

2015 Ann. Surv. of Bankr.Law 9

Norton Annual Survey of Bankruptcy Law | September 2015

Volume 2015, Issue 2015

Norton Annual Survey of Bankruptcy Law

Part I. Commercial Bankruptcy

Bill D. Bensinger*

The Facts of the Legal Fiction - Extending the Automatic Stay to Non-Debtors

While corporate entities on the one hand, and officers, managers, and equity holders on the other hand, typically try to maintain their distinctions from one another, maintaining that distinction is not always possible. The difficulty arises from that fact that corporate entities are “in effect, [] state-created legal fiction[s] with assets, employees, customers, and shareholders around the world.”¹ As the Supreme Court has noted in other contexts:

it is important to keep in mind that the purpose of this fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. An established body of law specifies the rights and obligations of the people (including shareholders, officers, and employees) who are associated with a corporation in one way or another. When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.²

Because a corporate entity is a legal fiction, the corporate entity cannot act by itself.³ Rather, the corporate entity can act only through its agents.⁴ This legal fiction and the questions concerning where a corporate entity ends, and another party begins has made maintaining the distinctions between entities and its agents even more difficult. The difficulties are even greater when the entity is a small or closely held business.⁵

In bankruptcy cases, the difficulty with these distinctions is compounded by the Bankruptcy Code's automatic stay. The automatic stay gives the debtor a breathing spell so as to afford an opportunity for rehabilitation free from the financial pressures or other problems that led the debtor to seek relief under the Bankruptcy Code.⁶ Courts generally have not had difficulty applying the automatic stay to corporate debtors and their assets. Courts, however, have had difficulty in extending the automatic stay to non-debtors such as the debtor's officers, managers, equity holders, and other affiliates.⁷ How and when to extend the stay to such parties is still an evolving issue.

I. Generally, the Automatic Stay Does Not Apply to Non-Debtors.

The Bankruptcy Code provides corporate entities with certain rights upon the filing of a petition. Chief among the rights afforded by the Bankruptcy Code is the automatic stay.⁸ Section 362 provides debtors with protection against acts by creditors against the debtor itself, and the debtor's estate. The automatic stay is by nature a broad protection for the debtor, covering “[a]ll judicial actions against a debtor seeking recovery on a claim that were or could have been brought before commencement of a bankruptcy case.”⁹ The purpose of the automatic stay is to “give[] 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.”¹⁰

While the automatic stay is broad, its breadth is limited.¹¹ In the few years immediately after the enactment of the Bankruptcy Code, courts were very strict in their application of the automatic stay as it related to non-debtors. At that time, the courts held that “It is universally acknowledged that an automatic stay proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the ... debtor.”¹² Courts thus restricted the breadth of the automatic stay to debtors, and virtually no other parties related to the debtor or the bankruptcy estate were protected by the automatic stay.¹³ While these restrictions made applying the automatic stay a straight-forward proposition for the courts, courts soon began to consider that the stay could apply to non-debtor third parties.

More recently, courts recognize that in certain situations, non-debtors may be entitled to the benefits of the automatic stay.¹⁴ While the general rule is still the same, that “[t]he automatic stay does not, in general, apply to actions against third parties,”¹⁵ courts have developed a limited exception to this general rule. “The only exception to this rule that any of the circuits recognize seems to relate only to non-bankruptcy co-defendants in unusual circumstances.”¹⁶ Courts have found unusual circumstances, and thereby extended the automatic stay in only two types of situations: (1) when the non-debtor and the debtor enjoy such an identity of interests that the suit against the non-debtor is essentially a suit against the debtor, or (2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization.¹⁷ Nonetheless, extending the stay to non-debtors involves important considerations regarding the bankruptcy court's jurisdiction, namely the relationship between the stayed actions and the debtor, and the parties' ability to prove the unusual circumstances.

II. Bankruptcy Courts' Jurisdiction to Extend the Stay to Non-Debtors

Courts employ a three-step analysis to determine whether the court should issue an injunction extending the § 362 automatic stay to non-debtors.¹⁸ As one court has summarized the analysis:

First, the Court must determine ‘whether the Bankruptcy Court had jurisdiction to issue the injunction.’ Second, the Court must determine ‘whether the Bankruptcy Court properly extended the § 362(a) stay to the non-debtor third parties. And third, the Court will determine ‘whether the Bankruptcy Court properly exercised its discretion in issuing the injunction pursuant to section 105(a).’¹⁹

Thus, before the bankruptcy court can issue an injunction, it must first consider the nature and extent of its jurisdiction.²⁰

