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ABI Talks

David Prella Eron, Moderator

Prella Eron & Bailey | Wichita, Kan.

Debtors with Gig and E-Commerce Jobs

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**What Bankruptcy Professionals Need to Know About the
Corporate Transparency Act**

William E. Quick

Polsinelli | Kansas City, Mo.

Economic Update

Charvi Gupta

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Intersection of State Court and Federal Court Issues

Hon. Jay D. Befort

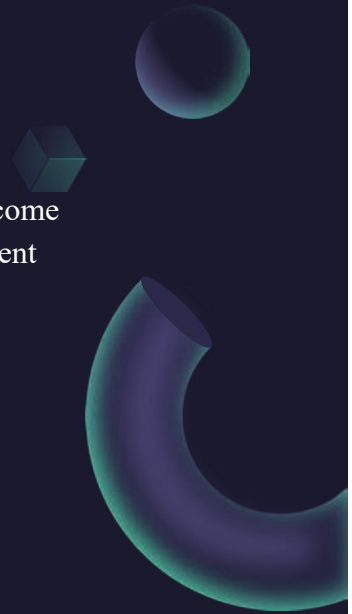
3rd Judicial District Court of Kansas (Div. 15) | Topeka



Identifying Income and Assets from Side Jobs and Hustles in Today's Economy

Agenda

Today, we're going to talk about an increasingly relevant issue in bankruptcy law: how consumer attorneys and trustees can identify income and assets from side jobs, side hustles, and unique forms of employment in today's evolving economy.



11 U.S. Code §521

- (a) The debtor shall—
- (1) file—
 - (A) a list of creditors; and
 - (B) unless the court orders otherwise—
 - (i) a schedule of assets and liabilities;
 - (ii) a schedule of current income and current expenditures;

Old School vs. Today's Reality

- When I was a child, my parents always said, "We don't care what you choose to do for a living, but whatever it is, you're going to be the best at it." They'd say, "You could be a trash collector, but if you are, you'd better go to college and know how to run the company, manage the technology, and own the business. Be the best in the world at what you do." The goal was a steady paycheck with a future and retirement.
- In recent years, the gig economy and the rise of side hustles have blurred the lines between traditional employment and alternative income streams. As more people take on nontraditional work to supplement their incomes, attorneys and trustees face increasing challenges in properly identifying and categorizing these sources of income and assets in bankruptcy cases. The complexity of understanding and evaluating these varied financial streams is crucial for effective case management.



JOB vs Gig vs Side Hustle

- A *job* is your main source of income, offering stability.
- A *gig* is short-term, project-based, often with irregular hours.
- A *side hustle* is an additional source of income alongside your primary job, providing flexibility.

Use all three terms when asking the debtor about income sources and straight up, what do you do for money?



The economic landscape has shifted significantly in recent years, with more individuals pursuing side hustles and freelance opportunities than ever before. These side jobs might be in addition to traditional full-time or part-time work, or they may serve as the primary source of income for some individuals.

Ryan Kaji (Ryan's World)
Age: 12 (as of 2024)
Net Worth: Estimated around \$20 million
Platform: YouTube
Content: Toy reviews, educational videos, and earning YouTube channel revenue from toys and clothing.

Claire Crosby
Age: 11 (as of 2024)
Net Worth: Estimated \$2 million
Platform: YouTube, Instagram
Content: Singing videos

Anastasia Radzinskaya (Like Nastya)
Age: 10 (as of 2024)
Net Worth: Estimated \$40 million
Platform: YouTube
Content: Children's entertainment, educational videos, vlogs, and travel. "Like Nastya" is one of the most popular YouTube channels in the world, with videos dubbed in multiple languages, making it accessible to a global audience.

Ethan Gaming
Age: 17 (but started at 7)
Net Worth: Estimated \$10 million
Platform: YouTube
Content: Family-friendly gaming content, including Minecraft and Roblox. Ethan started his channel at just 7 years old.

...er adorable singing
...orations with

...r mom, Savannah
... brand endorsements

... contributing to her income.



Social Media Influencer



(e.g., Upwork, Fiverr)



(Uber, Lyft, DoorDash)



(Etsy, eBay, Shopify)



(Airbnb, Vrbo)



(YouTube, Tik Tok, Patreon)

These side hustles can be highly flexible, making it difficult to track earnings consistently. Moreover, many people don't view these activities as traditional "jobs," so **they may not initially think to report this income** when discussing their financial situation with an attorney or during bankruptcy proceedings.

Challenges in Identifying Side Hustle Income and Assets

•**Inconsistent or variable income:** Side hustle income is often irregular. A debtor may have a profitable month driving for Uber but experience minimal earnings the next. This inconsistency can make it difficult to assess the debtor's true earning potential or project future income.

•**Unreported or underreported income:** Because side hustles can be informal, some debtors may not report their full income on tax returns. They may receive payments in cash or through apps like Venmo, PayPal, or Zelle, which they don't consider taxable income. Trustees need to be aware of these forms of compensation when examining a debtor's financial situation.

•**Asset concealment or undervaluation:** In some cases, side hustles generate assets that debtors may not realize they need to disclose. For example, someone running a part-time online store might not think of their unsold inventory as an asset, even though it has tangible value. Similarly, someone renting out property on Airbnb may not disclose the income or the value of the property as an asset in their bankruptcy schedules.

•**Mixing personal and business finances:** Many side hustlers don't maintain separate accounts for their personal and business expenses, making it difficult to separate what constitutes personal income versus business revenue. For trustees, this presents additional layers of complexity when trying to evaluate the debtor's assets and liabilities accurately.

While product endorsements and gifts may not be reported as income, they still hold tangible value. Trustees should assess the market value of these items to ensure they are properly considered as part of the debtor's overall asset profile.

Investigative Techniques

•**Conduct thorough financial interviews:** Attorneys should ask detailed questions about how the debtor earns income, beyond simply asking about traditional employment. Open-ended questions like "Do you have any side jobs, online sales, or freelancing income?" can prompt debtors to disclose nontraditional income streams.

•**Request additional documentation:** In addition to pay stubs and tax returns, attorneys and trustees should request bank statements, payment app histories (like PayPal or Venmo), and receipts from gig economy platforms (such as Uber or Airbnb). These documents can help track and verify the debtor's income from side hustles.

•**Contracts:** Ask for contracts for influencers, affiliates, or partnership agreements.

•**Google:** Use Google to search for your client and various names and handles. Check SOS database for filings as well as the Patent Trademark database.

•**Investigate social media and online platforms:** Sometimes debtors will advertise their side hustles online, whether on social media or specific gig platforms. Trustees may want to search for a debtor's presence on platforms like Instagram, YouTube, Facebook, TikTok, Twitch, Etsy or Airbnb to identify unreported businesses or rental properties. ASK for their online handle aka name such as KC Bankruptcy.

•**Evaluate assets from side hustles:** Attorneys and trustees should carefully assess whether the debtor owns valuable equipment, inventory, or property related to their side hustle. For example, a debtor who operates a photography business on the side may own expensive camera gear that needs to be listed as an asset.

•**Consider tax implications:** Review the debtor's tax returns carefully. If the debtor is running a small business or side hustle, they may have claimed deductions for expenses related to that activity. These deductions can provide clues about the existence of a side hustle, even if the income itself is not clearly stated.

Conclusion – Speaking the Lingo, Asking the Right Questions, and Thinking Outside the Box

•Speak the Lingo:

- Understand the gig economy, influencer marketing, and side hustles.
- Use terms that debtors relate to, like “freelancing,” “content creation,” and “gig work.”

•Ask the Right Questions:

- Go beyond traditional job and salary inquiries.
- Ask about side income, online sales, platform payments, and brand partnerships.
- Include non-monetary compensation, such as gifts or free products.

•Think Outside the Box:

- Be creative in looking for hidden income or assets.
- Investigate social media, online platforms, and payment apps for unreported earnings.
- Value non-traditional assets like business inventory, equipment, or rental properties.

•Final Thought:

- In today’s economy, identifying nontraditional income requires new strategies. By adapting, attorneys and trustees can ensure full financial transparency in bankruptcy cases.



Thank you

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2024 ABI-UMKC Midwest Bankruptcy Conference
October 24, 2024

Corporate Transparency Act

The CTA Went Into Effect January 1, 2024.
Are You Prepared?



Agenda

- The Corporate Transparency Act Universe
- Reporting Requirements: Reporting Company, Beneficial Owners, Company Applicants
- Personal Identifying Information (PII)
- Reporting vs. Exempt Companies
- Deadlines to File
- Recent Alabama Court Case and its Appeal
- Penalties and Enforcement
- BOSS Access: Law enforcement, Financial Institutions
- Derivative State Transparency Initiatives
- Q & A



About the Corporate Transparency Act (CTA)

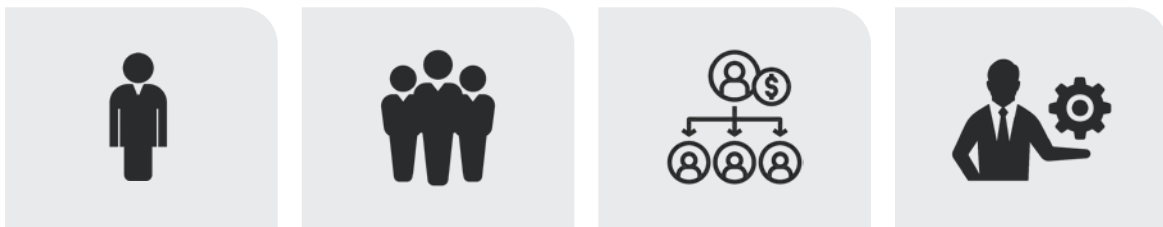
The CTA is intended to combat the use of “shell” companies in the commission of illicit activity and corrupt practices, as well as protect national security.



The CTA was enacted by Congress on January 1, 2021



About the CTA requirement



The CTA requires certain businesses (including privately held and non-profit entities) to **report direct and indirect, human, beneficial ownership, control and service provider information** to the Financial Crimes Enforcement Network of the US Department of Treasury (i.e., FinCEN).



How Many Business Entities Are Implicated?

FinCEN estimates that approximately **32 million** “reporting companies” existed as of January 1, 2024, and that approximately **5 million** new reporting companies will be formed in 2024.



ACCESS TO REPORTED INFORMATION

Who may access BOIRs and for what purposes?

- The Access Rule, when fully implemented, will permit disclosure of the reported BOI in limited circumstances by the following entities and for the designated uses:
 - Federal agencies engaged in national security, intelligence, or law enforcement activities, for use in furtherance of those activities.
 - A state, local or tribal law enforcement agency, if a court has authorized the agency to seek the information in connection with a civil or criminal investigation.
 - A federal agency on behalf of a non-U.S. law enforcement agency or foreign prosecutor or judge.
 - A financial institution subject to customer due diligence requirements, with the consent of the Reporting Company, to facilitate the financial institution’s compliance with customer due diligence requirements under applicable law.



