IN THE
Supreme Court of the United States

IN RE BLOCKBUSTERS, INC., DEBTOR,
NATALLIE SANTANTA, TRUSTEE,

PETITIONER,

v.

RACHEL RAY WARNER BAKES, INC.,

RESPONDENT.

On Writ of Certiorari to the
Supreme Court
of the United States

BRIEF FOR PETITIONER

TEAM NO. P35
COUNSEL FOR PETITIONER
JANUARY 30, 2012
QUESTIONS PRESENTED

1. Whether the bankruptcy court’s equitable power may prevent a trustee from avoiding and recovering an unauthorized post-petition transfer of funds that occurred in the ordinary course of business from a good faith vendor, when Congress has provided statutory exceptions to sections 549 and 550 that specifically do not provide a defense for that vendor against the trustee’s right to recoup those funds back into the estate.

2. Whether an action to recover an unauthorized post-petition transfer pursuant to sections 549 and 550 of the Bankruptcy Code is a core proceeding that a bankruptcy court can hear and determine under Article III of the Constitution.
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The Bankruptcy Court for the District of Moot found that the $150,000 paid to Rachel Ray Warner Bakes, Inc., the Respondent (hereinafter ‘Vendor’), was a payment made from funds that were property of Blockbusters, Inc.’s, the Petitioner (hereinafter ‘Debtor’), estate and thus entered an order avoiding the transfer and awarding a judgment against the Vendor for $150,000. R. at 6. The United States District Court for the District of Moot affirmed without opinion. R. at 6. On October 10, 2011, the United States Court of Appeals for the Thirteenth Circuit reversed the decision of the District Court in full in Case No. 11–4080. R. 15.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

STATUTORY PROVISIONS

STATEMENT OF THE CASE

I. Statement of Facts

Blockbusters, Inc., (the “Debtor”), centered its business on organizing conventions for Sondheim and Webber fans to celebrate the beloved musicals. R. at 3. After an economic downturn resulting in financial disaster, Blockbusters filed for bankruptcy. R. at 3. After filing for bankruptcy, Blockbusters still needed additional funding for its spring 2009 convention and entered into negotiations with Broadway Bank (the “Bank”) for a cash collateral which was entered by the bankruptcy court as a stipulated cash collateral order. R. at 3–4. The order allowed Blockbusters to use $1,500,000 of the Bank’s cash collateral for expenses related to the spring convention. R. at 4. The stipulated order provided a detailed budget that limited the amount that Blockbusters could pay to vendors, like Rachel Ray Warner Bakes, Inc., (the “Vendor”) to a total of $500,000. R. at 4.

Because the future of Blockbusters’ company depended on the success of the spring 2009 convention, management determined that it should create a “spectacle” that would generate enough publicity and interest to make it “the biggest show ever.” R. at 4. Blockbusters contacted Warner Bakes to supply a full-scale model of the stage set of “West Side Story.” R. at 4. Warner Bakes is a sophisticated party that decided to undergo this project knowing that Blockbusters was in bankruptcy. R. at 4. Both parties concede that a cake similar to the one ordered would carry a fair market value of at least $250,000. R. at 4. Warner Bakes agreed to pay $100,000 dollars up front through a wire transfer and then $150,000 the day before the cake was delivered. R. at 4–5. While the spring 2009 convention was a great success, partly due to the cake, Blockbusters fell under immediate scrutiny for the budgeted cash collateral was distributed. R. at 5.
II. **Nature of the Proceedings**

Due to the misuse of the cash collateral, the Bank moved for, and obtained, the appointment of a chapter 11 trustee, Natallie Santana (the “Trustee”). R. at 5. The Trustee brought this action as a “core proceeding” in the bankruptcy court for the District of Moot to recover the $150,000 transfer from Blockbusters to Warner Bakes. R. at 6. The Trustee alleged that the transfer was an unauthorized post-petition transfer under Bankruptcy Code sections 549(a) and 550(a)(1). R. at 6. The Bankruptcy Court found that the $150,000 payment to the Vendor was made from funds that were property of the estate and that those funds constituted the Bank’s cash collateral. R. at 6. The court further found that the payment was not authorized by the cash collateral order that had been negotiated by the Debtor and the Bank. R. at 6.