The bankruptcy court's jurisdiction to issue an injunction to extend the automatic stay to non-debtors is derived from the court's jurisdiction over the debtor and the debtor's estate. A bankruptcy court's jurisdiction extends “to actions against certain third parties, as well as suits against debtors themselves, [] to protect the assets of the estate so as to ensure a fair distribution of those assets at a later point in time.”²¹ Accordingly, a bankruptcy court has no jurisdiction over a matter that does not affect the debtor.²² Courts must be especially careful in their analysis of jurisdiction in this respect: *it is the relation of the dispute to the estate*, and not of a party to estate, that establishes the bankruptcy court's jurisdiction to extend the automatic stay to non-debtors.²³ “[I]n order to enjoin [] state court proceedings ... the Bankruptcy Court ‘was required to conclude that it had jurisdiction over [those proceedings,]’ and not just the instant adversary proceeding in which the motion for an injunction was filed.”²⁴ Thus, the mere existence of a bankruptcy proceeding itself has never been and cannot be an all-purpose grant of jurisdiction.²⁵

Typically, when a party requests that the bankruptcy court issue an injunction to extend the automatic stay to non-debtors, the bankruptcy court will exercise its “related to” jurisdiction.²⁶ A matter is “related to” a bankruptcy case for § 1334 purposes if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.”²⁷ Thus, if

a claim against a non-debtor will affect the *res* of the debtor's estate, then a bankruptcy court will have the minimum jurisdiction necessary to extend the stay to non-debtors.²⁸ If a claim has no effect on the debtor's estate, then the bankruptcy court cannot enjoin the enforcement of such claim against a non-debtor.

Parties must be allege and prove facts that establish the necessary effects that the action against the non-debtor will have on the bankruptcy estate. "What will or will not be sufficiently related to a bankruptcy to warrant the exercise of subject matter jurisdiction is a matter that must be developed on a fact-specific, cases-by-case basis."²⁹ While the inquiry concerning the bankruptcy court's jurisdiction is fact-specific, there are some general parameters to the inquiry.

Perhaps the most commonly made allegations concerning bankruptcy court jurisdiction involve claims against a non-debtor who, as a consequence, would have a claim for indemnity against the debtor. In those situations, a party who asserts a claim against a non-debtor in reality also pursues an action against the debtor. Either the non-debtor, or perhaps the debtor, requests that the bankruptcy court issue an injunction to extend the stay to the non-debtor because the non-debtor would have an indemnity claim against the debtor. In such situations, courts generally hold that an inchoate claim of common law indemnity is not in and of itself, enough to establish the bankruptcy court's subject matter jurisdiction.³⁰ Neither is an indemnity claim sufficient to establish jurisdiction when that claim requires that the non-debtor must commence an action against the debtor after the non-debtor's liability is fixed.³¹ However, a contractual claim for indemnity may have a sufficient effect on a bankruptcy estate for a bankruptcy court to have jurisdiction.³²

Accordingly, planning by either a borrower or a creditor could have a significant impact on the bankruptcy court's jurisdiction over actions against non-debtors. Because contractual indemnification is often one ground for a bankruptcy court to have jurisdiction to extend the automatic stay, guarantors, members, officers, and directors can enter into formal indemnification agreements with the associated corporation that provide that a judgment against the non-debtor would automatically result in liability of the debtor to indemnify the non-debtor party. While such an indemnification agreement might not be enough for a bankruptcy court to have jurisdiction over an action against the non-debtor, it may be a significant factor. Conversely, creditors that require credit enhancements such as guarantees may require that non-debtor guarantors waive all common law and contractual indemnity from the debtor. Again, although such a waiver alone might not prevent a bankruptcy court from having jurisdiction over an action against the non-debtor, it may have an effect on the bankruptcy court's jurisdictional determination.

In addition to a debtor's contractual indemnification of non-debtors, courts have also found that they have jurisdiction to extend the automatic stay over jointly held assets, such as insurance policies. When related entities such as parents and subsidiaries are insured under a single insurance policy, an action against a non-debtor insured can diminish the insurance proceeds and assets available to a debtor. This diminution of the joint property of the debtor and the non-debtor can be a basis for staying such an action against the non-debtor.³³

Jurisdiction is the threshold question for extending the automatic stay to non-debtors. The party requesting that the bankruptcy court exercise its jurisdiction has the burden of establishing jurisdiction.³⁴ Courts will require parties seeking to provide not only sufficient evidence, but also to establish facts which withstand "the rigorous analysis required to show entitlement to injunctive relief," because the "Court [will] decline[] to make those arguments for it."³⁵

III. The Exception to the Rule — Unusual Circumstances

Once a court determines that it has jurisdiction to extend the automatic stay to an action against a non-debtor, the court must determine whether the facts satisfy the exception to the rule "that stays pursuant to Section 362 'are generally limited to debtors and do not encompass non-bankruptcy co-defendants.'"³⁶ Courts acknowledge that under unusual circumstances where an identity of interests between a debtor and a third party non-debtor exists, or where an action will affect the bankruptcy estate, a

bankruptcy court's automatic stay might also apply to property of the third party non-debtor.³⁷ However, these circumstances are rare.³⁸

When determining whether there are unusual circumstances for extending the automatic stay to non-debtors, courts must take care to distinguish that determination from the determination concerning jurisdiction.³⁹ Whether the bankruptcy court has subject matter jurisdiction is a distinct question that differs from whether an injunction should issue.⁴⁰ A bankruptcy court's jurisdiction to enjoin an action does not require it to exercise that jurisdiction to enjoin a suit in a particular instance.⁴¹ Furthermore, "[a]lthough the facts necessary to support the Court's determination at each step of the analysis may overlap, each step of the inquiry is distinct, independently necessary, and implicates different interests."⁴²