Who are Beneficial Owners? What is a Company Applicant?

Beneficial Owners are:

1. Individuals with substantial control over the reporting company, or
2. Individuals who own or control at least 25% of the economic interests of a reporting company.

Company Applicants are:

The individual(s) responsible for the entity's formation.

* Note: there will be no more than 2 company applicants reported.

* Note: a "company applicant" is required to be included only for entities created or registered on or after January 1, 2024.

The reporting company must submit PII for beneficial owners and company applicants.



What is "25% Ownership"?

- "The term "ownership interest" refers to: (a) equity, stock, or similar instrument, (b) any capital or profit interest, (c) any instrument convertible, with or without consideration, into equity, stock, capital interest, profit interest or a similar instrument, (d) any put, call, option, warrant, straddle, or other privilege of buying or selling any of the above referenced items without being bound to do so, or (e) "any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership" (i.e., the "catch-all").
- If a put, call, option, warrant, straddle, or other privilege is created and held by a third-party, such person is required to be reported only if the reporting company has knowledge of or involvement in such relationship.
- An individual may own or control an ownership interest of a reporting company directly or indirectly, including through intermediaries or intermediate entities, or through joint ownership with one or more other persons of an undivided interest in such ownership interest (e.g., community property).



Substantial control

- An individual exercises substantial control if they meet any of the following:
 - Is a senior officer of the reporting company;
 - This includes all senior officers of the reporting company (including, but not limited to, the President, CEO, general counsel, COO, CFO, etc.)
 - Regardless of an individual's title, if they perform functions similar to a senior officer in the ordinary sense, they must report as a beneficial owners. Further analysis will be needed to understand which individuals meet the "senior officer" prong under the CTA.
 - Has authority over the appointment or removal of any senior officer or a majority of the board of directors or similar body;
 - Directs, determines, or has substantial influence over important decisions made by the reporting company including discussions regarding: the business, finances, and structure of the company; or
 - Possesses any other form of substantial control over the reporting company ("Catch All")



Substantial control (con't)

- The ownership or control requirement may be met through control of an ownership interest owned by another individual including:
 - A trustee of a trust if they are on the board, the trust owns or controls a majority of the voting power or voting rights of the company, or the trust has rights associated with financing or interest.
 - Beneficiary, or grantor of a trust which owns an interest in a reporting company.
- If multiple individuals exercise *essentially equal authority* over the entity's decisions, each individual would likely be considered to have substantial influence over the decisions even though no single individual directs or determines them. (Members of a board most likely have substantial control.)



Exemptions to the definition of a beneficial owner

- There are five exemptions from the definition of a beneficial owner, including:
 - Minors;
 - Nominees, intermediaries, custodians or agents of the beneficial owner;
 - Creditors;
 - Employees not acting as senior officers; and
 - an inheritor, whose only interest in the company is a future interest through a right of inheritance;



Personal Identifying Information (PII)

1. Full legal name
2. Date of birth.
3. Current business street address.
4. Photo ID with a unique identifying number from an acceptable identification document defined in 31 U.S.C. § 5336 (a)(1) (which may be a nonexpired U.S. passport, a nonexpired identification document issued by a state or local government or Indian tribe to the individual for the purpose of identifying that individual, a nonexpired driver's license issued by a state, or if the individual does not have any of the foregoing documents, a nonexpired passport issued by a foreign government).

OR

Utilization of FinCEN ID number



FinCEN ID number

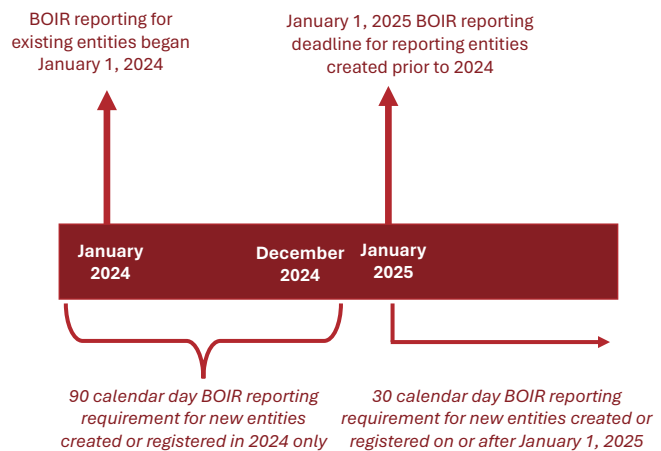
- A FinCEN ID is a unique identifying number that FinCEN will issue to individuals or reporting companies upon request, subject to certain conditions.
- A beneficial owner or company applicant may apply for a FinCEN ID by providing the same required information. An individual's FinCEN ID can then be provided to FinCEN on a BOI report in lieu of the required information about the individual.
- A reporting company may submit an application for a FinCEN ID at or after the time the reporting company submits its initial report to FinCEN.



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If you are a non-exempt entity, your obligation to file has already accrued! What is the timing of your reporting deadline?

- If the reporting company was created prior to January 1, 2024, it will have until January 1, 2025 to submit its initial BOI report.
- If the reporting company is created during 2024, it will have 90 calendar days from formation to file its initial BOI report.
- If the reporting company is created on or after January 1, 2025, it will have 30 calendar days from formation to file its initial BOI report.



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Does my entity need to file a BOIR?

STEP ONE: IS THE ENTITY A REPORTING ENTITY?

- Reporting Entity is: Corporations, LLCs, or other entities (i) created by the filing of a document with a secretary of state (or similar office) within the United States or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state (or similar office) in the United States.

STEP TWO: DO ANY OF THE 23 EXEMPTIONS APPLY?

STEP THREE: WHEN IS THE INITIAL BOIR FILING DUE?

- Entities existing or registered to do business before January 1, 2024, must file their initial BOI report with FinCEN by January 1, 2025.
- Entities created or registered to do business on or after January 1, 2024, and before January 1, 2025, have 90 days following their creation or registration to file their initial BOI report.
- Entities created or registered to do business on or after January 1, 2025, have 30 days to file their initial BOI report.



When are subsequent BOIRs due?

- A BOIR need only be submitted once, but once filed, it must be updated within 30 days of any change in the information last reported.
- For example, if there is a change in ownership of the reporting company, an updated BOI report must be filed within 30 days to report the new beneficial owners. Similarly, if the residential address of a beneficial owner changes, the new address must be reported on an updated BOI report within 30 days of the change in residence.



What if inaccurate information was previously submitted?

- The CTA places the responsibility to correct inaccurate or changed information on the reporting company itself.
 - If any of the previously submitted information changes, reporting companies will have 30 days to update the report. The company is not required to update any information for company applicants.
 - With respect to inaccurate information reported to FinCEN, the reporting company is required to correct inaccuracies within 90 days (FAQ suggests this period of time may decrease) of the date on which it becomes aware of the mistake.
 - There is no need to report the dissolution or termination of a reporting company.



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CTA reporting exemptions

ARE YOU ONE OF THE FOLLOWING?

<ul style="list-style-type: none"> ▪ Sole Proprietorship 	<ul style="list-style-type: none"> ▪ Estate Plan Trust 	<ul style="list-style-type: none"> ▪ General Partnership* <small>*Not to be confused with a limited partnership or the general partner of a limited partnership.</small>
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No

IS YOUR BUSINESS ONE OF THESE ENTITY TYPES?

<ul style="list-style-type: none"> ▪ Corporation ▪ Business Trust ▪ Cooperative Association <p><small>Or a similar entity that is (i) created by the filing of a document with a secretary of state's office, or (ii) a non-US entity registered to do business in the United States by a filing with a secretary of state's office.</small></p>	<ul style="list-style-type: none"> ▪ Limited liability company ▪ Series of a series LLC ▪ Decentralized autonomous organization (DAO) 	<ul style="list-style-type: none"> ▪ Limited partnership ▪ Limited liability partnership ▪ Limited liability limited partnership
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ARE YOU IN A HIGHLY REGULATED INDUSTRY OR SECTOR?

<ul style="list-style-type: none"> ▪ SEC Registered Parties ▪ Utilities ▪ Financial Institutions ▪ Insurance Providers ▪ Commodity 	<ul style="list-style-type: none"> ▪ CPA firms registered under Sarbanes-Oxley Act ▪ Pooled Investment Vehicles ▪ IRC § 501(c) registered non-profit entities ▪ Wholly owned subsidiary of an exempt company 	<ul style="list-style-type: none"> ▪ Governmental or quasi-governmental entities ▪ Un-capitalized entities without activity or foreign owners
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DO YOU MEET ALL THREE CRITERIA?

<ul style="list-style-type: none"> ▪ Physical U.D. address <small>Lease or deed</small> 	<ul style="list-style-type: none"> ▪ Over \$5 Million reported gross receipts or sales on most recent tax filing 	<ul style="list-style-type: none"> ▪ More than 20 Full Time Employees <small>Not 1099 or Full time equivalent</small>
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You are a "reporting company" under the CTA and need to discuss reporting requirements.



Large operating company exemption

- To qualify for the Large Operating Company Exemption, the entity must:
 - (A) Employ more than 20 full-time employees in the United States
 - (B) Have an operating presence at a physical office within the United States, and
 - (C) Filed a federal income tax or information return in the United States for the previous year demonstrating more than \$5 million in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065 or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 USC 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.



Subsidiary exemption

- Exemption applies to an entity "whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities ..." of the types that are exempt from reporting, other than a money transmitting or money services business, a pooled investment vehicle, an entity assisting a tax-exempt entity or an inactive entity
- Jan, 2024 - FinCEN provided a much-needed clarification of the exemption titled "Subsidiary of Certain Exempt Entities"
- Under its clarification, FinCEN provided that a subsidiary whose ownership interests are partially controlled by an exempt entity does not qualify for the Subsidiary Exemption. The FAQ states as follows:

If an exempt entity controls some but not all of the ownership interests of the subsidiary, the subsidiary does not qualify. To qualify, a subsidiary's ownership interests must be fully, 100 percent owned or controlled by an exempt entity.



Inactive entity exemption

- Any entity that
 - (A) was in existence on or before January 1, 2020,
 - (B) is not engaged in active business,
 - (C) is not owned by a foreign person, whether directly or indirectly, wholly or partially,
 - (D) has not experienced any change in ownership in the preceding 12-month period,
 - (E) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12-month period, and
 - (F) does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company or other similar entity.
- **Note that this exemption does not apply to inactive entities formed after January 1, 2020**



Community Property Considerations

- Spouses, in community property jurisdictions, have joint ownership of an undivided interest in a BOI under the ownership prong of the definition of “beneficial owner.” BUT BOI solely based on “substantial control” would not be included in community property.
- Nine states and two U.S. territories have adopted the community property system: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington and Wisconsin, Guam and Puerto Rico.
- Three states have adopted an “optional” community property system: Alaska, South Dakota, and Tennessee. In these jurisdictions, spouses may create community property by entering into a community property agreement or by creating a community property trust.