Warner Bakes attempted to raise multiple defenses and offer evidence that the transfer of the cash collateral in exchange for the cake generated new revenues in excess of the misused funds to show that the Bank’s cash collateral was actually enhanced as a result of the transfer. R. at 6. However, the Bankruptcy Court found that the enhancement of the cash collateral was irrelevant because the plain language of the statute requires avoidance and held the Vendor strictly liable. R. at 6.

Warner Bakes objected to the Bankruptcy Court’s authority to hear and determine the adversary proceeding because the court lacked constitutional authority to enter a final order avoiding the transfer and imposing liability. R. at 6. The Bankruptcy Court for the District of Moot held that it did have the authority to enter an order avoiding the transfer and awarded a judgment against the Vendor for $150,000. R. at 6.

The District Court affirmed the decision of the Bankruptcy Court on both the avoidance and judicial authority issues without opinion. R. at 6. The Appellate Court reversed the District
Court and held that the Trustee’s power to avoid post-petition transfers under section 549 is subject to equitable defenses and that the Bankruptcy Court lacked the constitutional authority to enter a final order. R. at 7. This Court granted certiorari to definitively resolve the conflicting interpretations of these issues by the lower courts. R. at 1.

**SUMMARY OF THE ARGUMENT**

The Respondent seeks to radically alter two fundamental principles within the Bankruptcy Code. First, the Respondent argues that although the Bankruptcy Code expressly states an unauthorized post-petition transfer of cash collateral can be avoided by a Chapter 11 trustee, this Court should recognize an ambiguity in the statute and fashion an equitable exception allowing the Respondent to keep the transferred funds. Second, the Respondent attempts to distract this Court from the preceding issue by raising a jurisdictional question from precedent that is clearly inapplicable to the case at bar and has no effect on the Bankruptcy Court’s ability to enter a final judgment.

This Court has long held that a chapter 11 trustee may recover funds paid to a good faith vendor if that payment was a post-petition an unauthorized cash collateral payment. Congress has never recognized, nor created, an exception allowing a good faith vendor to keep unauthorized post-petition payments because they received a reasonably equivalent exchange of goods. Had Congress desired to fashion an exception, it would have placed the exception in section 549. However, the plain language of section 549 provides for no such exception. Instead, section 549 dictates that if a debtor has transferred cash collateral without authorization under the Bankruptcy Code, the trustee may properly avoid that transfer under section 550(a). Section 550(a) grants a chapter 11 trustee the authority to avoid an unauthorized post-petition transfer of cash collateral and return those proceeds to the estate almost without question. As
simple as this concept is, the Appellate Court constructed an ambiguity in section 549(a) by inaccurately bringing a UCC concept into conflict with the Bankruptcy Code. Resolving this alleged ambiguity in favor of the UCC provision was additionally improper because the UCC’s own construction guidelines state that if a conflict arises between the UCC and the Bankruptcy Code, the Bankruptcy Code will preempt. However, if this Court determines that section 549(a) is ambiguous, the ambiguity should be resolved through statutory interpretation to align with Congress’ current bankruptcy policy. At no point has Congress intended to create an exception that allows good faith vendors to keep funds transferred by a debtor in direct violation of the Bankruptcy Code. Though Congress has had the ability to do so, it has refused to codify this exception, and courts should not take the liberty to create an unwanted exception. Thus the Appellate Court’s interpretation is inconsistent with bankruptcy and congressional policy.

Article III of the Constitution permits a bankruptcy judge to hear and determine an action to recover unauthorized post-petition transfers pursuant to 11 U.S.C. §§ 549 and 550. Although the Respondent tries to create a parallel between the current case and the holding of Stern v. Marshall, the facts in that case are not applicable. The action to recover an unauthorized post-petition transfer is a matter concerning the administration of the estate and therefore is a core proceeding arising under section 157. Further, this case does not involve a counterclaim by the estate against a person filing a claim against the estate nor does the action raise a state law question. Thus, this case clearly does not trigger the holding in Stern. However, even if the action to recover an unauthorized post-petition transfer was a counterclaim under Stern, the counterclaim stemmed from the bankruptcy itself and thus the bankruptcy court’s adjudication of that claim is constitutional. In the alternative, if the Court determine that this action to recover an unauthorized post-petition transfer is not constitutional pursuant to sections 549 and 550, this
action falls within the public rights exception to Article III and therefore the bankruptcy court had authority to adjudicate the claim.