Courts have found unusual circumstances that justify extending the automatic stay to non-debtors (1) when the non-debtor and the debtor enjoy such an identity of interests that the suit against the non-debtor is essentially a suit against the debtor, or (2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization. These circumstances, however, carry with them a materiality threshold. There is "no support for the view that any and all minor impacts on the value of estate property can justify the extension of the stay."⁴³ Additionally, the effect on the bankruptcy estate must be economic, as opposed to an inconvenience.⁴⁴

A non-debtor and a debtor share an identity of interests when the identity between parties is so great as to make a judgment against the third-party defendant in effect a judgment or finding against the debtor.⁴⁵ However, a close relationship between the debtor and the non-debtor alone will not necessarily mean that the non-debtor is entitled to the benefits of the automatic stay. For example, courts have held that common control of both the debtor and non-debtor is not sufficient to justify extending the stay beyond the debtor.⁴⁶ Similarly, a parent-subsidiary relationship will not necessarily warrant a stay for the non-debtor.⁴⁷ However, a court can find identity of interests when a debtor may be later barred from defending the claims against it by operation of collateral estoppel.⁴⁸

In addition to cases where there is an identity of interests between the debtor and non-debtor, courts can also extend the automatic stay to third parties when the action against the non-debtor will adversely impact the debtor's ability to reorganize. Of the two grounds for extending the stay, the latter is the most commonly granted. The prototypical fact pattern in this regard is when the action against a non-debtor, typically an officer or managing member of the debtor, will cause the non-debtor to forsake responsibilities in working towards confirming the debtor's plan.⁴⁹ In such cases, there are unusual circumstances that warrant extending the automatic stay because the non-debtor's services are necessary to ensure not only the reorganization, but ultimately the repayment of creditors' claims.

IV. Procedure for Extending the Automatic Stay to Non-Debtors

While there is factual diversity in the cases extending the automatic stay to non-debtors, there is an equal amount of diversity in the procedures for extending the stay. Although some courts maintain that extending the stay is done pursuant to § 362, the better analysis is that courts extend the stay to non-debtors pursuant to the courts' injunction powers found under § 105. "[W]here the proposed action involves only third parties and no estate property, and where an 'unusual circumstances' 'exception' would be needed to justify extension of the automatic stay, § 105 is the more appropriate source of authority for assessing the propriety of a stay."⁵⁰ When proceeding pursuant to § 105, courts adhere to the usual standards, procedures, and burdens of proof for injunctive relief.⁵¹ The basis for requiring an injunction is found in the legislative history of § 105, which makes clear that stays under that section are granted only under the usual rules for the issuance of an injunction.⁵² Like extending the stay to non-debtors itself, a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by clear showing, carries the burden of persuasion.⁵³

Because § 105 requires an injunction, a bankruptcy court must consider the traditional factors governing preliminary injunctions issued pursuant to [Federal Rule of Civil Procedure 65](#).⁵⁴ This will require a debtor to plead and prove facts satisfying four factors:

- (1) Whether there is a likelihood of successful reorganization; (2) whether there is an imminent irreparable harm to the estate in the absence of an injunction; (3) whether the balance of the harms tips in favor of the moving party; (and (4) whether the public interest weighs in favor of an injunction.⁵⁵

In considering a request for an injunction, the court does not weigh these four factors simultaneously. Rather, the court determines whether the moving party establishes the first two threshold factors, and if so, only then does it proceed to consider the third and fourth factors.⁵⁶

To begin, a party requesting that the bankruptcy court enter an injunction extending the stay to non-debtors must first file a complaint to commence an adversary proceeding. Under [Fed. R. Bankr. P. 7001\(7\)](#) a proceeding to obtain an injunction constitutes an “adversary proceeding,” which, under Rule 7002, is commenced by filing a complaint with the court.⁵⁷ Furthermore, [Fed. R. Bankr. P. 7008](#), which incorporates the pleading requirements of [Fed. R. Civ. P. 8](#), as interpreted by the Supreme Court in *Iqbal*⁵⁸ and *Twombly*⁵⁹ require the plaintiff to allege sufficient factual detail to support its need for an injunction; specifically the four factors detailed above that must be satisfied for an injunction to be issued. Thus, in order to obtain an injunction, the debtor or the non-debtor parties must first carry their burden in pleading the necessary facts to warrant an injunction.⁶⁰

In addition to properly pleading the facts to support the issuance of an injunction, a party must also prove the facts related to the four injunction factors. The first factor concerns a likelihood of a successful reorganization. Because third-party injunctions are granted to assist a debtor's reorganization and only until the bankruptcy court confirms the reorganization plan, “it makes sense to require a showing of a reasonable likelihood of a successful reorganization.”⁶¹

This showing does not require consideration of a full blown plan in order to obtain the injunction. Even early in a case, courts can consider the fact that “nothing has transpired in this case that would lead the court to conclude that the debtor does not have a reasonable likelihood of reorganization.”⁶² To this end courts have considered the a debtor's successful negotiation of cash collateral agreements and continued operations as evidence that a successful reorganization is likely.⁶³ Even as a case progresses, if a debtor is proceeding with its efforts towards a plan of reorganization, courts have found that this progress is evidence of the likelihood of a successful reorganization.⁶⁴ Some courts have gone so far as to find a likelihood of successful reorganization when the debtor anticipates a sale of substantially all of its assets.⁶⁵ Thus, the threshold for satisfying this factor appears to be rather low.

