MOTIONS TO EXTEND OR IMPOSE

MAKING THE MOST OF SECOND CHANCES, BY LEARNING FROM THE FIRST.

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MOTIONS TO EXTEND OR IMPOSE:

A REVIEW OF §362(c)(3) & (4)
PRACTICAL CONSIDERATIONS
AND RECENT CASE LAW

Hon. Douglas D. Dodd,

U.S. Bankruptcy Court, Middle District of Louisiana – Baton Rouge, LA.

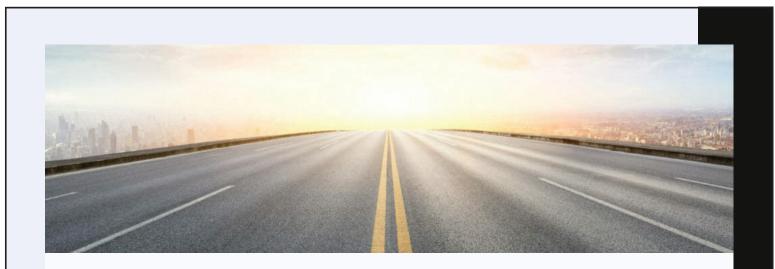
Cristina Rodriguez, Keeling Law Firm - Houston, TX



OUTLINE

- 1. §362(c)(3) Motion to Extend
- 2. §362(c)(4) Motion to Impose
- 3. Practical Considerations
- 4. Recent & Helpful Case Law

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MOTION TO EXTEND THE AUTOMATIC STAY

when debtors need a second chance

(3) If a single or joint case is filed by or against a 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;
- (B) on the motion of a party in interest for continuation of the automatic stay and upon notice and hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitation as the court may then impose) after notice and hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

11 USC §362(C)(3)AUTOMATIC STAY (continued)

- (c) For purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary) –
- (i) as to all creditors if -
 - (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding1-year period;
 - (II) a previous case under any of chapters 7, 11, and 13 in which the in the individual was a debtor was **dismissed** within such 1-year period, after the debtor failed to
 - (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
 - (bb) provide adequate protection as ordered by the court; or
 - (cc)perform the terms of a plan confirmed by the court; or



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