Note: the community property consideration is associated with the state of residence of the owner, not the jurisdiction of formation of the entity.



Trust Arrangements

- If a trust is created through a filing with a secretary of state or similar office, then it is a reporting company, unless an exemption applies. But if a trust is created without the requirement to file a document with a secretary of state or similar office (including through the registration with a court of law), then it is not a domestic reporting company and not individually subject to the CTA.
- However, trusts may own or control ownership interests in a reporting company, and thereby be reportable on a BOIR of a reporting company.
- The trustee is the individual deemed to control trust assets for the purpose of determining which individuals own or control 25 percent of the ownership interests of the reporting company.
- Ownership interests held in trust will be considered to be owned or controlled by a beneficiary: if the beneficiary is the sole permissible recipient of income and principal from the trust, or if the beneficiary has the right to demand a distribution of, or withdraw substantially all, of the assets in the trust.
- Trust assets will be considered to be owned or controlled by a grantor or settlor who has the right to revoke the trust or withdraw its assets.
- Ownership interests held in trust may be considered simultaneously as owned or controlled by multiple parties in a trust arrangement.

▪ The substantial control and ownership tests will need to be applied to trust protectors and advisors associated with trusts.

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Trust Arrangements (cont.) -

- The term “**corporate trustee**” indicates that a legal entity rather than an individual exercises the powers of a trustee in a trust arrangement.
 - “If a reporting company’s ownership interests are owned or controlled through a trust arrangement with a corporate trustee, the reporting company should determine whether any of the corporate trustee’s individual beneficial owners indirectly own or control at least 25 percent of the ownership interests of the reporting company through their ownership interests in the corporate trustee.”
 - “The reporting company may, but is not required to, report the name of the corporate trustee in lieu of information about an individual beneficial owner only if all of the following three conditions are met: [1] the corporate trustee is an entity that is exempt from the reporting requirements; [2] the individual beneficial owner owns or controls at least 25 percent of ownership interests in the reporting company only by virtue of ownership interests in the corporate trustee; and [3] the individual beneficial owner does not exercise substantial control over the reporting company.”
 - “In addition to considering whether the beneficial owners of a corporate trustee own or control the ownership interests of a reporting company whose ownership interests are held in trust, it may be necessary to consider whether any owners of, or individuals employed or engaged by, the corporate trustee exercise substantial control over a reporting company. The factors for determining substantial control by an individual connected with a corporate trustee are the same as for any beneficial owner.”



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PENALTIES

Am I going away to jail?

- Civil penalties of \$591 per day, up to \$11,820 per violation.
 - (These fine amounts were adjusted as of January 25, 2024 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA))
- Criminal penalties of up to 2 years of federal imprisonment may apply for wilfull violations.



Is the CTA constitutional?

- A U.S. District Judge in Alabama, on March 1, 2024, issued a judgment holding that the CTA is unconstitutional because it exceeds the Constitution's limits on Congress' power. Further, FinCEN was enjoined from enforcing the CTA **against the plaintiffs in that case**. The U.S. Department of Justice, on March 11, 2024, filed an appeal of that ruling on behalf of U.S. Treasury with the Eleventh Circuit Court of Appeals (which has *de novo* review of this case). Oral arguments are scheduled for late September 2024.
- It is currently unclear as to the implications of this ruling (and its appeal) for persons not party to that case. However, business owners and management should continue to monitor further developments in the ever evolving CTA space, and should continue to meet any impending filing deadlines under the CTA.



Is the CTA constitutional? (cont.)

- We note that FinCEN, in response to the district court ruling, on March 4, 2024 (and updated March 11, 2024) stated its position:
 1. “FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court’s order.” FinCEN will comply with the court’s order “for as long as it remains in effect.”
 2. FinCEN is currently and will continue enforcing the CTA against all persons “other than the particular individuals and entities subject to the court’s injunction” (i.e., the plaintiffs in that case).
 3. “[R]eporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN’s regulations.”
 4. “[A]t this time,” FinCEN is not requiring beneficial ownership information reporting from those members of National Small Business United who were members as of March 1, 2024 (i.e., future and past members of NSBA are not included in this reporting deferral).



State law transparency initiatives

- New York LLC Transparency Act became fully enacted March 1, 2024. It takes effect on January 1, 2026.
- California introduced Senate Bill SB 594 (SB 594, Ca. Legis. Reg. Sess. 2023-2024 (2023)) with business entity transparency requirements similar to the CTA..
- Maryland introduced Senate Bill 954, with a proposed October 1, 2024 effective date, which would require certain business entities to file with the State Department of Assessments and Taxation a report including certain information regarding entities’ beneficial owners (and prohibiting the inspection of the reports in certain circumstances), together with any applicable federal beneficial ownership information report. Compliance for entities formed prior to the legislation’s effectiveness would have until October 1, 2025 to file their Maryland report.
- Massachusetts introduced House Bill 3566 on January 20, 2023, which would require certain limited liability companies to disclose beneficial owner and other information to the Secretary of the Commonwealth.
- The New York and proposed California, Maryland and Massachusetts laws may signal a trend toward state-driven transparency (independent of the CTA), so as to assist in bringing the U.S. more into line with many other countries’ business entity transparency requirements.




What can I do now?

- Determine if your existing business entities are reporting companies
- Determine who is in your control group for each entity
- Identify and notify your beneficial owners (direct and indirect) in each entity and gather PPI or FinCEN Identifier information
- Establish policies, procedures and protocols, and responsible parties, to ensure timely compliance (including for corrections and changes)
- Develop system for tracking and retaining reported information
- Determine when to file in 2024
- Establish protocol and deadlines for new entities formations steps
- Consider utilization of third party CTA vendor
- Keep apprised of new CTA developments



Thank you



CORPORATE TRANSPARENCY ACT CHAIR

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Economic Update and Implications for Selected Industries

Charvi Gupta

October 2024



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Agenda

- Key drivers for the markets and economy
- Implications for selected industries

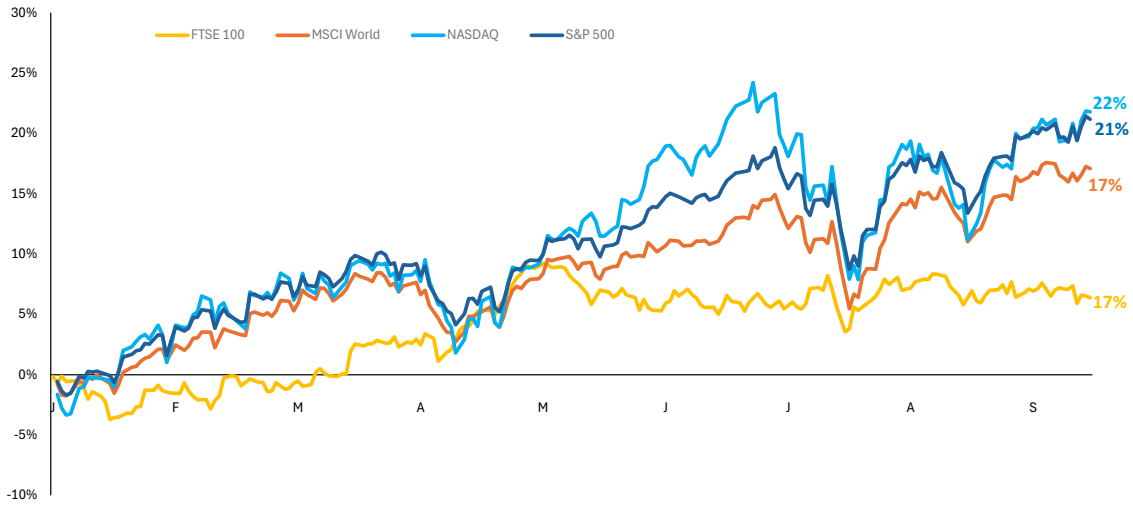
Key drivers for markets and economy

Key drivers for markets and economy

- A. Geopolitical Issues
 - Middle East / Ukraine-Russia War / US-China standoff
 - Supply chain issues
 - Markets have largely ignored these
- B. Impending Elections
 - More than the result, the markets are concerned about a “swift resolution to the election results”
 - That remains an overhang as any large investment by corporates will not be made before that (tax and tariff policy)
- C. Economic Issues
 - Economy has started to cool down
 - Multiple leading indicators have been pointing towards a “soft landing”

Equity Markets have been exuberant with S&P reaching an all-time high

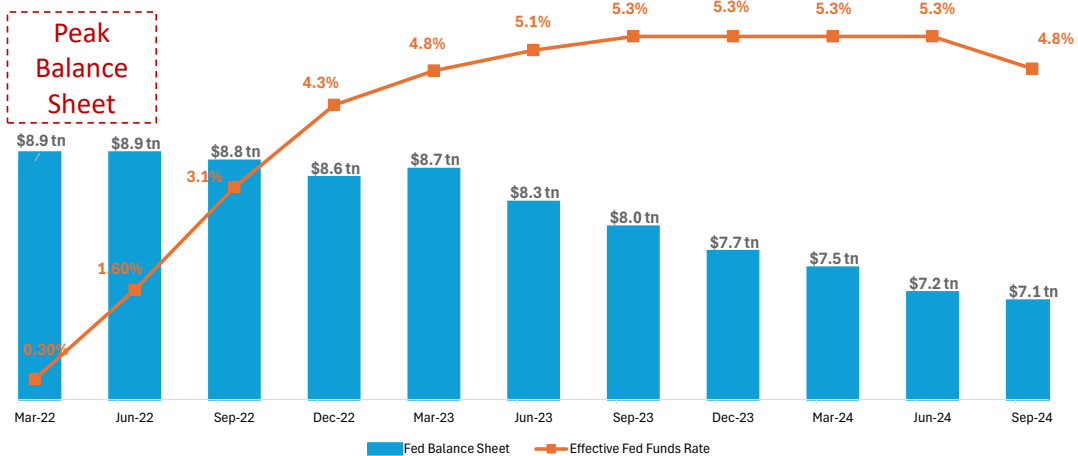
Equity Market Indices – YTD 2024 Performance



Source: FactSet



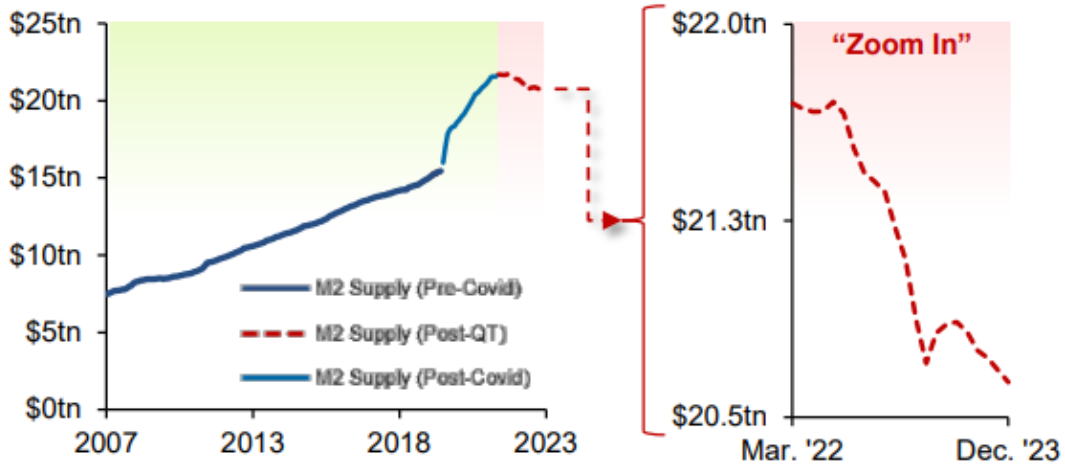
Record Monetary Tightening...