The second factor for determining whether a court should issue an injunction is whether there is an imminent irreparable harm to the estate. Again, the focus is on the debtor's ability to reorganize. The harm to the estate can come as a result of an action against estate property, or against the debtor's officers, employees, members, or other agents. Courts consider whether continuation of actions against such non-debtors would require the involvement of the debtor's management and owners as grounds for finding irreparable harm to the estate.⁶⁶

The third factor requires a showing that the potential harm to the stayed party is outweighed by the harm to the estate. Many courts find that where there is the potential for significant harm to the estate, that harm to the estate outweighs the harm to the stayed party. This is because the stayed party is just that: stayed. The party does not lose it cause of action against the non-debtor, but rather is merely delayed in obtaining the damages that it seeks. As one court observed, the fact that efforts to collect

on the judgment may be delayed for short period in and of itself is not sufficient to outweigh the potential harm to the estate if the estate is deprived of the assistance of its key personnel.⁶⁷

Finally, bankruptcy courts consider whether the issuance of an injunction would further the public interests. Generally, courts find a strong public interest in fostering reorganization and protecting the integrity of the claims resolution process in bankruptcy.⁶⁸

V. Conclusion

The three inquiries of (1) whether the Bankruptcy Court has jurisdiction to issue the injunction, (2) whether the bankruptcy court properly extends the § 362(a) stay to the non-debtor third parties, and (3) whether the bankruptcy court properly exercises its discretion in issuing the injunction pursuant to section 105(a), are all related. Indeed, much of the evidence for one area of inquiry will extend to the other two areas. The party seeking to extend the stay must therefore be prepared from the very beginning to prove its case. This includes a fully-developed factual context in the complaint, and being prepared to support the allegations with competent proof through witnesses and exhibits.

Introducing the evidence, however, is not sufficient by itself. The parties must show the court how the evidence relates to each area of inquiry. Just because a court has jurisdiction to enter an injunction extending the automatic stay to non-debtors, does not mean that the court must so extend the stay. It is the parties' responsibility to carry their burdens at each step of the adversary proceeding seeking an injunction.

Westlaw. © 2016 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Footnotes

- * **Bill D. Bensinger** is a partner with Christian & Small, LLP, in Birmingham, Alabama, where he practices in the areas of bankruptcy and creditors' rights, and commercial litigation. Mr. **Bensinger** graduated from Cumberland School of Law, Samford University, and received his LL.M. in Bankruptcy from St. John's University School of Law.
- 1 [Combs v. International Ins. Co.](#), 354 F.3d 568, 583 n.6, 2004 FED App. 0002P (6th Cir. 2004). See also [FCC v. AT & T Inc.](#), 562 U.S. 397, 131 S. Ct. 1177, 1183, 179 L. Ed. 2d 132, 39 Media L. Rep. (BNA) 1368 (2011) (referring to various corporate structures as “artificial entities”).
 - 2 [Burwell v. Hobby Lobby Stores, Inc.](#), 134 S. Ct. 2751, 189 L. Ed. 2d 675, 123 Fair Empl. Prac. Cas. (BNA) 621, 2014-2 U.S. Tax Cas. (CCH) P 50341 (2014).
 - 3 [Burwell v. Hobby Lobby Stores, Inc.](#), 134 S. Ct. 2751, 189 L. Ed. 2d 675, 123 Fair Empl. Prac. Cas. (BNA) 621, 2014-2 U.S. Tax Cas. (CCH) P 50341 (2014) (“Corporations, ‘separate and apart from’ the human beings who own, run, and are employed by them, cannot do anything at all”).
 - 4 [Hunter v. Allis-Chalmers Corp., Engine Div.](#), 797 F.2d 1417, 1422, 41 Fair Empl. Prac. Cas. (BNA) 721, 41 Empl. Prac. Dec. (CCH) P 36417, 21 Fed. R. Evid. Serv. 188 (7th Cir. 1986).
 - 5 [Pan Eastern Exploration Co. v. Hufo Oils](#), 855 F.2d 1106 (5th Cir.1988) (“Many wholly owned subsidiaries and closely-held corporations are not factually distinct from their owners. Many are in fact controlled and operated in close concert with the interests of the owners, and do not have a distinct factual existence: separate employees, offices of properties; consolidated financial reporting and tax returns; and the like.”).
 - 6 See [Norton Bankruptcy Law and Practice](#) 3d § 43:4.
 - 7 [Norton Bankruptcy Law and Practice](#) 3d § 43:4, citing [Queenie, Ltd. v. Nygard Intern.](#), 321 F.3d 282, 65 U.S.P.Q.2d 1996, Bankr. L. Rep. (CCH) P 78803 (2d Cir. 2003).
 - 8 [In re Feingold](#), 730 F.3d 1268, 1276, 58 Bankr. Ct. Dec. (CRR) 124, Bankr. L. Rep. (CCH) P 82546 (11th Cir. 2013), cert. denied, 134 S. Ct. 1880, 188 L. Ed. 2d 919 (2014) (“The automatic stay is ‘one of the fundamental debtor protections provided by the bankruptcy laws.’”).

