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EXTENDING AND IMPOSING THE AUTOMATIC STAY IN REPEAT FILINGS

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EXTENDING AND IMPOSING THE AUTOMATIC STAY IN REPEAT FILINGS

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"In an Act in which head-scratching opportunities abound for both attorneys and judges alike, § 362(c)(3)(A) stands out.... The language of the statute is susceptible to conflicting interpretations, and if read literally, would apply to virtually no cases at all. In sum, it's a puzzler."

In re Paschal, 337 B.R. 274, 277
(Bankr. E.D.N.C. 2006) (Small, J.)

¹ United States Bankruptcy Judge, Middle District of Louisiana. Updated by Cristina Rodriguez and Lauren Havrylkoff, Judge Dodd's Career Law Clerk, for UTCLE in July 2020.

2005 Changes to 11 U.S.C. §362(c)

- A. Congress, in October 2005, added three provisions relating to the automatic stay in repeat bankruptcy filings: 11 U.S.C. §362(c)(3), 11 U.S.C. §362(c)(4) and 11 U.S.C. §362(j).²
- B. The changes are applicable to single or joint cases filed by (or against³) individuals under Bankruptcy Code chapters 7, 11 and 13.
- C. The changes lead to motion practice most often in chapter 13 cases, where repeat filers are more common given the debtor's ability to dismiss voluntarily. *See* 11 U.S.C. §1307(b).
- D. Counsel for prospective debtors who have been debtors in cases dismissed within one year before the contemplated filing should carefully review these statutes, because they may have to act swiftly to preserve the automatic stay or to obtain a stay in the new case.
- E. The statutes:
 - 1. 11 U.S.C. §362(c)(3) deals with filers who have been debtors in only a single case dismissed within the year before another bankruptcy:

(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) –

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case

11 U.S.C. §362(c)(3)(A).

² Exhibit A is an excerpt with relevant provisions of the statute as amended.

³ Chapter 13 cases cannot be commenced involuntarily. 11 U.S.C. §303(a).

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