Source: FRED, Federal Bank of NY



...Driving a Steep Contraction in Money Supply



Source: FRED

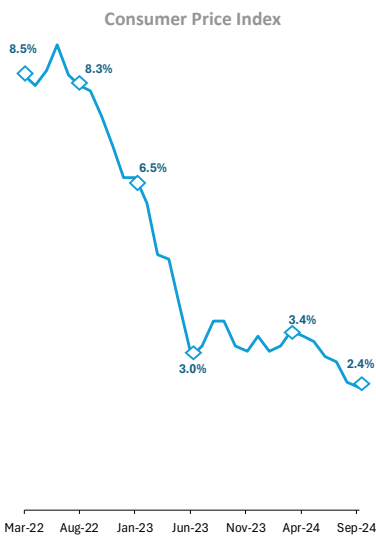


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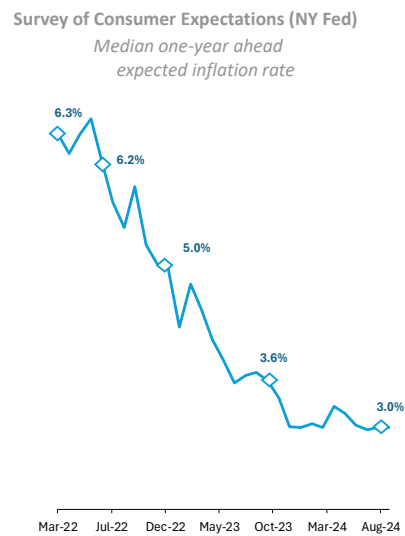
REAL CHALLENGES. REAL SOLUTIONS.

The Fed's inflation fight yields results...

Inflation Has Cooled



Inflation Expectations Declined



Source: U.S. Bureau of Labor Statistics, NY Fed



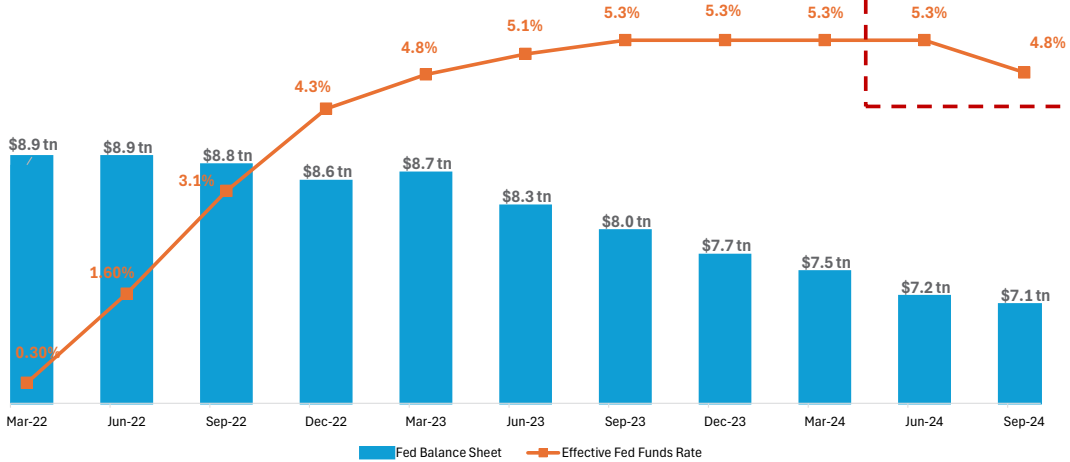
8

REAL CHALLENGES. REAL SOLUTIONS.

...And Interest Rates start to come down...

The proxy funds rate, which accounts for Fed balance sheet changes, is currently at ~4.5%

Rates went down by 50 bp in Sept '24



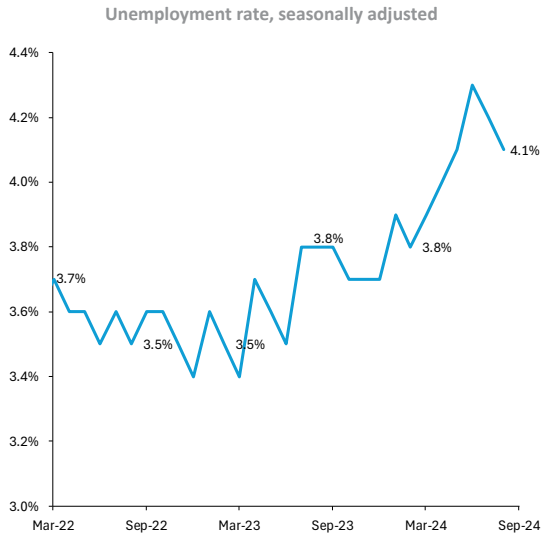
Source: FRED, Federal Bank of NY

However, employment data remains strong

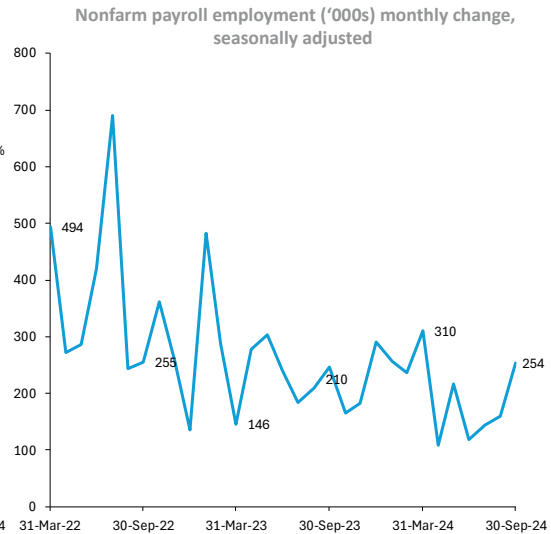


However, employment data remains strong

Unemployment Rate Dipped Slightly in Sep 2024



254K Jobs Were Added in Sep 2024



Source: BLS



Rate Cut needs time to work its way through the economy

The housing market is already responding, but some business and consumer borrowers are still struggling to make their payments



Source: Bloomberg



Consumer Debt and Delinquencies Climbing



Source: NY Fed

Consumer Debt and Delinquencies Climbing



Source: AI Image Creator

Supply Chain Pressures Building

- Trade Disruption in the Middle East / through the Red Sea
- Drought in Panama Canal
- Russia’s invasion of Ukraine
- US-China trade standoff
- Events such as the Baltimore bridge collapse
- Port workers’ strikes on the US east coast – suspended till January 15, 2025

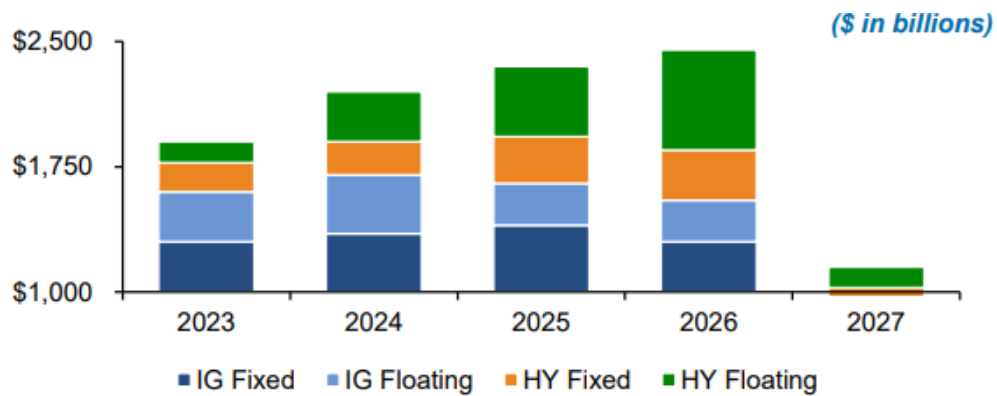
BUSINESS IMPACT

- Shipping delays
- Higher costs of fuel and container prices
- Capacity issues

CUSTOMER IMPACT

- Price increases
- Shrinkflation
- Availability issues

Corporate Debt Wall is on the horizon



Source: FactSet, LCD, Bloomberg, NFIB

Majority of CEOs believe economy to have a “Soft Landing”

	Oct. 2024	Aug. 2024	Oct. 2023	
32%	Severe recession	1%	7%	8%
	Mild recession or slowdown	31%	53%	50%
66%	Flat or soft landing	42%	32%	29%
	Growth or recovery	23%	7%	13%
	Strong growth	1%	1%	0%
	Don't know	2%	1%	0%

Source: CEO Confidence Index, Chief Executive Group



Implications for Selected Industries



Stressed Industries

- Commercial Real Estate
 - Office
 - Multifamily
 - Some hospitality
- Healthcare
 - Hospital systems
 - Senior living / CCRCs / skilled nursing / assisted living
 - Physician practice groups
 - Behavioral health
- Consumer and Retail
 - Furniture, home goods, home appliances
 - DTC brands
 - Food and beverage
 - Lower tier brands
- Automotive
 - EV manufacturers
 - Tier 2 /3 auto suppliers

Real Challenges. Real Solutions.

THE INTERSECTION OF STATE AND FEDERAL COURT ISSUES

- ▶ Prepared for the
 - ▶ ABI UMKC Midwestern Bankruptcy Institute
 - ▶ October 25, 2024
 - ▶ University of Missouri, Kansas City
 - ▶ Kansas City, Missouri

- ▶ by
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AUTOMATIC STAY

- ▶ Overview of Provisions and Exceptions of the Stay
- ▶ Notice and Effective Time of Stay; Scope of Stay; Provisions; Exceptions

Overview of Provisions and Exceptions of the Stay

- ▶ 11 U.S.C. § 362 sets out the provisions and exceptions to the automatic stay invoked upon the filing of any bankruptcy chapter.
 - ▶ The automatic stay in bankruptcy is a comprehensive stay of litigation, lien enforcement, and judicial and other actions that are efforts to enforce or collect any prepetition claims against the debtor or the debtor's estate.
 - ▶ The stay also suspends actions that may affect or interfere with property of the bankruptcy estate, property of the debtor, or property in the custody of the estate.

