(h) is troubling. Currently four circuits fail to allow corporate entities injured by a violation of a stay recovery under the Federal Bankruptcy Code.[235] Courts that limit the application of § 362(h) to natural persons

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230. *Ron Pair*, 489 U.S. at 242 (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982)).

231. *Id.*

232. If Congress intended to provide corporate debtors protection under the automatic stay provision of § 362(a), yet intended to provide no remedy for a violation of such a stay under § 362(h), it is a justified assumption that there would exist some legislative history surrounding this issue. The automatic stay is one of the fundamental protections afforded by the Bankruptcy Code. If Congress intended to provide corporate entities with no legal remedies for a violation of a stay, it is likely legislative history would reveal this.

233. *See Ron Pair*, 489 U.S. at 242-43.

234. *See* H.R. REP. NO. 95-595, at 340 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-98.

235. *See, e.g.*, Sosne v. Reinert & Duree, P.C. (*In re* Just Brakes Corporate Sys., Inc.), 108 F.3d 881 (8th Cir. 1997); Cal. Employment Dev. Dep't v. Taxel (*In re* Del Mission Ltd.), 98 F.3d 1147 (9th Cir. 1996); Jove Eng'g, Inc. v. IRS (*In re* Jove Eng'g, Inc.), 92 F.3d 1539 (11th Cir. 1996); Johnston Envtl. Corp. v. Knight (*In re* Goodman), 991 F.2d. 613 (9th Cir. 1993); Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re* Chateaugay Corp.), 920 F.2d 183 (2d Cir. 1990). All of these cases held that § 362(h) is not applicable to corporations.

severely diminish the protection provided by the automatic stay. Corporate entities—debtors and creditors alike—under the jurisdiction of these courts receive no bankruptcy process protection against the depletion of assets by unlawful actions of credit collectors. Regardless of whether Congress amends § 362(h) or the U.S. Supreme Court addresses the issue, corporate debtors injured by violations of the automatic stay should be included in the class of "individuals" entitled to legal remedies under the Federal Bankruptcy Code.

IV. CONCLUSION

This Note argues that, as a final benefit, corporate debtors injured by a willful violation of an automatic stay should recover actual damages, including costs and attorneys' fees, and under appropriate conditions, should recover punitive damages. Under the American jurisprudence system, corporations are afforded the same rights and responsibilities as an individual person. Therefore, there is no reason why corporations should be denied equal access to a legal remedy under federal law.

The automatic stay is generally considered one of the most (if not the most) fundamental provisions contained within the Federal Bankruptcy Code.[236] As such, the automatic stay must judiciously apply to protect individual and corporate debtors alike. Although § 362(h) was codified to enforce this provision, the scope of its application has been muddied by the decisions of the federal circuit courts of appeals. While the Second, Eighth, Ninth, and Eleventh Circuits have limited the reach of § 362(h) to include only natural persons, the Third and Fourth Circuits have correctly extended it to allow injured corporate debtors to recover damages.[237] An examination of § 362 as a whole, as well as its legislative history, reveals the wisdom of the Third and Fourth Circuits' decisions to protect debtor and creditor corporations.[238]

Finally, the civil contempt remedy falls short of an adequate alternative to § 362(h) sanctions. Not only does civil contempt fail to provide a corporate debtor with punitive damages, but it also is a highly discretionary award which is subject to an increased standard of proof and inconsistent procedural processes.[239] The civil contempt remedy is an unreliable mechanism by which to uphold a fundamental provision of the U.S. Code. Thus, § 362(h) must be applied to provide corporations injured by a violation of an automatic stay a legal remedy under the Federal Bankruptcy Code.

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236. *See* H.R. REP. NO. 95-595, at 340.

237. *See* Cuffee v. Atl. Bus. & Cmty. Dev. Corp. (*In re* Atl. Bus. & Cmty. Corp.), 901 F.2d 325, 329 (3d Cir. 1990); Budget Serv. Co. v. Better Homes of Va., Inc., 804 F.2d 289, 292 (4th Cir. 1986). *But see In re Just Brakes*, 108 F.3d at 886-88; *In re Del Mission*, 98 F.3d at 1151-52; *In re Jove Eng'g*, 92 F.3d at 1542-44; *In re Goodman*, 991 F.2d at 619-20; *In re Chateaugay*, 920 F.2d at 185-86.

238. *See In re Atl. Bus.*, 901 F.2d at 329 (finding § 326(h) applicable to corporations and partnerships); *Budget Serv.*, 804 F.2d at 292 (holding § 326(h) applicable to corporate debtors).

239. *See* Mountain Am. Credit Union v. Skinner (*In re* Skinner), 917 F.2d 444, 447-49 (10th Cir. 1990); *see also Recovery*, *supra* note 174, ¶ 362.11[3].