For these reasons, the Court should reverse the decision of the Thirteenth Circuit Court of Appeals and hold both that a Chapter 11 trustee may avoid unauthorized post-petition transfers of cash collateral to good faith vendors and that the Bankruptcy Court was constitutionally allowed, under Article III, to hear and enter a final judgment in the case at bar.
ARGUMENT

In a civil appeal, this Court employs a *de novo* review of conclusions of law and utilizes a ‘clearly erroneous’ standard when reviewing findings of fact. *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 948 (1995). Both issues before the Court today are questions of pure interpretation of a federal statute. Thus, this Court applies a *de novo* standard of review to the conclusions of the courts below.

I. A chapter 11 bankruptcy trustee may recover funds transferred to a good faith transferee in the ordinary course of business regardless of an exchange of reasonably equivalent value.

A fundamental objective of the Bankruptcy Code is equal distribution of the estate among creditors. *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 653 (2006). However, this goal may be frustrated by creditors seizing property of the estate or debtors transferring property post-petition. 2 Collier on Bankruptcy § 549 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011). An apparent analogy may be drawn between section 549 and the automatic stay within the Bankruptcy Code. *See In re Ford*, 296 B.R. 537, 548 (Bank. N.D. Ga. 2003). Both provisions are essential to the equitable distribution of estate assets during a bankruptcy proceeding. *40235 Washington St. Corp. v. Lusardi*, 329 F.3d 1076, 1081 (9th Cir. 2003). The stay is designed to protect debtors from creditors while they attempt to regain their financial footing. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). In contrast, section 549 exists to protect creditors against a debtor’s unauthorized transfer of estate property. *Id.* at 574.

Sections 549 and 550 authorize a trustee to avoid unauthorized post-petition transfers and recover the transferred property back into the estate. 11 U.S.C. §§ 549, 550. Section 549 states that a trustee may avoid a transfer of property of the estate if the transfer occurs after the commencement of the case and is not authorized under title 11 or by the court. 11 U.S.C.
§ 549(a). Under this section, the trustee must show that an unauthorized transfer occurred, that the property transferred was property of the estate, and the transfer occurred post-petition. See, e.g., In re Allen, 217 B.R. 952, 955 (Bankr. M.D. Fla. 1998). Once a court finds a transfer avoidable, section 550(a) allows the trustee to recover the property from the initial transferee. See 11 U.S.C. § 550(a).

The transfer of cash collateral may be authorized under section 363. In re Delco, 599 F.3d 1255, 1259 (11th Cir. 2010). Section 363 states that post-petition use of cash collateral is prohibited, unless after notice and a hearing, the secured party or the bankruptcy court authorizes the use of the cash collateral. 11 U.S.C. § 363(c)(2). There exists an inherent tension between a debtor's need to use cash to continue operations and a secured creditor's right to preserve security interests in the debtor's cash proceeds. In re Proalert, LLC., 314 B.R. 436, 441 (B.A.P. 9th Cir. 2004). After showing the secured creditor’s interest is adequately protected, section 363(c)(2) balances this tension by allowing the debtor to use the cash collateral after procuring either the secured creditor or the bankruptcy court’s permission. Id; see also 11 U.S.C. § 363(e) (“[O]n request of an entity that has an interest in property ... proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.”).

The basis for the Vendor’s argument rests on this Court fashioning an equitable exception to the Trustee’s avoidance powers under section 549. See 11 U.S.C. § 549. Adapting this view would require the Court to read an ambiguity into the Bankruptcy Code that does not exist. Such an untenable reading is directly at odds with the plain meaning of sections 363, 549, 550, and the underlying purpose of the Bankruptcy Code to prevent diminution of the estate and equally distribute assets to creditors. See id.
A. The plain language of section 549 does not provide an exception for a good faith transferee providing reasonably equivalent value.