Overview of Provisions and Exceptions of the Stay

- ▶ (Continued) 11 U.S.C. § 362 sets out the provisions and exceptions to the automatic stay invoked upon the filing of any bankruptcy chapter.
 - ▶ While the reach of the automatic stay is wide, Section 362 creates exceptions and limitations based on policy objectives such as the enforcement of criminal penalties or to regulate conduct that may be environmentally damaging.
 - ▶ Section 362 also sets out grounds for a party to seek relief from the automatic stay and in conjunction with Fed. R. Bankr. P. 4001 provides a procedure for seeking relief from the stay.
 - ▶ Section 362 establishes damage remedies for an individual harmed by a violation of the automatic stay. A bankruptcy court may invoke its contempt power to punish violations of the stay.

AUTOMATIC STAY

- ▶ Overview of Provisions and Exceptions of the Stay
- ▶ Notice and Effective Time of Stay; Scope of Stay; Provisions; Exceptions

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ Upon the voluntary, involuntary, or joint filing of a bankruptcy petition for relief by the debtor, the automatic stay becomes immediately effective.
 - ▶ Service of process of the notice of the bankruptcy filing is not required for the stay to subject the party to the stay.
 - ▶ In unusual cases in which there is alleged possible abuse of the bankruptcy court's discretion, the stay may be inapplicable. This exception is extremely narrow, and a creditor relying on such a narrow exception will do so assuming considerable risk of contempt of court and subjecting itself to penalties.
 - ▶ Actions taken in violation of the automatic stay are void or voidable whether or not there was actual notice of the existence of the stay.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Upon the voluntary, involuntary, or joint filing of a bankruptcy petition for relief by the debtor, the automatic stay becomes immediately effective.
 - ▶ Stay violations are punishable as contempt of the court, and if the violation is willful, the court may punish the violator and craft appropriate remedies to nullify the effect of the violation.
 - ▶ If the debtor is an individual, the court may award damages including punitive damages under 11 U.S.C. § 362(k).
 - ▶ If a party receives notice of the bankruptcy, even if only oral notice, it can be sanctioned for a stay violation. It is the responsibility of the party receiving notice of the bankruptcy to determine the veracity and validity of the notice before deciding whether to act in the face of such bankruptcy notice.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ Section 362 is comprehensive in scope and, with the exceptions set out in subsection 362(b), applies to nearly any formal or informal action against the debtor or the debtor's property or property of the estate.
- ▶ The stay applies to all entities which are defined as a person, estate, trust, governmental unit, and the United States trustee. 11 U.S.C. § 101.
- ▶ The stay does not protect separate legal entities such as corporate directors, officers or affiliates, partners in debtor partnerships or codefendants in joint litigation.
- ▶ The stay affords protection to both the debtor and creditors and promotes the bankruptcy goal of equality of distribution:
 - ▶ To debtors: the stay provides relief from the pressure and harrassment of creditors trying to collect debts and attach property necessary for a debtor's fresh start and reorganization.
 - ▶ To creditors: the stay provides protection from the disorderly liquidation of the debtor's assets by piecemeal levy and attachment and sale by individual creditors.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (continued) Section 362 is comprehensive in scope and, with the exceptions set out in subsection 362(b), applies to nearly any formal or informal action against the debtor or the debtor's property or property of the estate.
- ▶ The stay affects liquidation (Chapter 7) and reorganization (Chapters 11, 12, and 13) cases in addition to staying litigation against the debtor outside the bankruptcy and commenced prior to the bankruptcy filing.
- ▶ The stay prevents the commencement or continuation of administrative, judicial or other similar proceedings including interception of tax refunds for payments of debts through setoffs or revocation of a license due to the debtor's failure to pay a debt.
- ▶ The stay prevents a creditor from terminating or other interference with executory contracts or leases.
 - ▶ Executory contracts and leases are considered a form of property of the estate and therefore would be subject to the stay.
 - ▶ If the property is no longer estate property at the date of the bankruptcy filing, the automatic stay does not apply.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (continued) Section 362 is comprehensive in scope and, with the exceptions set out in subsection 362(b), applies to nearly any formal or informal action against the debtor or the debtor's property or property of the estate.
 - ▶ The stay does not affect claims that arise after the bankruptcy is filed although enforcement of a judgment on a postpetition claim is stayed.
 - ▶ The stay does not stay actions against parties who may be subjected to litigation for transactions or events involving the debtor but who are not the debtor. Caveat: a codebtor stay does prevent creditors from collecting consumer debts against codebtors in Chapter 12 and 13 cases.
 - ▶ The stay does not affect ministerial acts such as the entry of a judgment by the clerk of the court.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ Criminal proceedings on both a state and federal level. The exception is consistent with the Younger Abstention doctrine in which the Supreme Court recognized a strong policy against interference with state criminal proceedings.
 - ▶ Bad check prosecutions when the prosecution is brought for the specific purpose to enforce the criminal law are excepted from the stay.
 - ▶ Enforcement of criminal sanctions such as fines or jail are excepted but the government may not seize property to enforce the payment of restitution or fines nor may the government record a restitution lien.
 - ▶ The collection of alimony, maintenance or support are excepted from the automatic stay provided the collection is not against property of the estate. Actions to establish paternity or to modify an order for alimony, support or maintenance are also excepted from the stay.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ Section 362 does not prevent a debtor's former spouse from taking postpetition state court action to recover pension benefits from the debtor or the debtor's pension plan. The nondebtor spouse's interest in the pension benefits is her separate property and not property of the debtor's estate and therefore not subject to the automatic stay.
 - ▶ The stay does not prevent actions taken under the government's police and regulatory power pursuant to section 362(b)(4). Two tests have developed to judge the government's action as a police or regulatory action or simply a collection action:
 - ▶ the pecuniary purpose test: is the governmental unit pursuing a matter of public safety and welfare rather than a pecuniary interest? and
 - ▶ the public policy test: is the government action designed to effectuate public policy rather than to adjudicate private rights?
 - ▶ If the answer to either of these questions is yes, then the exception applies.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ The setoffs by repurchase agreements ("repo") participants of claims against the debtor for a margin or settlement arising under such repurchase agreements. Repurchase (repo) agreements are involved in the marketing and trading of debt securities; the automatic stay does not apply to the recovery of investments in these transactions.
 - ▶ The stay does not apply to the commencement of foreclosures by Secretary of Housing and Urban Development. 11 U.S.C. § 362(b)(8).
 - ▶ The stay does not prohibit the issuance of notices of tax deficiencies, demand for returns and assessments. The government may also conduct an audit to determine tax liability and to issue notice and demand for payment of any tax. Any tax lien associated with the assessment may not take effect against the property of the estate unless such tax represents a nondischargeable debt and the property to which the lien will attach will be transferred out of the estate or will otherwise revert in the debtor.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ The automatic stay does not apply to a lessor's efforts to retake nonresidential real estate after term of the lease expires.
 - ▶ The automatic stay does not prevent the presentment of a negotiable instrument such as a check or promissory note or providing notice and dishonor of any such instrument. Under the Uniform Commercial Code, presentment is generally required before asserting remedies against secondary obligors. Thus, this exception allows the holder of the instrument to enforce the instrument, although the exception does not permit enforcement against the debtor.
 - ▶ The automatic stay does not prevent certain foreclosure actions brought pursuant to the Merchant Marine Act.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ The stay does not prevent actions by accrediting agencies or state licensing bodies dealing with the accreditation status of an educational institution.
 - ▶ The stay does not prevent actions by certain guaranty agencies or the Secretary of Education involving the eligibility of the debtor to participate in programs authorized by the Higher Education Act of 1965.
 - ▶ The stay does not prevent setoffs by swap participants as defined in 11 U.S.C. § 101. 11 U.S.C. § 362(b)(17).
 - ▶ The stay does not apply to the creation or perfection of statutory liens for *ad valorem* property taxes coming due after the commencement of the case.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ The stay does not apply to the withholding of income from a debtor's wages and collection of amounts withheld under debtor's agreement to authorize such withholding to the extent such amounts withheld are used solely for the repayment of a loan under section 408(b)(1) of the Employee Retirement Income Security Act (ERISA).
 - ▶ The automatic stay may not apply due to a prior case involving the bankruptcy code.
 - ▶ Exception applies to in rem orders entered in accordance with § 362(d)(4).
 - ▶ Exception also applies to exempt from the stay the enforcement of lien or security interest in real property in a case filed by a debtor who is ineligible to be a debtor under §109(g).
 - ▶ The stay does not apply to residential property evictions involving the prepetition judgment for possession.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ The stay does not apply to residential property evictions involving endangerment of property or illegal drug use.
 - ▶ The stay does not apply to transfers that are not avoidable under sections 544 and 549.
 - ▶ The stay does not apply to investigations or actions by securities self-regulation organizations
 - ▶ The stay does not apply to the setoff of income tax refunds permitted under applicable nonbankruptcy law by a governmental unit of an income tax refund from a prepetition tax period against a prepetition tax liability. The tax refund and the tax liability must relate to a taxable period ending before the date of the filing of the bankruptcy petition.
 - ▶ The stay does not apply to excluding a debtor from participation in the Medicare program or any other federal health care program defined in section 1128B(f) of the Social Security Act.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ (Continued) Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
 - ▶ Chapter 11 bankruptcies contain two exceptions to the full effect of the automatic stay as it applies to aircraft equipment and vessels and railroad rolling stock dealing, respectively with sections 1110 and 1168.
 - ▶ Under 11 U.S.C. § 362(n), the revised code excepts from the automatic stay certain cases arising from small business cases defined in section 101 filed under chapter 11. The stay under section 362(a) does not apply in a case in which the debtor
 - ▶ is a debtor in a small business case as defined in section 101 when the petition is filed in the subsequent case;
 - ▶ was a debtor in a small business case as defined in section 101 that was dismissed for any reason by an order that became final during the two-year period ending on the date of the order for relief entered in the subsequent case;
 - ▶ was a debtor in a small business case with a confirmed plan in the two-year period ending on the date the order for relief entered in the subsequent case; or
 - ▶ is an entity that has acquired substantially all the assets or business of a small business debtor, unless such entity establishes the acquisition was in good faith and not for the purpose of evading the stay exception.

Notice and Effective Time of Stay; Scope of Stay; Provisions Exceptions

- ▶ The automatic stay expires at the earlier of the time that the case is closed, the case is dismissed, or the debtor receives a discharge.

