



The Nuts & Bolts of a Lift Stay Motion

THE NUTS & BOLTS OF CHAPTER 11 (SERIES I)

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Meet the Faculty

Panelists

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Moderator

Maria Carr – McDonald Hopkins LLC

About This Webinar

The Nuts and Bolts of a Lift Stay Motion

Most businesses of any meaningful size in the United States have a line of credit or term loan with a bank or other lender that is secured by a lien on substantially all of the assets of that business.

One of the strongest tools in a secured lender's toolbox is the ability to ask the bankruptcy court to lift or modify the automatic stay to allow the secured lender to get to its collateral. Needless to say, the debtor will often oppose the lender's request. This is just one of many aspects of litigation surrounding the automatic stay.

The Bankruptcy Code provides for specific circumstances under which relief from the stay is permitted, and litigation over whether the requisite conditions exist is common. This webinar discusses the scope of the automatic stay and the procedure and grounds for seeking relief.

Learning Objectives:

- Understand the concept and scope of the automatic stay: Explore the purpose and significance of the automatic stay in bankruptcy proceedings; Identify the protections it provides to debtors and its impact on creditors
- Learn the strategic importance of a lift stay motion: Examine why secured lenders often request relief from the automatic stay; Understand the role of the automatic stay in protecting creditors' collateral
- Analyze the legal framework for lifting or modifying the automatic stay: Study the specific conditions under the Bankruptcy Code that permit relief from the automatic stay; Explore common scenarios in which creditors seek relief and the legal thresholds required
- Explore the debtor's perspective in opposing a lift stay motion: Understand common debtor objections to lift stay motions and the strategies used to defend against them
- Understand the litigation process surrounding lift stay motions: Review the procedural steps for filing and litigating a lift stay motion; Analyze key arguments and evidence presented by both secured creditors and debtors during litigation
- Gain insights into the practical implications of lift stay motions: Evaluate how decisions regarding lift stay motions affect the dynamics of a bankruptcy case and the debtor-creditor relationship

About This Series

The Nuts & Bolts of Bankruptcy

- No matter how you are involved in a bankruptcy proceeding, there is a real chance you will wind up litigating some issue. Litigating in bankruptcy court, however, is very different than litigating in any other federal or state court because the customs, rules and players are all different.
- Whether you are a general litigator or a business person who has never had to fight in bankruptcy court, this webinar series is for you if you want to understand some of the more commonly litigated issues in bankruptcy cases.

Episodes In This Series

1. The Nuts & Bolts of a Chapter 11 Plan
Premiere date: 1/15/26
2. The Nuts & Bolts of a Lift Stay Motion
Premiere date: 2/5/26
3. The Nuts and Bolts of DIP Financing
Premiere date: 3/5/26
4. The Nuts & Bolts of a First Day Hearing
5. *Premiere date: 3/26/26*

Episode #2

The Nuts and Bolts of a Lift Stay Motion

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Overview

- Introduction
- Scope of the Automatic Stay
- Procedure for Enforcing the Automatic Stay
- Relief From the Automatic Stay
- Litigation
- Miscellaneous Considerations



Introduction to the Automatic Stay

Under 11 U.S.C. § 362(a), the filing of a bankruptcy petition immediately & automatically stays substantially all litigation, lien enforcement, or other activities by creditors against the debtor and its property.

Purposes of the Automatic Stay

The automatic stay serves several purposes:

1. Provides time to effect a reorganization or an orderly liquidation.
2. Prevents a race to the courthouse.
3. Protects debtor from creditor harassment, promoting a “fresh start.”



Effectiveness of Stay

- The automatic stay arises by operation of law when bankruptcy petition is filed.
- Fully effective without judicial action.
- Acts in violation of the automatic stay are void or voidable.



Types of Litigation

Two (2) primary types of litigation regarding the automatic stay:

1. Requests by the debtor to enforce the stay;
2. Requests by creditors for relief from the stay.



Scope of an Automatic Stay

Duration of Stay

- Begins immediately upon the filing of the bankruptcy petition.
- Can end at different times:
 - When the case is closed or dismissed, or a discharge is granted or denied.
 - Regarding actions against property of the bankruptcy estate, the stay ends when the property is no longer property of the estate (e.g., it has been sold).
 - If the stay is terminated or modified during the bankruptcy case (11 U.S.C. § 362(d)).



Notice of the Stay

- Bankruptcy court mails notice to known creditors disclosed by the debtor.
- Stay effective against creditor regardless of whether it receives notice.
- Creditors usually cease actions in violation of stay once they learn of it.



Jurisdiction

- State & Federal non-bankruptcy courts have concurrent jurisdiction with bankruptcy courts to determine whether the stay applies to litigation before them.
- The bankruptcy court has final adjudicative authority.