Interpreting the Bankruptcy Code begins “where all such inquiries must begin: with the language of the statute itself.” Ransom v. FIA Card Serv., N.A., 131 S. Ct. 716, 723 (2011). Where the statute is clear and the facts are clear, the statute must be interpreted according to its terms. Lamie v. United States, 540 U.S. 526, 534 (2004). “The plain meaning of legislation should be conclusive, except in the ‘rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.’” United States v. Ron Enters., Inc., 489 U.S. 235, 242 (1989). Under the plain language of section 549, it is immaterial that a vendor was acting in good faith, was an innocent vendor, or that the Bank’s cash collateral position was actually enhanced. See 11 U.S.C. § 549. If the meaning of the statute is clear, whereby no ambiguity exists, then no further inquiry is required or warranted. Dodd v. United States, 545 U.S. 353, 357 (2005). Reading the plain language of sections 549(a) and 550(a), the unauthorized transfer of cash collateral may be avoided and recovered from a vendor, regardless of whether the transfer is harmless or the vendor is innocent. In re Delco Oil, Inc., 599 F. 3d 1255, 1263 (11th Cir. 2010).

1. The Debtor’s transfer was not authorized under the Bankruptcy Code nor is there an applicable statutory exception allowing the transfer.

Section 363(c)(2) prohibits the debtor’s use of cash collateral unless the Court approves, or each entity with an interest in the cash collateral consents to the use. In re 848 Brickell Ltd., 243 B.R. 142, 146 n.1 (Bankr. S.D. Fla. 1998) (citing that cash generated by a debtor was secured creditor’s cash collateral, and the trustee was prohibited from spending cash absent secured creditor’s consent). Because a creditor does not need to obtain an order forbidding the use of cash collateral under section 363(c), such provisions are self-effectuating. In re A-1
Specialty Gasolines, Inc., 246 B.R. 445, 450 (Bankr. S.D. Fla. 2000). Thus, unless the court has affirmatively stated that the cash collateral may be used in a certain manner, or creditors with an interest in the transferred property consent to the use of the cash collateral, the post-petition transfer to a vendor is not authorized under the Bankruptcy Code.

The argument that a transferee provided equivalent value only applies as an exception to the trustee’s avoidance power in the context of an involuntary case. 11 U.S.C. § 549(b).

Moreover, good faith and innocent transferee exceptions only apply to the transfer of an interest in real property. 11 U.S.C. § 549(c). The present case involves a transfer of cash during a voluntary case and is not an interest in real property during a voluntary case. R. at 4. Thus the exceptions mentioned above are not applicable.

2. **Section 550(a) permits the recovery of an unauthorized post-petition transfer of cash collateral that is avoidable under Section 549(a).**

In the present case, the Bank never consented to the use of its cash collateral, nor did the bankruptcy court authorize the Debtor’s use of any cash collateral beyond $1.5 million. R. at 4. Given that section 549 renders the Debtor’s transfer to the Vendor avoidable, the Trustee “may recover, for the benefit of the estate, the property transferred ….” 11 U.S.C. § 550(a). Without exception, case law holds that an unauthorized transfer of cash collateral may be recovered under section 550(a) when the court avoids the transfer.

In *In re Countryside Manor, Inc.*, a principal had two companies, one of which was a chapter 11 debtor. 239 B.R. 443, 445 (Bankr. D. Conn. 1999). There, a vendor sold parts that were delivered to the non-debtor company but were paid for by the debtor company. *Id.* The debtor company was authorized to use the cash collateral pursuant to a specified budget. *Id.* However, the parts sold by the vendor were not included in that budget. *Id.* The trustee brought an adversary proceeding to avoid the unauthorized post-petition transfer made to purchase the
parts. *Id.* at 444. The court granted summary judgment on the trustee’s claim that unauthorized transfers of cash collateral were avoidable under section 549(a) and therefore recoverable under section 550(a). *Id.* at 447. The court noted that the vendor’s good faith and ignorance of the unauthorized transfer did not constitute a defense to the trustee’s avoidance power. *Id.*

The Eleventh Circuit relied on *Countryside Manor* when it affirmed an order requiring a vendor to return money to the estate.1 In *In re Delco Oil, Inc.*, a vendor supplied roughly $2 million in goods, post-petition, to a chapter 11 debtor that distributed fuel and owned gas stations. *Delco*, 599 F. 3d at 1257 (11th Cir. 2010). The vendor was paid through a series of payments in the ordinary course of business for those goods. *Id.* However, the debtor was not authorized to use the cash collateral under section 363(c)(2). *Id.* Due to this lack of authorization, the Bankruptcy Court ordered the vendor to return the money to the estate. *Id.* The vendor appealed twice, and both the District Court and the Eleventh Circuit affirmed. *Id.* The court rejected the vendor’s argument that there should be an equitable exception to section 549(a) for harmless error, innocent vendors, or equivalent value and avoided the transfer under a