ABSTENTION

- ▶ Abstention, generally, is a judicially created doctrine
 - ▶ to resolve conflicts between state and federal courts
 - ▶ based on comity with the state courts
- ▶ Bankruptcy context, abstention is written into 28 U.S.C. § 1334(c)
 - ▶ (c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
 - ▶ (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

- ▶ 28 U.S.C. . § 1334(c) separates the circumstances for permissive versus mandatory abstention.
 - ▶ 28 U.S.C. . § 1334(c)(1) vests in the bankruptcy court the discretion to exercise jurisdiction or to defer to the state district court or administrative tribunal.
 - ▶ 28 U.S.C. . § 1334(c)(2) mandates abstention and provides the criteria for the bankruptcy court to make the determination upon a party's timely motion

- ▶ Case law: Abstention extended into administrative, state, and federal forums.
 - ▶ See *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071 (9th Cir. 1991) (district court did not abuse its discretion by abstaining to local administrative proceedings to resolve issues in adversary proceeding).
 - ▶ *In re T.D.M.A. Inc.*, 66 B.R. 992, 995 (Bankr. E.D. Pa. 1986) ("the statement that '[n]othing . . . prevents a district court in the interests of justice' from abstaining . . . probably applies to reference to federal as well as state forums"). While the reach of the automatic stay is wide, Section 362 creates exceptions and limitations based on policy objectives such as the enforcement of criminal penalties or to regulate conduct that may be environmentally damaging.

- ▶ Permissive Abstention.
 - ▶ The bankruptcy court's discretion to abstain in 28 U.S.C. § 1334(c)(1) involves the bankruptcy judge's determination that abstaining would be in the best interest of justice, comity with state courts, or out of respect for applicable state law.
 - ▶ 28 U.S.C. § 305 supplements § 1334(c)(1) by affording the bankruptcy court the discretion to abstain from the entire bankruptcy process in certain circumstances.
 - ▶ In abstaining, bankruptcy courts should consider the efficient administration of the bankruptcy estate, the predominance, if any, of federal or state law issues over the applicable bankruptcy laws, difficulty of federal and state law issues and whether the federal or state law tribunal may be better suited, based on the respective expertise of the non-bankruptcy tribunal, to adjudicate the issues, the extent to which the underlying state or federal law action is related to or remote from the bankruptcy proceedings, and the feasibility of cleaving or separating state and federal law claims from the main bankruptcy proceeding.
 - ▶ a. See 179 B.R. 913, 928 (Bankr. E.D. Cal. 1995) which sets out twelve (12) factors to consider in deciding whether to abstain.
 - ▶ b. See also *Plum Run Serv. Corp.*, 167 B.R. 460 (Bankr. S.D. OH 1994); see also *Hutchins v. Fordyce Bank & Trust Co. (In re Hutchins)*, 211 B.R. 319 (Bankr. E.D. Ark. 1997); *Fid. Nat'l Title Ins. Co. v. Franklin (In re Franklin)*.

- ▶ While bankruptcy court’s abstention is usually associated with state law claims, bankruptcy courts have exercised permissive abstention in deferring to other federal courts and tribunals to resolve disputes involving subject areas where the subject matter expertise may be accorded to a federal administrative agency or in circumstances where an action involving several districts is already on-going.
 - ▶ Several examples include the following: *Asbestosis Claimants v. Apex Oil Co. (In re Apex Oil Co.)*, 980 F.2d 1150 (8th Cir. 1992);
 - ▶ *Plum Run Serv. Corp. v. United States Dep’t of the Navy (In re Plum Run Serv. Corp.)*, 167 B.R. 460, 464-65 (Bankr. S.D. Ohio 1994);
 - ▶ *United States v. Am. Pouch Foods, Inc. (In re Am. Pouch Foods, Inc.)*, 30 B.R. 1015, 1023-24 (N.D. Ill. 1983) (same), *aff’d*, 769 F.2d 1190 (7th Cir. 1985);
 - ▶ *see also Franklin Sav. Corp. v. Office of Thrift Supervision*, 213 B.R. 596 (D. Kan. 1997); *In re Kalvar Microfilm, Inc.*, 208 B.R. 819 (Bankr. D. Del. 1997).

▶ Factors for Permissive Abstention.

- ▶ 28 U.S.C. § 1334(c)(1)’s language regarding permissive abstention invokes the notions of “the interest of justice, . . . comity with State courts or respect for State law[.]” while also presenting the opportunity for practitioners to advance a number of arguments to persuade a bankruptcy judge to abstain.
- ▶ Two recent cases illustrate approaches by two bankruptcy courts, one which declined to abstain, and the other court which did abstain.
 - ▶ *In re Nilhan Developers, LLC*, 631 B.R. 507 (Bankr. N.D. Ga. 2021) declined to abstain:
 - ▶ i. effect, or lack thereof, on the efficient administration of the bankruptcy estate if the discretionary abstention is exercised;
 - ▶ ii. the extent to which state law issues predominate over bankruptcy issues;
 - ▶ iii. the difficulty or unsettled nature of the applicable law; the presence of related proceedings commenced in state court or other non-bankruptcy court;
 - ▶ iv. the jurisdictional basis, if any, other than [28 U.S.C. § 1334](#); the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
 - ▶ v. the substance rather than form of an asserted “core” proceeding;
 - ▶ vi. the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
 - ▶ vii. the burden of the bankruptcy court’s docket;
 - ▶ viii. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
 - ▶ ix. the existence of a right to a jury trial; and
 - ▶ x. the presence in the proceeding of non-debtor parties.
 - ▶ Contrast *In re Nilhan Developers* with the case of *Matter of Galardi*, 2023 WL 2435683 (Bankr. M.D. Ga. 2023) in which the bankruptcy court reviewed the twelve factors and overwhelmingly decided to abstain.

- ▶ Mandatory Abstention.
- ▶
 - ▶ 28 U.S.C. § 1334(c)(2) mandates abstention.
 - ▶ (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court *shall abstain* from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. (Emphasis supplied.)

1. The statutory language triggers consideration of mandatory abstention “upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action[.]” The implication is that absent a timely motion, the bankruptcy court need not consider it.

- ▶ Several examples include the following:
- ▶ *Asbestos Claimants v. Apex Oil Co. (In re Apex Oil Co.)*, 980 F.2d 1150 (8th Cir. 1992);
- ▶ *Plum Run Serv. Corp. v. United States Dep’t of the Navy (In re Plum Run Serv. Corp.)*, 167 B.R. 460, 464-65 (Bankr. S.D. Ohio 1994);
- ▶ *United States v. Am. Pouch Foods, Inc. (In re Am. Pouch Foods, Inc.)*, 30 B.R. 1015, 1023-24 (N.D. Ill. 1983) (same), *aff’d*, 769 F.2d 1190 (7th Cir. 1985);
- ▶ *see also Franklin Sav. Corp. v. Office of Thrift Supervision*, 213 B.R. 596 (D. Kan. 1997); *In re Kalvar Microfilm, Inc.*, 208 B.R. 819 (Bankr. D. Del. 1997).

1. Reduced to its components, the statute requires a bankruptcy court to abstain in a circumstance where the following statutory conditions are met:
 - ▶ timely motion by a party involving a proceeding based on a state law claim or cause of action;
 - ▶ timely motion by a party involving a proceeding based on a state law claim or cause of action; (See *In re Chicago, Milwaukee, St. Paul & Pac. R.R.*, 6 F.3d 1184, 1194 (7th Cir. 1993); *In re Emerald Acquisition Corp.*, 170 B.R. 632, 646 (Bankr. N.D. Ind. 1994));
 - ▶ absent the bankruptcy filing, the proceeding would have been brought in state and not federal court; and
 - ▶ the bankruptcy court finds the action is commenced and can be timely adjudicated in the state forum of appropriate jurisdiction; (See *Miller & Miller Auctioneers, Inc. v. Ritchie Bros. Auctioneers Int'l (In re Mo. Props. Inc.)*, 211 B.R. 914 (Bankr. W.D. Mo. 1996)).

THE
END



**THE INTERSECTION OF
STATE AND FEDERAL COURT ISSUES
October 25, 2024
8:30-10:00**

Prepared for the

ABI UMKC Midwestern Bankruptcy Institute
October 25, 2024
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THE AUTOMATIC STAY
IN A BANKRUPTCY CASES
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INTRODUCTION

The materials presented here represent a summary of the federal bankruptcy code provisions regarding the priority and filing of proofs of claim, automatic stay, and jurisdictional issues. The outline is an abbreviation of the many provisions to facilitate a quick study of the practice; however, a comprehensive review of the applicable code provisions is essential to ensure compliance and to minimize the risk of missing a bar date and resulting in a disallowed claim. Some practical tips to assist compliance with the priority determination and claim filing process are as follows:

1. Read, understand and comply with all applicable Bankruptcy Code sections, Federal Rules of Civil Procedure, Federal Rules Bankruptcy Procedure and Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Kansas.
2. Determine the priority under which the claim falls;
3. Determine the bar date for filing such claims;
4. Comply with all proof of claim filing requirements, including Fed. R. Bank. P. 3002.

I. AUTOMATIC STAY

A. Overview of Provisions and Exceptions of the Stay

11 U.S.C. § 362 sets out the provisions and exceptions to the automatic stay invoked upon the filing of any bankruptcy chapter.

1. The automatic stay in bankruptcy is a comprehensive stay of litigation, lien enforcement, and judicial and other actions that are efforts to enforce or collect any prepetition claims against the debtor or the debtor's estate.
2. The stay also suspends actions that may affect or interfere with property of the bankruptcy estate, property of the debtor, or property in the custody of the estate.
3. While the reach of the automatic stay is wide, Section 362 creates exceptions and limitations based on policy objectives such as the

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enforcement of criminal penalties or to regulate conduct that may be environmentally damaging.

4. Section 362 also sets out grounds for a party to seek relief from the automatic stay and in conjunction with Fed. R. Bankr. P. 4001 provides a procedure for seeking relief from the stay.
5. Section 362 establishes damage remedies for an individual harmed by a violation of the automatic stay. A bankruptcy court may invoke its contempt power to punish violations of the stay.

Collier on Bankruptcy, 15th Ed. Rev'd, 362.01, Sept. 2005.

B. Notice and Effective Time of Stay; Scope of Stay; Provisions; Exceptions

1. Upon the voluntary, involuntary, or joint filing of a bankruptcy petition for relief by the debtor, the automatic stay becomes immediately effective.
 - a. Service of process of the notice of the bankruptcy filing is not required for the stay to subject the party to the stay. See *In re Calder*, 907 F.2d 953 (10th Cir. 1990).
 - b. In unusual cases in which there is alleged possible abuse of the bankruptcy court's discretion, the stay may be inapplicable. This exception is extremely narrow, and a creditor relying on such a narrow exception will do so assuming considerable risk of contempt of court and subjecting itself to penalties. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.01, Sept. 2005. See also *Matter of Carter*, 16 B.R. 481 (W.D.Mo. 1981).
 - c. Actions taken in violation of the automatic stay are void or voidable whether or not there was actual notice of the existence of the stay.
 - d. Stay violations are punishable as contempt of the court, and if the violation is willful, the court may punish the violator and craft appropriate remedies to nullify the effect of the violation.
 - e. If the debtor is an individual, the court may award damages including punitive damages under 11 U.S.C. § 362(k).
 - f. If a party receives notice of the bankruptcy, even if only oral notice, it can be sanctioned for a stay violation. It is the responsibility of the party receiving notice of the bankruptcy to

determine the veracity and validity of the notice before deciding whether to act in the face of such bankruptcy notice. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.02, Sept. 2005. See also *Matter of Carter*, 16 B.R. 481 (W.D. Mo. 1981).