- 9 *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d at 1203, 1206 (3d Cir. 1991); Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1214, 40 Bankr. Ct. Dec. (CRR) 117, Bankr. L. Rep. (CCH) P 78742 (9th Cir. 2002) (“[t]he scope of protections embodied in the automatic stay is quite broad, and serves as one of the most important protections in bankruptcy law.”).
- 10 *In re Robinson*, 764 F.3d 554, 559, 59 Bankr. Ct. Dec. (CRR) 269, 72 Collier Bankr. Cas. 2d (MB) 520, Bankr. L. Rep. (CCH) P 82681 (6th Cir. 2014), cert. denied, 135 S. Ct. 2372 (2015) (citing H.R. Rep. No. 95-595, at 340 (1978)).
- 11 *Renier v. Merrell*, 457 B.R. 484, Bankr. L. Rep. (CCH) P 82043 (W.D. Va. 2011), aff’d, 471 Fed. Appx. 142 (4th Cir. 2012) (“The automatic stay applies to a broad, but not unlimited set of circumstances.”).
- 12 *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196, 10 Bankr. Ct. Dec. (CRR) 1282, 8 Collier Bankr. Cas. 2d (MB) 1301, Bankr. L. Rep. (CCH) P 69317 (6th Cir. 1983) (citing *Matter of Earth Lite, Inc.*, 9 B.R. 440 (Bankr. M.D. Fla. 1981) in support of the position that guarantors are not entitled to stay relief); *Credit Alliance Corp. v. Williams*, 851 F.2d 119, 18 Bankr. Ct. Dec. (CRR) 227, Bankr. L. Rep. (CCH) P 72369 (4th Cir. 1988); *Otoe County Nat. Bank v. W & P Trucking, Inc.*, 754 F.2d 881, Bankr. L. Rep. (CCH) P 70256, 40 Fed. R. Serv. 2d 1482 (10th Cir. 1985).
- 13 *Matter of A & B Heating and Air Conditioning, Inc.*, 48 B.R. 401, 403 (Bankr. M.D. Fla. 1985) (“It should be noted at the outset that the automatic stay imposed by § 362 does not protect non-debtors and was designed only to protect a [d]ebtor who seeks relief under any operating chapter of the Bankruptcy Code.”).
- 14 *McCartney v. Integra Nat. Bank North*, 106 F.3d 506, 510, 37 Collier Bankr. Cas. 2d (MB) 713, Bankr. L. Rep. (CCH) P 77290 (3d Cir. 1997) (“This prohibition [of extending the stay to non-debtors], however, has been liberalized in a number of cases where courts have applied the automatic stay protection to nondebtor third parties.”).
- 15 *In re Panther Mountain Land Development, LLC*, 686 F.3d 916, 921, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) (citing *Sav-A-Trip, Inc. v. Belfort*, 164 F.3d 1137, 1139 (8th Cir. 1999); *Ebin v. Kangadis Family Management LLC*, 45 F. Supp. 3d 395, 60 Bankr. Ct. Dec. (CRR) 14 (S.D. N.Y. 2014) (“With respect to the bankruptcy stay, it is well established that stays pursuant to Section 362 ‘are generally limited to debtors and do not encompass non-bankruptcy co-defendants.’”) (quoting *Gucci America, Inc. v. Duty Free Apparel, Ltd.*, 328 F. Supp. 2d 439, 441 (S.D. N.Y. 2004)).
- 16 *In re Panther Mountain Land Development, LLC*, 686 F.3d 916, 921, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) (quoting *Croyden Associates v. Alleco, Inc.*, 969 F.2d 675, 677, Bankr. L. Rep. (CCH) P 74710 (8th Cir. 1992)).
- 17 *Matter of Zale Corp.*, 62 F.3d 746, 761, Bankr. L. Rep. (CCH) P 76617 (5th Cir. 1995). For a further discussion of the general standards for third-party releases, see **Bill D. Bensinger**, If You Want a Third Party Release, You Have To Prove It, 21 Norton Journal of Bankruptcy Law and Practice 3, Art 5, at p. 331 (2012). For discussion of non-debtor releases in reorganization plans, as distinguished from extending the automatic stay, see George W. Kuney, Nondebtor Releases and Travelers v. Bailey: A Circuit Split That Is Likely to Remain, 2010 Ann. Surv. Bankr. Law 201; and Jason W. Harbour and Tara L. Elgie, The 20-Year Split: Nonconsensual Nondebtor Releases, 21 Norton Journal of Bankruptcy Law and Practice 4, Art. 4 (2012).
- 18 *In re Philadelphia Newspapers, LLC*, 407 B.R. 606, 611 (E.D. Pa. 2009).
- 19 *In re Union Trust Philadelphia, LLC*, 460 B.R. 644, 652 (E.D. Pa. 2011) (internal citations omitted).
- 20 *U.S., Dept. of Air Force v. Carolina Parachute Corp.*, 907 F.2d 1469, 1475, 23 Collier Bankr. Cas. 2d (MB) 620, 36 Cont. Cas. Fed. (CCH) P 75903, 17 Fed. R. Serv. 3d 102 (4th Cir. 1990) (stating that § 105 injunction cannot exceed the court’s jurisdiction).
- 21 *In re Quigley Co., Inc.*, 676 F.3d 45, 57, 56 Bankr. Ct. Dec. (CRR) 78, 67 Collier Bankr. Cas. 2d (MB) 807, Bankr. L. Rep. (CCH) P 82197, Prod. Liab. Rep. (CCH) P 18818 (2d Cir. 2012), cert. denied, 133 S. Ct. 2849, 186 L. Ed. 2d 908 (2013) (internal quotations omitted).
- 22 *Matter of Zale Corp.*, 62 F.3d 746, 752–53, Bankr. L. Rep. (CCH) P 76617 (5th Cir. 1995) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300, 115 S. Ct. 1493, 131 L. Ed. 2d 403, 27 Bankr. Ct. Dec. (CRR) 93, 32 Collier Bankr. Cas. 2d (MB) 685, Bankr. L. Rep. (CCH) P 76456, 31 Fed. R. Serv. 3d 355 (1995)).
- 23 *Matter of Zale Corp.*, 62 F.3d 746, 752–53, Bankr. L. Rep. (CCH) P 76617 (5th Cir. 1995) (quoting *Matter of Xonics, Inc.*, 813 F.2d 127, 131, 17 Collier Bankr. Cas. 2d (MB) 230, Bankr. L. Rep. (CCH) P 71695 (7th Cir. 1987)).
- 24 *In re Union Trust Philadelphia, LLC*, 460 B.R. 644, 653 (E.D. Pa. 2011).