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1 At least one commentator has incorrectly argued that the *Delco* court falsely relied on *Countryside*. See Jonathan Friedland & Bill Schwartz, *Punishing the Innocent: Lessons from Delco Oil*, Am. Bankr. Inst. J., May 2010, at 1, 89. (“With all due respect to the Eleventh Circuit's reading, that is simply not what the *Countryside* court said. Rather, the *Countryside* court stated: ‘The defendant argues that [principal] involvement with both [non-debtor company] and the debtor raises the possibility that the parts produced by the defendant for [the non-debtor company] were actually for the use and benefit of the debtor, and that, if so, the transfer may have occurred in the “ordinary course of business,” … The defendant, however, provides no evidence sufficient to raise a genuine issue of fact with regard to these conjectures.’” It seems pretty clear that the *Countryside* court found that there was no evidence to support an “ordinary course” defense and so did not reach the legal issue of whether there is such a defense. Moreover, the facts in *Countryside* were different than in *Delco*: *Countryside* involved the owner of two businesses, one of which was in bankruptcy and one which was not; the business in bankruptcy used its cash collateral to pay for goods received by the nondebtor.”). Friedland and Schwartz, however, while correct that the *Countryside* court did not reach this legal conclusion, overlook the *Countryside* court’s dicta, noted above, concerning what their conclusion would be:

“that the [vendor]…received the checks for value, in good faith and without knowledge of the voidability of the transfers, do not represent a defense to the [trustee’s avoidance]…These defenses do not apply to avoided transfers under § 550(a).”


The conclusion within this dicta is the legal conclusion reached by the *Delco* court as persuaded by the *Countryside* dicta. *Delco*, 599 F.3d at 1263 (holding that there is no “ordinary course” or “innocent vendor” defense to § 549(a)).
plain reading of the Code. *Id.* at 1262–63.

Other courts support the previously discussed position, though not expressly. Courts have long recognized that unauthorized post-petition transfers of a lender’s cash collateral may be avoided under section 549. *In re Knudson*, 929 F.2d 1280 (8th Cir. 1991) (where the court’s explicit authorization of the debtors’ use of cash collateral was held to defeat the trustee’s subsequent 549 claim); *see also In re Wiston XXIV, Ltd.*, 153 B.R. 322, 324 (Bankr. D. Kan. 1993) (court noted that it had previously found that post-petition transfers of lender’s cash collateral were unauthorized and therefore possibly violated section 549). Thus as in *Delco* and *Countryside*, section 550(a) permits the Trustee to recover the unauthorized payment of $150,000 to the Vendor. *Delco*, 599 F.3d at 1263; *Countryside*, 239 B.R. at 447.

**B. Should this Court find Section 549(a) ambiguous, statutory interpretation and bankruptcy policy demonstrate Congress’ intent to abstain from creating an exception for harmless transfers to a good faith vendor.**

Here, the Appellate Court held that the Bankruptcy Code permits a transfer of cash collateral to be both authorized and unauthorized at the same time. R. at 9. The Appellate Court found this ambiguity not in the Bankruptcy Code, but in the UCC. R. at 9. The Court noted that UCC section 9-332(b) provides a good faith “transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ....” *Id.; see UCC 9–332(b)(2006).* Accordingly, the Court noted that while the Debtor’s funds constituted cash collateral before the transaction, the act of transferring the funds to the Vendor stripped the Bank’s lien. R. at 9. Thus, at the instant of the Vendor’s receipt of the funds, they were no longer cash collateral, and therefore not subject to the prohibition against an unauthorized transfer of cash collateral under section 363(c)(2). R. at 9. The Court held this to be an anomalous ambiguity, in that a transfer could be both authorized and unauthorized. R. at 9–10.
To resolve this ambiguity, the Appellate Court took interpretive license to fashion an equitable remedy for the Vendor, holding that although the Debtor’s transfer to the Vendor was not authorized under section 363(c)(2), the transfer was authorized under sections 363(c)(1) and 1108. See R. at 9. If this Court agrees that the statutory interplay between sections 363, 1108, and UCC section 9-332(b) creates an ambiguity, this Court must engage in statutory interpretation to determine congressional intent. *Dewsnap v. Timm*, 502 U.S. 410, 419–20 (1992). Congressional intent is clarified through the application of this Court’s long standing canons of statutory construction. *In re Windsor on the River Assocs.*, 7 F. 3d 127, 130 (8th Cir. 1993).