Acts Prohibited

11 U.S.C. § 362(a) – Actions prohibited by the automatic stay include:

- ✖ Actions against the debtor.
- ✖ Actions against the debtor's property (property of the bankruptcy estate).
- ✖ Commencement or continuation of judicial and administrative proceedings.
- ✖ Nonjudicial activities (e.g. demands, collection letters, phone calls, etc.)
- ✖ Enforcement of lien rights by taking possession of property, foreclosure, etc.
- ✖ Garnishment
- ✖ Enforcing setoff right.
- ✖ Termination of contracts, licenses, etc.
- ✖ Suing on debtor's insurance policies (e.g. products liability, D&O, etc.)

Acts **Not** Prohibited

Actions **NOT** generally prohibited by the stay include:

- ✓ Debtor's continued prosecution of its own claims.
- ✓ Proceedings against non-debtor third parties (e.g. non-debtor spouses, parent corporations, guarantors, etc.)
- ✓ Continuation of proceedings against debtor's co-defendants.
- ✓ Actions against partners of partnership debtor.
- ✓ Post-petition claims.
- ✓ Creditor's exercise of right of recoupment (but use caution!)
- ✓ Continuing certain acts to perfect a lien.
- ✓ Expiration of contracts by their own terms.

Exceptions to the Stay

11 U.S.C. § 362(b) has 28 specific exceptions to the stay, including:

- Criminal prosecution & exercise of governmental police power.
- Enforcement of environmental laws.
- Certain actions to perfect a security interest.
- Action by commercial lessor to obtain possession of real property under lease that expired prior to or during the bankruptcy case.
- Government audits to determine tax liability.
- Other narrow exceptions are judicially created, or found elsewhere in bankruptcy code.

Enforcing the Automatic Stay

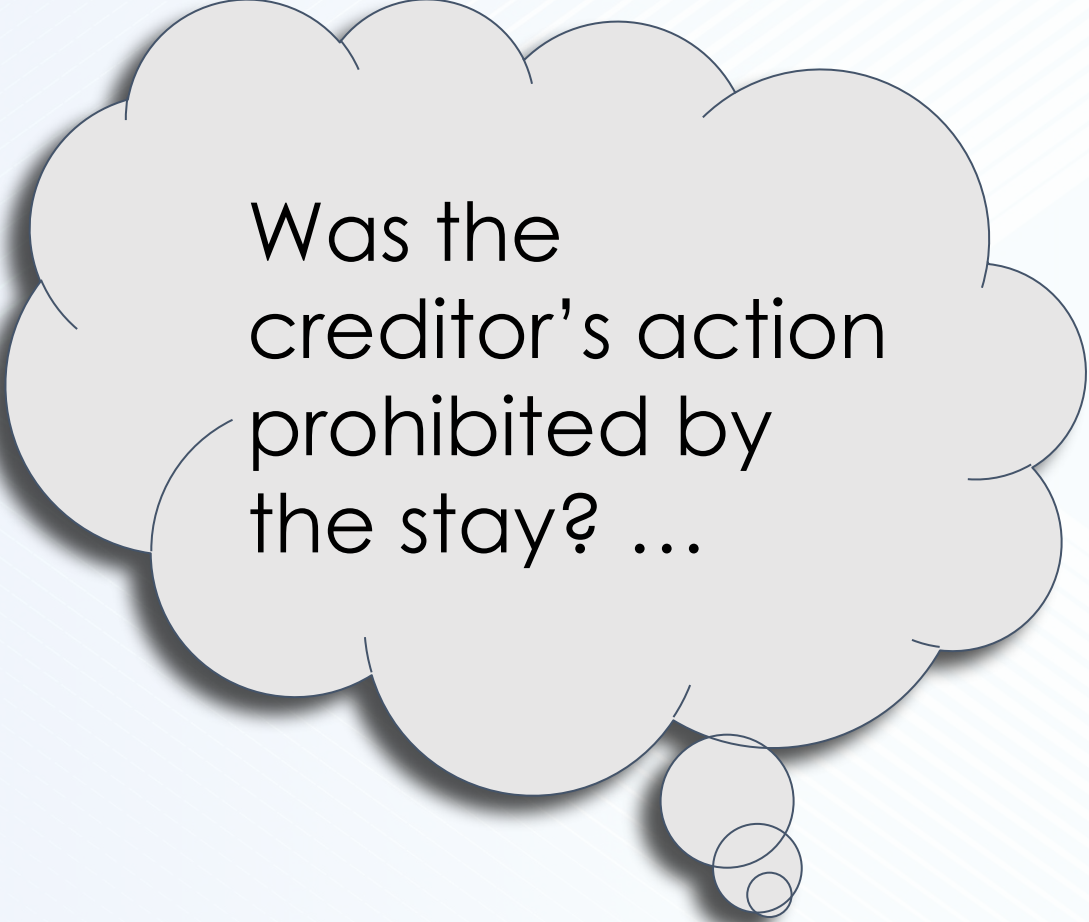
Enforcement Overview

Enforcement is usually done by:


- Contempt proceedings under § 105(a) of the [Bankruptcy Code](#) and Bankruptcy Rule 9020.
- Where the debtor was injured by a violation of the stay, under § 362(k) of the Bankruptcy Code.