- 25 In re W.R. Grace & Co., 591 F.3d 164, 172, 52 Bankr. Ct. Dec. (CRR) 155, Bankr. L. Rep. (CCH) P 81656 (3d Cir. 2009).
- 26 See Quattrone Accountants, Inc. v. I.R.S., 895 F.2d 921, 926, 20 Bankr. Ct. Dec. (CRR) 168, 22 Collier Bankr. Cas. 2d (MB) 427, Bankr. L. Rep. (CCH) P 73256, 90-1 U.S. Tax Cas. (CCH) P 50103, 65 A.F.T.R.2d 90-580 (3d Cir. 1990) (“Since we are determining the bankruptcy court’s jurisdiction over a case between two non-debtors, we must examine the ‘related to’ language of Section 1334.”).
- 27 Pacor, Inc. v. Higgins, 743 F.2d 984, 994, 12 Bankr. Ct. Dec. (CRR) 285, Bankr. L. Rep. (CCH) P 70002 (3d Cir. 1984); In re W.R. Grace & Co., 591 F.3d 164, 171, 52 Bankr. Ct. Dec. (CRR) 155, Bankr. L. Rep. (CCH) P 81656 (3d Cir. 2009) (“Proceedings over which a bankruptcy court can legitimately exercise related-to jurisdiction include ‘suits between third parties that conceivable may have an effect on the bankruptcy estate.’”).
- 28 In re Johns-Manville Corp., 517 F.3d 52, 66, 49 Bankr. Ct. Dec. (CRR) 144, Bankr. L. Rep. (CCH) P 81107 (2d Cir. 2008).
- 29 In re W.R. Grace & Co., 591 F.3d 164, 171 n.9, 52 Bankr. Ct. Dec. (CRR) 155, Bankr. L. Rep. (CCH) P 81656 (3d Cir. 2009).
- 30 In re W.R. Grace & Co., 591 F.3d 164, 171, 52 Bankr. Ct. Dec. (CRR) 155, Bankr. L. Rep. (CCH) P 81656 (3d Cir. 2009).
- 31 In re W.R. Grace & Co., 591 F.3d 164, 172, 52 Bankr. Ct. Dec. (CRR) 155, Bankr. L. Rep. (CCH) P 81656 (3d Cir. 2009) (“There is no related-to jurisdiction over a third-party claim if there would need to be another lawsuit before the third-party claim could have any impact on the bankruptcy proceedings.”).
- 32 In re Brentano’s, Inc., 27 B.R. 90, 92, 10 Bankr. Ct. Dec. (CRR) 157, Bankr. L. Rep. (CCH) P 69079 (Bankr. S.D. N.Y. 1983) (finding that the court had jurisdiction where an indemnification agreement between the debtor and a non-debtor provided that a judgment against the non-debtor would automatically result in liability for the debtor.).
- 33 In re Quigley Co., Inc., 676 F.3d 45, 58, 56 Bankr. Ct. Dec. (CRR) 78, 67 Collier Bankr. Cas. 2d (MB) 807, Bankr. L. Rep. (CCH) P 82197, Prod. Liab. Rep. (CCH) P 18818 (2d Cir. 2012), cert. denied, 133 S. Ct. 2849, 186 L. Ed. 2d 908 (2013) (finding that “the potential impact of the [plaintiff’s] suits on the bankruptcy estate is thus nothing but direct: at [the parent’s] election, any judgments, settlements, or litigation expenses arising out of the [] suits will be paid by [the debtor’s] estate.”); A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 1001–02, 14 Bankr. Ct. Dec. (CRR) 752, 15 Collier Bankr. Cas. 2d (MB) 235, Bankr. L. Rep. (CCH) P 71094 (4th Cir. 1986) (indicating that proceedings against third parties “who may be entitled to indemnification under [an insurance] policy [owned by the debtor] or who qualify as an additional insured under the policy” are covered by the automatic stay).
- 34 Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391, 29 Fed. R. Serv. 3d 1 (1994).
- 35 Fratelli Cosulich Unipessoal, S.A. v. Specialty Fuels Bunkering, LLC, 2014 WL 2611547 (S.D. Ala. 2014).
- 36 Ebin v. Kangadis Family Management LLC, 45 F. Supp. 3d 395, 60 Bankr. Ct. Dec. (CRR) 14 (S.D. N.Y. 2014) (quoting Gucci America, Inc. v. Duty Free Apparel, Ltd., 328 F. Supp. 2d 439, 441 (S.D. N.Y. 2004).
- 37 Stephen Inv. Securities, Inc. v. S.E.C., 27 F.3d 339, 342 n.5, Bankr. L. Rep. (CCH) P 75967, Fed. Sec. L. Rep. (CCH) P 98246 (8th Cir. 1994).
- 38 In re Panther Mountain Land Development, LLC, 686 F.3d 916, 921, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) (“‘The unusual circumstances in which the bankruptcy court can stay cases against non-debtors are rare.’”) (quoting Ritchie Capital Management, L.L.C. v. Jeffries, 653 F.3d 755, 762 (8th Cir. 2011)).
- 39 In re Philadelphia Newspapers, LLC, 407 B.R. 606, 611 (E.D. Pa. 2009).
- 40 In re Excel Innovations, Inc., 502 F.3d 1086, 1096, 48 Bankr. Ct. Dec. (CRR) 212, Bankr. L. Rep. (CCH) P 81020 (9th Cir. 2007).
- 41 In re Quigley Co., Inc., 676 F.3d 45, 58 n.14, 56 Bankr. Ct. Dec. (CRR) 78, 67 Collier Bankr. Cas. 2d (MB) 807, Bankr. L. Rep. (CCH) P 82197, Prod. Liab. Rep. (CCH) P 18818 (2d Cir. 2012), cert. denied, 133 S. Ct. 2849, 186 L. Ed. 2d 908 (2013).
- 42 In re Philadelphia Newspapers, LLC, 407 B.R. 606, 611 (E.D. Pa. 2009).
- 43 In re Panther Mountain Land Development, LLC, 686 F.3d 916, 924, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012).