1. The Appellate Court’s interpretation fails to read the statute as a whole.

When resolving an ambiguity, a court looks not only to the specific statutory language in question but also to the statute as a whole. *United States v. Atl. Research Corp.*, 551 U.S. 128, 135 (2007). The Appellate Court’s reliance on the UCC to disaggregate the transfer is not consistent with the statutory definitions provided by the Bankruptcy Code. See 11 U.S.C. § 101(54) (2006). Where a statute states the meaning of a term, all other meanings not stated are excluded. *Johns-Manville Corp. v. U.S.*, 855 F.2d 1556, 1559 (Fed. Cir. 1988). If Congress intentionally crafted a definition for the interpretation of a term, it is not the function of the court to subvert that effort. *Consumers Union v. Heimmann*, 589 F.2d 531, 533 (D.C. Cir. 1978). Section 101(54) defines transfer to mean, “each mode … of disposing of or parting with … property.” 11 U.S.C. § 101 (54). By employing the term ‘transfer,’ section 549 of the Bankruptcy Code requires that either the Code itself or a court order authorize the Debtor to part with the subject property. R. at 17 (Judge Solow, dissenting). Therefore in this case, provided Congress’ definition, the Trustee is permitted to avoid and recover from the Vendor because the Debtor was not authorized to transfer the funds to anyone post-petition without the permission of
the court or the Bank. R. at 4. In Delco, the court even agreed with the Vendor that under the
UCC, the creditor did not have a security interest after the debtor transferred the funds. Delco,
599 F.3d at 1260. However, the court noted:

“… that is beside the point. To ascertain whether Debtor could lawfully transfer the funds
in its deposit accounts to a third party without permission from [the Creditor] or the
bankruptcy court, we first determine whether those funds were cash collateral. To
determine whether the funds constitute cash collateral, we examine the status of the funds
while they were in Debtor’s hands before the disputed transfer, [and] … not at the
moment after the funds left Debtor’s control.”

Id. at 1260. Further, the Appellate Court did not consider the UCC’s own guidelines for
construction. These guidelines are clear that when a conflict arises between the Bankruptcy
Code and the UCC, federal bankruptcy law pre-empts. See U.C.C. § 1–103(b)(2004) (“Unless
displaced by the particular provisions of [the Uniform Commercial Code], the principles of law
and equity, including … bankruptcy … supplement its provisions.”). The official comment to
this section states that “interpretive principles addressing the interrelationship between statutes
may lead the court to conclude that the other statute is controlling, even though it conflicts with
the Uniform Commercial Code.” Id; U.C.C. § 1–103(b) cmt. 3 (2004). Thus, the UCC’s own
construction guidelines mandate that Bankruptcy law control in the present case.

While the protection of an innocent vendor is a fundamental goal of the UCC, that goal
may not usurp Congress’s authority to enact uniform bankruptcy laws. The 1978 Bankruptcy
Act was, in part, a response to state developments in Article 9 of the UCC. See G. Ray Warner,
The Anti-Bankruptcy Act: Revised Article 9 and Bankruptcy, 9 Am. Bankr. Inst. L. Rev. 3, 29
(2001) (“It is clear that the 1978 Code was drafted in response to the growth of secured credit.”).
With mounting tension between The Bankruptcy Act and the UCC, this Court commented
merely one year later that state law is suspended to the extent it conflicts with federal bankruptcy
law. 2 *Butner v. U.S*, 440 U.S. 48, 58 n. 9 (1979). Thus, in overlooking the UCC’s own guidelines for construction in section 1–103, the Appellate Court also overlooked this Court’s guidance on the matter.3