2. Section 362 is comprehensive in scope and, with the exceptions set out in subsection 362(b), applies to nearly any formal or informal action against the debtor or the debtor's property or property of the estate. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.03, Sept. 2005.
 - a. The stay applies to all entities which are defined as a person, estate, trust, governmental unit, and the United States trustee. 11 U.S.C. § 101.
 - b. The stay does not protect separate legal entities such as corporate directors, officers or affiliates, partners in debtor partnerships or codefendants in joint litigation. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.03, Sept. 2002. See also *Patten v. Bearden*, 8 F.3d 343 (6th Cir. 1993); *In re Fernstrom Storage & Van Co.*, 938 F.2d 731 (7th Cir. 1991).
 - c. The stay affords protection to both the debtor and creditors and promotes the bankruptcy goal of equality of distribution:
 - i. To debtors: the stay provides relief from the pressure and harrassment of creditors trying to collect debts and attach property necessary for a debtor's fresh start and reorganization.
 - ii. To creditors: the stay provides protection from the disorderly liquidation of the debtor's assets by piecemeal levy and attachment and sale by individual creditors.

Collier on Bankruptcy, 15th Ed. Rev'd, 362.03, Sept. 2005.

- d. The stay affects liquidation (Chapter 7) and reorganization (Chapters 11, 12, and 13) cases in addition to staying litigation against the debtor outside the bankruptcy and commenced prior to the bankruptcy filing.
- e. The stay prevents the commencement or continuation of administrative, judicial or other similar proceedings including interception of tax refunds for payments of debts through setoffs or revocation of a license due to the debtor's failure to pay a debt. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.03, Sept. 2005. See also *In re Stucka*, 77 B.R. 777 (Bankr. C. D. Cal. 1987); *In re*

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Nejberger, 120 B.R. 121 (E.D. Pa. 1990), *aff'd*, 934 F.2d 1300 (3d Cir. 1991).

- f. The stay prevents a creditor from terminating or other interference with executory contracts or leases.
 - i. Executory contracts and leases are considered a form of property of the estate and therefore would be subject to the stay. See *In re West Electronics*, 852 F.2d 79 (3rd Cir. 1988).
 - ii. If the property is no longer estate property at the date of the bankruptcy filing, the automatic stay does not apply. See *Moody v. Amoco Oil Co.*, 734 F.2d 1200, 11 C.B.C. 2d 1 (7th Cir. 1984).
 - g. The stay does not affect claims that arise after the bankruptcy is filed although enforcement of a judgment on a postpetition claim is stayed. See *Bellini Imports, Ltd. V. The Mason & Dixon Lines, Inc.*, 944 F.2d 199 (4th Cir. 1991).
 - h. The stay does not stay actions against parties who may be subjected to litigation for transactions or events involving the debtor but who are not the debtor. Caveat: a codebtor stay does prevent creditors from collecting consumer debts against codebtors in Chapter 12 and 13 cases. See 11 U.S.C. §§ 1201 and 1301. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.03, Sept. 2005.
 - i. The stay does not affect ministerial acts such as the entry of a judgment by the clerk of the court. See *In re Soares*, 107 F.3d 969 (1st Cir. 1997).
3. Section 362(b) sets out a list of exceptions to the automatic stay. A summary of the exceptions follows:
- a. Criminal proceedings on both a state and federal level. The exception is consistent with the Younger Abstention doctrine in which the Supreme Court recognized a strong policy against interference with state criminal proceedings. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005. See *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971).
 - b. Bad check prosecutions when the prosecution is brought for the specific purpose to enforce the criminal law are excepted from the stay.

- c. Enforcement of criminal sanctions such as fines or jail are excepted but the government may not seize property to enforce the payment of restitution or fines nor may the government record a restitution lien.
- d. The collection of alimony, maintenance or support are excepted from the automatic stay provided the collection is not against property of the estate. Actions to establish paternity or to modify an order for alimony, support or maintenance are also excepted from the stay.
- e. Section 362 does not prevent a debtor's former spouse from taking postpetition state court action to recover pension benefits from the debtor or the debtor's pension plan. The nondebtor spouse's interest in the pension benefits is her separate property and not property of the debtor's estate and therefore not subject to the automatic stay. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005. See *Bigelow v. Brown*, 168 B.R. 331 (Bankr. N.D. Ill. 1994).
- f. The stay does not prevent actions taken under the government's police and regulatory power pursuant to section 362(b)(4). Two tests have developed to judge the government's action as a police or regulatory action or simply a collection action:
 - i. the pecuniary purpose test: is the governmental unit pursuing a matter of public safety and welfare rather than a pecuniary interest? and
 - ii. the public policy test: is the government action designed to effectuate public policy rather than to adjudicate private rights?
 - iii. If the answer to either of these questions is yes, then the exception applies. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005. See also *Berg v. Good Samaritan Hosp.*, 230 F.3d 1165 (9th Cir. 2000).
- g. The setoffs by repurchase agreements ("repo") participants of claims against the debtor for a margin or settlement arising under such repurchase agreements. Repurchase (repo) agreements are involved in the marketing and trading of debt securities; the automatic stay does not apply to the recovery of investments in these transactions. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005.

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- h. The stay does not apply to the commencement of foreclosures by Secretary of Housing and Urban Development. 11 U.S.C. § 362(b)(8).
- i. The stay does not prohibit the issuance of notices of tax deficiencies, demand for returns and assessments. The government may also conduct an audit to determine tax liability and to issue notice and demand for payment of any tax. Any tax lien associated with the assessment may not take effect against the property of the estate unless such tax represents a nondischargeable debt and the property to which the lien will attach will be transferred out of the estate or will otherwise revert in the debtor. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005.
- j. The automatic stay does not apply to a lessor's efforts to retake nonresidential real estate after term of the lease expires.
- k. The automatic stay does not prevent the presentment of a negotiable instrument such as a check or promissory note or providing notice and dishonor of any such instrument. Under the Uniform Commercial Code, presentment is generally required before asserting remedies against secondary obligors. Thus, this exception allows the holder of the instrument to enforce the instrument, although the exception does not permit enforcement against the debtor. *Collier on Bankruptcy*, 15th Ed. Rev'd, 362.05, Sept. 2005. See also *Whitman v. State Farm Ins. Co.*, 176 B.R. 924 (D. Kan. 1994).
- l. The automatic stay does not prevent certain foreclosure actions brought pursuant to the Merchant Marine Act. 11 U.S.C. § 362(b)(12) and (13).
- m. The stay does not prevent actions by accrediting agencies or state licensing bodies dealing with the accreditation status of an educational institution. 11 U.S.C. 362(b)(14) and (15).
- n. The stay does not prevent actions by certain guaranty agencies or the Secretary of Education involving the eligibility of the debtor to participate in programs authorized by the Higher Education Act of 1965. 11 U.S.C. § 362(b)(16).
- o. The stay does not prevent setoffs by swap participants as defined in 11 U.S.C. § 101. 11 U.S.C. § 362(b)(17).

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- p. The stay does not apply to the creation or perfection of statutory liens for *ad valorem* property taxes coming due after the commencement of the case. 11 U.S.C. § 362(b)(18).
- q. The stay does not apply to the withholding of income from a debtor's wages and collection of amounts withheld under debtor's agreement to authorize such withholding to the extent such amounts withheld are used solely for the repayment of a loan under section 408(b)(1) of the Employee Retirement Income Security Act (ERISA). 11 U.S.C. § 362(b)(19).
- r. The automatic stay may not apply due to a prior case involving the bankruptcy code. 11 U.S.C. § 362(b)(19).
 - i. Exception applies to in rem orders entered in accordance with § 362(d)(4). 11 U.S.C. § 362(b)(20).
 - ii. Exception also applies to exempt from the stay the enforcement of lien or security interest in real property in a case filed by a debtor who is ineligible to be a debtor under §109(g). 11 U.S.C. § 362(b)(21).
- s. The stay does not apply to residential property evictions involving the prepetition judgment for possession. 11 U.S.C. § 362(b)(22).
- t. The stay does not apply to residential property evictions involving endangerment of property or illegal drug use. 11 U.S.C. § 362(b)(23).
- u. The stay does not apply to transfers that are not avoidable under sections 544 and 549. 11 U.S.C. § 362(b)(24).
- v. The stay does not apply to investigations or actions by securities self-regulation organizations 11 U.S.C. § 362(b)(25).
- w. The stay does not apply to the setoff of income tax refunds permitted under applicable nonbankruptcy law by a governmental unit of an income tax refund from a prepetition tax period against a prepetition tax liability. The tax refund and the tax liability must relate to a taxable period ending before the date of the filing of the bankruptcy petition. 11 U.S.C. § 362(b)(26).
- x. The stay does not apply to excluding a debtor from participation in the Medicare program or any other federal health care program

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defined in section 1128B(f) of the Social Security Act. 11 U.S.C. § 362(b)(28).

- y. Chapter 11 bankruptcies contain two exceptions to the full effect of the automatic stay as it applies to aircraft equipment and vessels and railroad rolling stock dealing, respectively with sections 1110 and 1168.
 - z. Under 11 U.S.C. § 362(n), the revised code excepts from the automatic stay certain cases arising from small business cases defined in section 101 filed under chapter 11. The stay under section 362(a) does not apply in a case in which the debtor
 - i. is a debtor in a small business case as defined in section 101 when the petition is filed in the subsequent case;
 - ii. was a debtor in a small business case as defined in section 101 that was dismissed for any reason by an order that became final during the two-year period ending on the date of the order for relief entered in the subsequent case;
 - iii. was a debtor in a small business case with a confirmed plan in the two-year period ending on the date the order for relief entered in the subsequent case; or
 - iv. is an entity that has acquired substantially all the assets or business of a small business debtor, unless such entity establishes the acquisition was in good faith and not for the purpose of evading the stay exception.
4. The automatic stay expires at the earlier of the time that the case is closed, the case is dismissed, or the debtor receives a discharge.

II. ABSTENTION

- A. Judicially created doctrine to resolve conflicts between state and federal courts and based on comity with the state courts.
- B. Abstention is written into statute in the bankruptcy context in 28 U.S.C. § 1334(c):

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State

courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

1. The statute separates the circumstances for permissive versus mandatory abstention.
2. The former vests in the bankruptcy court the discretion to exercise jurisdiction or to defer to the state district court or administrative tribunal.
3. Subsection (c)(2) mandates abstention and provides the criteria for the bankruptcy court to make the determination upon a party's timely motion.