- 44 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 924, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012).
- 45 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 921, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) quoting [Ritchie Capital Management, L.L.C. v. Jeffries](#), 653 F.3d 755, 762 (8th Cir. 2011).
- 46 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 923, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) (“We do not simply brush aside the consequences flowing from these decisions or the separate identities of the individual commissioners, the Debtor and the Improvement Districts merely because we are able to trace a chain of ownership and control back to the same natural persons who now seek to disregard their earlier decisions.”).
- 47 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 921, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012) (citing [Kreisler v. Goldberg](#), 478 F.3d 209, 213, 47 Bankr. Ct. Dec. (CRR) 233, Bankr. L. Rep. (CCH) P 80866 (4th Cir. 2007) (“[T]he automatic stay does not, in general, apply to actions against parties who enjoy factual or legal relationships with a debtor, such as a debtor's wholly owned subsidiaries.”)).
- 48 See [In re American Film Technologies, Inc.](#), 175 B.R. 847, 855 (Bankr. D. Del. 1994).
- 49 See, e.g., [In re Lazarus Burman Associates](#), 161 B.R. 891, 899–900, Bankr. L. Rep. (CCH) P 75654 (Bankr. E.D. N.Y. 1993) (enjoining guaranty actions against non-debtor principals of the debtor because the principals were the only persons who could effectively formulate, fund, and carry out debtor's plan of reorganization); [In re Steven P. Nelson, D.C., P.A.](#), 140 B.R. 814, 816–17 (Bankr. M.D. Fla. 1992) (enjoining actions against non-debtor guarantor where guarantor was president of debtor and his services were required to confirm debtor's plan of reorganization).
- 50 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 926, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012).
- 51 [In re Panther Mountain Land Development, LLC](#), 686 F.3d 916, 927, 56 Bankr. Ct. Dec. (CRR) 226, Bankr. L. Rep. (CCH) P 82305 (8th Cir. 2012).
- 52 [Matter of Commonwealth Oil Refining Co., Inc.](#), 805 F.2d 1175, 1188–89, 15 Bankr. Ct. Dec. (CRR) 688, 15 Collier Bankr. Cas. 2d (MB) 1387, 25 Env't. Rep. Cas. (BNA) 1748, Bankr. L. Rep. (CCH) P 71542, 17 Env'tl. L. Rep. 20407 (5th Cir. 1986).
- 53 [Mazurek v. Armstrong](#), 520 U.S. 968, 972, 117 S. Ct. 1865, 138 L. Ed. 2d 162 (1997).
- 54 [In re Eagle-Picher Industries, Inc.](#), 963 F.2d 855, 858, Bankr. L. Rep. (CCH) P 74574 (6th Cir. 1992).
- 55 [In re Calpine Corp.](#), 365 B.R. 401, 409 (S.D. N.Y. 2007).
- 56 [Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly](#), 309 F.3d 144, 157 (3d Cir. 2002).
- 57 Fed. R. Bankr. P. 7001; [In re Lyons](#), 995 F.2d 923, 924, Bankr. L. Rep. (CCH) P 75306 (9th Cir. 1993) (holding that, when a Rule 7001 category was at issue, the movant “may obtain the authority he seeks only through an adversary proceeding”).
- 58 [Ashcroft v. Iqbal](#), 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009-2 Trade Cas. (CCH) ¶ 76785, 73 Fed. R. Serv. 3d 837 (2009).
- 59 [Bell Atlantic Corp. v. Twombly](#), 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, 2007-1 Trade Cas. (CCH) ¶ 75709, 68 Fed. R. Serv. 3d 661 (2007).
- 60 See generally [In re Oglesby](#), 13-3178 (Sept. 26, 2014 Bankr. N.D. Ohio) (stating that *Iqbal* and *Twombly* pleading standards applied to complaint to enforce discharge injunction); [Ice Cream Distributors of Evansville, LLC v. Dreyer's Grand Ice Cream, Inc.](#), 487 Fed. Appx. 362 (9th Cir. 2012) (finding that plaintiff failed to plead sufficient facts to support injunctive relief); [National Alliance for Accessibility, Inc. v. Annapolis Plaza, LLC](#), 2013 WL 245771 (D. Md. 2013) (same).
- 61 [In re Excel Innovations, Inc.](#), 502 F.3d 1086, 1095–96, 48 Bankr. Ct. Dec. (CRR) 212, Bankr. L. Rep. (CCH) P 81020 (9th Cir. 2007) (internal quotations omitted).
- 62 [In re Philadelphia Newspapers, LLC](#), 407 B.R. 606, 617 (E.D. Pa. 2009). See also [In re Lyondell Chemical Co.](#), 402 B.R. 571, 590, 61 Collier Bankr. Cas. 2d (MB) 567 (Bankr. S.D. N.Y. 2009) (stating that “Whether they [the debtor] will be able to address later issues cannot be determined in the earliest weeks of a case, and it would be silly for a court to impose any standard other than” the reasonable likelihood of a successful reorganization, and that it would be an “arbitrary and restrictive placement of burdens on the debtor to meet standards that require proof of the uncertain”).