Issues in Enforcement of Stay



Was the creditor's action prohibited by the stay? ...



... If so, what sanctions should be imposed because of the violation?

Contempt Proceedings

Facts that must be established to prove contempt:

- Person engaged in conduct that violated the stay.
- Person had information that a bankruptcy case was filed or the stay was in effect.
- Act in violation of stay is void or voidable regardless of violator's awareness of stay, but contempt only found if violator was aware.
- Proof of intent to violate the stay not required.



Remedies for Violation of the Stay

Remedies for violation of the stay may include:

- Court order to comply with the stay.
- Damages arising from violation, including attorneys' fees and costs, out-of-pocket losses, loss of goodwill, etc.
- Punitive damages under 11 U.S.C.A § 362(k).



Burden of Proof

- The moving party bears the burden to prove the violation.
- Movant must prove damages resulting from violation.
- Most courts require preponderance of evidence, but some require clear and convincing evidence.



Declaratory Relief

If a creditor is uncertain whether an action violates the stay, it can:

- Proceed with the action and risk sanctions for violation of the stay.
- File an adversary proceeding under Bankruptcy Rule 7001, seeking declaratory relief.
- In some districts, request a “comfort order”.



Relief From the Automatic Stay

Relief Overview

- Under § 362(d) of the Bankruptcy Code, the court can terminate, annul, modify, or condition the continuation of the automatic stay.
- The court has considerable latitude to tailor relief to the exigencies of the circumstances.



Procedure for Relief

- Relief is obtained by filing a motion.
- If opposed, motion is a contested matter under Bankruptcy Rule 9014.
- Motion for relief may be granted without a hearing, if unopposed.
- If opposed, however, the court must commence the hearing on the motion within 30 days.
 - Must resolve the motion within 30 days after the first hearing:
 - ✓ Unless extended with consent or
 - ✓ On a showing of compelling circumstances.



Burden of Proof

- Party seeking modification has initial burden of demonstrating grounds for relief.
- If relief from stay relates to property, movant has burden of proof for showing extent of debtor's equity (or lack thereof) in the property.
- Valuation of the property is often a central issue.



Grounds for Relief From Stay

11 U.S.C. § 362(d)—Four statutory grounds for relief:

- Cause, including creditor's lack of adequate protection.
- Debtor's lack of equity in property, and property is unnecessary for an effective reorganization.
- Single asset real estate.
- Other real property, under certain circumstances.

Lack of Adequate Protection

- Essentially means that debtor has not protected a secured creditor's ability to realize the value of its collateral.
- For example, if the value of collateral is declining, or collateral is at risk or uninsured.
- Debtor may provide adequate protection to mitigate, such as by making cash payments to creditor, providing additional liens, etc.



Lien Enforcement

Most litigation regarding relief from the stay involves secured creditors seeking court permission to foreclose upon their collateral.



Oversecured Creditors

- If the collateral is worth more than what the debtor owes to the secured creditor, the secured creditor may not be able to obtain relief from the stay if its value is fully protected.
- Often hinges on determination of “equity cushion”: the amount by which the value of the collateral exceeds the debt.
- Factors regarding the collateral and the debtor’s circumstances can influence the court’s evaluation of the equity cushion.
- Junior liens do not affect senior lienholder’s equity cushion.
- Oversecured creditors may recover postpetition interest.

Undersecured Creditors

- A creditor is undersecured if its collateral is worth less than what the debtor owes it.
- The automatic stay is generally lifted to permit an undersecured creditor to take possession of its collateral from the debtor.
- The reason is that, if the property is sold in the bankruptcy estate, all proceeds will go to the senior secured creditor, and no value will be left for the debtor or its other creditors.



Necessary for an Effective Reorganization

- The court may deny an undersecured creditor relief from the automatic stay to take possession of its collateral if the debtor needs the collateral for an effective reorganization, such as because the debtor is using the collateral in its continuing business operations.
- Most courts use the “feasibility test” to determine whether collateral is necessary to the debtor’s reorganization. Under this test, to defeat a motion for relief from the stay, the debtor must show that a reorganization is a reasonable prospect within a reasonable period of time.