C. Case law recognizes its extension into administrative, state, and federal forums.

1. See *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071 (9th Cir. 1991) (district court did not abuse its discretion by abstaining to local administrative proceedings to resolve issues in adversary proceeding).
2. *In re T.D.M.A. Inc.*, 66 B.R. 992, 995 (Bankr. E.D. Pa. 1986) ("the statement that '[n]othing . . . prevents a district court in the interests of justice' from abstaining . . . probably applies to reference to federal as well as state forums"). While the reach of the automatic stay is wide, Section 362 creates exceptions and limitations based on policy objectives such as the enforcement of criminal penalties or to regulate conduct that may be environmentally damaging.

D. Permissive Abstention.

1. The bankruptcy court's discretion to abstain in 28 U.S.C. § 1334(c)(1) involves the bankruptcy judge's determination that abstaining would be in the best interest of justice, comity with state courts, or out of respect for applicable state law.

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2. 28 U.S.C. § 305 supplements § 1334(c)(1) by affording the bankruptcy court the discretion to abstain from the entire bankruptcy process in certain circumstances.
3. In abstaining, bankruptcy courts should consider the efficient administration of the bankruptcy estate, the predominance, if any, of federal or state law issues over the applicable bankruptcy laws, difficulty of federal and state law issues and whether the federal or state law tribunal may be better suited, based on the respective expertise of the non-bankruptcy tribunal, to adjudicate the issues, the extent to which the underlying state or federal law action is related to or remote from the bankruptcy proceedings, and the feasibility of cleaving or separating state and federal law claims from the main bankruptcy proceeding.
 - a. See 179 B.R. 913, 928 (Bankr. E.D. Cal. 1995) which sets out twelve (12) factors to consider in deciding whether to abstain.
 - b. See also *Plum Run Serv. Corp.*, 167 B.R. 460 (Bankr. S.D. OH 1994); see also *Hutchins v. Fordyce Bank & Trust Co. (In re Hutchins)*, 211 B.R. 319 (Bankr. E.D. Ark. 1997); *Fid. Nat'l Title Ins. Co. v. Franklin (In re Franklin)*,
4. While bankruptcy court's abstention is usually associated with state law claims, bankruptcy courts have exercised permissive abstention in deferring to other federal courts and tribunals to resolve disputes involving subject areas where the subject matter expertise may be accorded to a federal administrative agency or in circumstances where an action involving several districts is already on-going.
 - a. Several examples include the following: *Asbestosis Claimants v. Apex Oil Co. (In re Apex Oil Co.)*, 980 F.2d 1150 (8th Cir. 1992); *Plum Run Serv. Corp. v. United States Dep't of the Navy (In re Plum Run Serv. Corp.)*, 167 B.R. 460, 464-65 (Bankr. S.D. Ohio 1994); *United States v. Am. Pouch Foods, Inc. (In re Am. Pouch Foods, Inc.)*, 30 B.R. 1015, 1023-24 (N.D. Ill. 1983) (same), *aff'd*, 769 F.2d 1190 (7th Cir. 1985); see also *Franklin Sav. Corp. v. Office of Thrift Supervision*, 213 B.R. 596 (D. Kan. 1997); *In re Kalvar Microfilm, Inc.*, 208 B.R. 819 (Bankr. D. Del. 1997).

E. Factors for Permissive Abstention.

1. 28 U.S.C. § 1334(c)(1)'s language regarding permissive abstention invokes the notions of "the interest of justice, . . . comity with State courts or respect for State law[.]" while also presenting the opportunity for practitioners to advance a number of arguments to persuade a bankruptcy judge to abstain.

2. Two recent cases illustrate approaches by two bankruptcy courts, one which declined to abstain, and the other court which did abstain.
 - a. *In re Nilhan Developers, LLC*, 631 B.R. 507 (Bankr. N.D. Ga. 2021) declined to abstain:
 - i. effect, or lack thereof, on the efficient administration of the bankruptcy estate if the discretionary abstention is exercised;
 - ii. the extent to which state law issues predominate over bankruptcy issues;
 - iii. the difficulty or unsettled nature of the applicable law; the presence of related proceedings commenced in state court or other non-bankruptcy court;
 - iv. the jurisdictional basis, if any, other than [28 U.S.C. § 1334](#); the degree of relatedness or remoteness of the proceeding to the main bankruptcy case;
 - v. the substance rather than form of an asserted “core” proceeding;
 - vi. the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
 - vii. the burden of the bankruptcy court's docket;
 - viii. the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
 - ix. the existence of a right to a jury trial; and
 - x. the presence in the proceeding of non-debtor parties.
 - b. Contrast *In re Nilhan Developers* with the case of *Matter of Galardi*, 2023 WL 2435683 (Bankr. M.D. Ga. 2023) in which the bankruptcy court reviewed the twelve factors and overwhelmingly decided to abstain.

F. Mandatory Abstention.

1. 28 U.S.C. § 1334(c)(2) mandates abstention.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court *shall abstain* from hearing such proceeding if

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an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.
(Emphasis supplied.)

2. Reduced to its components, the statute requires a bankruptcy court to abstain in a circumstance where the following statutory conditions are met.
 - a. timely motion by a party involving a proceeding based on a state law claim or cause of action;
 - b. timely motion by a party involving a proceeding based on a state law claim or cause of action; (See *In re Chicago, Milwaukee, St. Paul & Pac. R.R.*, 6 F.3d 1184, 1194 (7th Cir. 1993); *In re Emerald Acquisition Corp.*, 170 B.R. 632, 646 (Bankr. N.D. Ind. 1994));
 - c. absent the bankruptcy filing, the proceeding would have been brought in state and not federal court; and
 - d. the bankruptcy court finds the action is commenced and can be timely adjudicated in the state forum of appropriate jurisdiction; (See *Miller & Miller Auctioneers, Inc. v. Ritchie Bros. Auctioneers Int'l (In re Mo. Props. Inc.)*, 211 B.R. 914 (Bankr. W.D. Mo. 1996)).
3. The statutory language triggers consideration of mandatory abstention “upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action[.]” The implication is that absent a timely motion, the bankruptcy court need not consider it.
 - e. Several examples include the following: *Asbestosis Claimants v. Apex Oil Co. (In re Apex Oil Co.)*, 980 F.2d 1150 (8th Cir. 1992); *Plum Run Serv. Corp. v. United States Dep't of the Navy (In re Plum Run Serv. Corp.)*, 167 B.R. 460, 464-65 (Bankr. S.D. Ohio 1994); *United States v. Am. Pouch Foods, Inc. (In re Am. Pouch Foods, Inc.)*, 30 B.R. 1015, 1023-24 (N.D. Ill. 1983) (same), *aff'd*, 769 F.2d 1190 (7th Cir. 1985); *see also Franklin Sav. Corp. v. Office of Thrift Supervision*, 213 B.R. 596 (D. Kan. 1997); *In re Kalvar Microfilm, Inc.*, 208 B.R. 819 (Bankr. D. Del. 1997).

Faculty

Hon. Jay D. Befort is a District Court Judge for the Third Judicial District Court of Kansas (Div. 15) in Topeka, appointed in 2023. Prior to his judicial appointment, he served as general counsel and special assistant attorney general for the Kansas Department of Revenue, where he was responsible for the KDOR's litigation and legislative matters. From 1990-2009, Judge Befort had served as counsel for the Kansas Department of Revenue and was a special assistant attorney general for the State of Kansas, where he fulfilled the role as the senior tax enforcement and bankruptcy attorney representing the State of Kansas and the Department of Revenue in the practice of bankruptcy; tax litigation including assessment, enforcement and collection; Native American tax litigation; Section 1983 and damages cases; and administrative and appellate work. From 2009-2013, he served as the Assistant U.S. Bankruptcy Trustee for the District of Kansas and as an Assistant U.S. Attorney for the District of Kansas. He then represented the Kansas real estate commission and was named as the general counsel for the Kansas State Bank Commissioner. From 2005-2022, Mr. Befort served on the board of directors and has made presentations on bankruptcy and related taxation issues for the National Association of Attorneys General/States' Association of Bankruptcy Attorneys (NAAG/SABA). He has also made presentations before the the Litigation Committee of the Multi-State Tax Commission (MTC), the Conference of State Bank Supervisors and the National Association of Consumer Credit Administrators, and before the U.S. and Canadian International Fuel Tax Agreement (IFTA) conferences, in addition to presenting lectures on various bankruptcy, tax, tort claims litigation and employment law topics at bar associations in Wichita, Topeka and Kansas City and at the Kansas Bar Association. Judge Befort received his undergraduate degree in history from Fort Hays State University and his J.D. in 1991 from Washburn University School of Law.

Rachel L. Foley is the founder of Foley Law, PC in Independence, Mo. She specializes in consumer bankruptcy cases, particularly chapter 7 and chapter 13 filings, and represents clients in both Kansas and Missouri. Ms. Foley has a strong background in both law and health care. She is Board Certified in Consumer Bankruptcy Law by the American Board of Certification and frequently presents on innovative approaches to bankruptcy law and technology's role in legal practice. Ms. Foley's professional recognition includes receiving the prestigious K. Colleen Nunnally Award from the National Association of Consumer Bankruptcy Attorneys. She has also been inducted into the Missouri Bar Association Pro Bono Hall of Fame and is ranked among the Best of The Kansas City Bar Award honorees. Ms. Foley received her undergraduate degree in the sciences and medicine from Creighton University and her J.D. from Creighton School of Law.

Charvi Gupta is a senior director at Getzler Henrich & Associates in New York and has more than 10 years of experience in turnaround, restructuring, M&A and bankruptcy situations. Her expertise includes business plan analysis, performance improvement, cash and vendor management, operations restructuring, workouts, bankruptcy consulting and interim-management engagements. She also works with law firms on forensic and litigation support assignments in bankruptcy cases. Ms. Gupta's experience spans multiple industries, including health care, food and beverage, retail, commercial real estate and hospitality, security alarm, automotive, consumer products and restaurants. She is a board member of the New York Institute of Credit as well as Legal Aid Society's New Leadership Program. In 2023, Ms. Gupta was honored as one of ABI's 40 Under 40 Emerging Leaders in

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William E. Quick is the Corporate Transparency Act Chair and a shareholder of Polsinelli PC in Kansas City, Mo. His practice centers around business entities, and he handles an array of corporate, finance, governance, transactional and related legal needs. Mr. Quick seeks to fill voids in the legal and transactional process, bringing order to dissonance and timely project consummations. He also literally wrote the book on the Corporate Transparency Act, which is scheduled to be published by the American Bar Association in October 2024. Mr. Quick serves as the lead business negotiation competition coach and an adjunct professor at the University of Kansas Law School, where he teaches transactional skills and corporate transparency. He is rated AV-Preeminent by Martindale-Hubbell, received the Kansas Bar Association's Distinguished Service Award in 2024, and is admitted to the U.S. Supreme Court. Mr. Quick received his B.S. in 1993 in civil engineering from Iowa State University, his Faculty of Law in 1996 from Leiden University in The Netherlands, and his J.D. in 1997 from the University of Michigan.