- 63 [In re Saxby's Coffee Worldwide, LLC](#), 440 B.R. 369, 381 (Bankr. E.D. Pa. 2009); [In re Union Trust Philadelphia, LLC](#), 465 B.R. 765, 773 (Bankr. E.D. Pa. 2011), stay pending appeal denied, 2011 WL 3330797 (E.D. Pa. 2011) and aff'd, 460 B.R. 644 (E.D. Pa. 2011).
- 64 See, e.g., [In re Lyondell Chemical Co.](#), 402 B.R. 571, 590, 61 Collier Bankr. Cas. 2d (MB) 567 (Bankr. S.D. N.Y. 2009) (finding the likelihood of success factor satisfied and noting that “the Debtors [had] so far been successful in doing everything they've needed to do to date. Whether they will be able to address later issues cannot be determined in the earliest weeks of a case ...”).
- 65 See [In re SN Liquidation, Inc.](#), 388 B.R. at 585 (extending the stay to protect the debtors' former managers after the debtors had sold substantially all of their assets and finding that the “[d]ebtors meet each of the requisite [preliminary injunction] factors ... The automatic stay clearly applies and the Court will enforce it and enjoin the violation of the stay.”).
- 66 [In re Philadelphia Newspapers, LLC](#), 407 B.R. 606, 617 (E.D. Pa. 2009).
- 67 [In re Union Trust Philadelphia, LLC](#), 460 B.R. 644, 652 (E.D. Pa. 2011) (internal citations omitted).
- 68 [In re Union Trust Philadelphia, LLC](#), 460 B.R. 644, 652 (E.D. Pa. 2011) (internal citations omitted).

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.