Valuation of Collateral

- Depending on the circumstances of each case, a court may use a “going concern value” or “forced sale liquidation value”.
- Liquidation value is generally used in chapter 7 cases, and in some chapter 11 cases.



Relief From Stayed Litigation

- A creditor seeking relief must show “cause” for relief from the stay to continue or initiate litigation in non-bankruptcy forum.
 - For example, Claim can:
 - ✓ Be more expeditiously resolved in another court.
 - ✓ Involve unsettled questions of state law.
- Specialized tribunal exists to adjudicate claim.
- Plaintiff must obtain judgment to recover against insurance policy, insurer will pay cost of defense, and judgment will not be enforced against debtor in bankruptcy case.
- Where claim has no connection to bankruptcy case (e.g., where debtor is a fiduciary).

Factors for Continuing Non-Bankruptcy Litigation

Twelve factors, some of which include whether:

- Relief would result in partial or complete resolution of issues.
- Action primarily involves third parties.
- Interests of judicial economy and expeditious and economical resolution of the litigation.
- Whether the parties are ready for trial in the other case.

Questions or Comments?

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Meet The Faculty

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Maria focuses her practice on corporate restructuring, commercial bankruptcy, business counseling, and creditors' rights matters. As a Member in the firm's Strategic Advisory and Restructuring Department, she frequently counsels businesses and fiduciaries in chapter 11 bankruptcy proceedings, state or federal receiverships, out of court workouts, or other insolvency proceedings and commercial matters. Maria also represents secured and unsecured creditors in these proceedings, and handles litigation arising out of and related to bankruptcy or receivership cases. Maria also has experience representing purchasers of assets of distressed businesses and liquidating trustees in various bankruptcy and distressed matters. Maria also previously served as counsel for a national distressed debt buyer, where she analyzed, negotiated, and litigated claims against the company under the Fair Debt Collections Practices Act, the Fair Credit Reporting Act, and numerous other statutes in bankruptcy, federal and state courts across the country.

Maria earned her J.D., cum laude, from Case Western Reserve University School of Law. She received a Bachelor of Music degree, summa cum laude, from Vanderbilt University. [Read More](#)

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Zachary McKay helps debtors and creditors across all industries navigate through the complex Chapter 11 bankruptcy process. He has extensive experience in untangling lien validity, priority, and value issues with a specific focus on statutory M&M and mineral liens. He has also represented hundreds of secured and unsecured oil and gas industry creditors ranging from small family-owned entities to the largest public companies in the world in all types of bankruptcy and restructuring settings.

Zach's litigation experience includes oilfield job disputes, construction contract disputes, lien litigation, stay litigation, claim defense, creditor committee representation, and preferential or fraudulent transfer defense in state and bankruptcy courts across the United States.

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David A. Wood is a Partner at Marshack Hays Wood LLP. His practice areas include bankruptcy litigation, business and civil litigation, lender liability, and creditors' rights.

Mr. Wood's practice areas include Chapter 11 business reorganizations, representation of Chapter 11 debtors, official committee of unsecured creditors, secured creditors, Chapter 7 and 11 trustees, and related litigation. In 2017, Mr. Wood was selected as one of 40 young attorneys from across the nation to participate in the National Conference of Bankruptcy Judges' Next Generation Program. Mr. Wood is currently serving as the President of the Orange County Bankruptcy Forum and has been selected by his peers as a "Rising Star" in Super Lawyers Magazine in 2016, 2017, 2018, 2019, and 2020. Additionally, Mr. Wood has been selected by his peers as a "Super Lawyer" in Super Lawyers Magazine for 2022 and 2023. Mr. Wood is also a former board member and president of the Orange County Bankruptcy Forum, a former board member of the California Bankruptcy Forum, and a current board member for the Los Angeles Bankruptcy Forum. [Read More](#)

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Edward L. Schnitzer is a Partner at Womble Bond Dickinson (US) LLP. He represents creditor committees, creditors, litigation trustees, equity committees, and debtors, with particular expertise in bankruptcy litigation including the prosecution and defense of avoidance actions, claims objections, and collection and turnover actions. Ed is a court-approved mediator and has mediated disputes in the Health Diagnostic, Standard Register, Borders and WP Steel bankruptcy cases. As a member of the N.Y.C. Bar Association's Pro Bono Bankruptcy Panel, he has represented individuals in need of pro bono assistance in adversary proceedings. Following law school, Ed served as an Assistant District Attorney in the Bronx where he handled appeals before the Appellate Division, New York Court of Appeals, Southern District of New York and Second Circuit, as well as tried several cases and assisted with the prosecution of a first degree murder trial. He then joined the SEC's Enforcement Division where he investigated violations of the Federal Securities Laws.

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