

**THE “AUTOMATIC STAY”: A HIGH LEVEL VIEW FOCUSING ON
RECENT CASE LAW AND STRATEGIC TIPS**

I. **Scope of the Automatic Stay**

- (a) What does it cover?
- (b) What does it not cover?
- (c) The role of “comfort” orders?

II. **Limits of the Automatic Stay Due to Previous Filings Within One Year**

- (a) One prior case pending?
- (b) Two-plus cases pending?
- (c) Presumption of bad faith factors?
- (d) Substantial change in conditions?

III. **Annulment and/or Nunc Pro Tunc Relief from the Automatic Stay**

- (a) Three recent cases discuss this issue, including the U.S. Supreme Court.

IV. **Relief From the Automatic Stay to Litigate in Non-Bankruptcy Forums**

- (a) The legal standard is defined in the *Plumberex* factors.
- (b) Factors in Chapter 7 no asset cases?
- (c) Factors in Chapter 7 asset cases?
- (d) Factors in connection with nondischargeability complaints?
- (e) New factors as a result of Covid-19’s effect on the state court system?

V. **In Rem Relief from the Automatic Stay**

- (a) Importance of proper service of motion for In Rem relief.
- (b) Effect of a confirmed Plan on In Rem relief

VI. **Valuation in Relief from Stay Motions and Hearings**

- (a) When valuation is disputed.
- (b) Lay opinion testimony (FRE 701).
- (c) Expert opinion testimony (FRE 702).
- (d) Applicability of the FRE to bankruptcy cases (FRBP 9017).
- (e) Method of valuation dependent on type of property.