The Appellate Court invoked its equitable power to render the interpretation. However, it never cited to section 105 as the source of its equitable power. See R. at 18 (Judge Solow, dissenting). Section 105(a) of the Bankruptcy Code gives the court equitable power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a) (2010). Courts have long recognized that “Section 105(a) limits the bankruptcy court's equitable powers, which ‘must and can only be exercised within the confines of the Bankruptcy Code.’ ” *FDIC v. Colonial Realty Co.*, 966 F.2d 57, 59 (2d Cir.1992) (quoting *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988)). Section 105 does not “authorize bankruptcy courts to create substantive rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity.” *U.S. v. Sutton*, 786 F.2d 1305, 1308 (5th Cir.1986); *In re Dairy Mart Convenience Stores, Inc.*, 351 F.3d 86, 91-92 (2d Cir. 2003). The Bankruptcy Code’s prohibition of the use of cash collateral in section 363(c)(2) is a limitation on the court’s equitable powers. *See In re WBQ P'ship*, 189 B.R. 97, 110 (Bankr. E.D.

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2 The *Butner Court* commented, “The Federal Constitution, Article I, § 8, gives Congress the power to establish uniform laws on the subject of bankruptcy throughout the United States. In view of this grant of authority to the Congress it has been settled from an early date that state laws to the extent that they conflict with the laws of Congress, enacted under its constitutional authority, on the subject of bankruptcies are suspended. While this is true, state laws are thus suspended only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress.”

3 Petitioner recognizes that were the conflict between the UCC and the petitioner’s reading of section 549 merely an issue of defined property rights, then the appellate court would be correct that the UCC controls here, for Congress specifically left the defining of property rights and liens to the states in the 1978 Act. *Butner v. United States*, 440 U.S. 48, 55 (1979). However, this conflict does not just revolve around the property rights of a transferee. Instead, the conflict is one of competing policies between state and federal law. Protecting the innocent transferee is a fundamental goal of UCC section 332(b) that conflicts with the overall purpose of the bankruptcy code to distribute the estate among creditors. Commentators point to this distinction between a conflict of property rights and inapposite bankruptcy policy as often dispositive of whether federal bankruptcy or state law should control. See G. Ray Warner, *The Anti-Bankruptcy Act: Revised Article 9 and Bankruptcy*, 9 Am. Bankr. Inst. L. Rev. 3, 5 (2001). ("Bankruptcy is redistributional and both can and should alter non-bankruptcy rights where necessary to achieve policies such as distributional fairness.").
Va. 1995) (Holding that section 363(f) is a confine for purposes of section 105.). Congress evidently intended the court to exercise its equitable powers within the confines of cash collateral transferred with the permission of the court or the secured creditor. *Paleologos v. Nickless*, No. 97–1903, WL 45460, at *1 (1st Cir. Jan. 23, 1998) (“Although the avoidance provisions of 11 U.S.C. § 549 may sometimes operate in a manner which appears harsh, bankruptcy courts must exercise their equitable powers within the confines of the Bankruptcy Code.”) Thus, the Appellate Court overstepped this confine in its interpretation without giving effect to the very provision which gives the court its equitable power.

The Appellate Court pointed to *In re Harwell* for the proposition that even the Eleventh Circuit, which “claimed the lack of power to protect an innocent transferee in Delco, has recognized that the equitable principles of bankruptcy require creation of equitable exceptions.” R. at 1; *see* 628 F. 3d 1312, 1322–23 (11th Cir. 2010). This proposition is incorrect for two reasons. First, unlike Delco, the Harwell Court did not fashion an exception. Rather, Harwell designed a test for what constitutes an “initial transferee.” *Id.*; *see* 11 U.S.C. § 550(a)(1) (the trustee may recover an avoided transfer from the initial trustee). Secondly, the bankruptcy code does not define initial transferee, and legislative history is silent on its meaning. *Harwell*, 628 F.3d at 1317. Given that Congress gave no guidance on the meaning of initial transferee, the court was authorized to issue a “judgment that is necessary or appropriate to carry out the provisions of this title.” *See* 11. U.S.C. § 105(a). Harwell held that “good faith is a requirement under this Circuit's mere conduit or control test.” 628 F.3d at 1323.

2. **Section 363(c)(2) is a specific exception to the debtor’s right to use property of the estate in the ordinary course of business.**

The Appellate Court held that the Debtor’s transfer was authorized because section 363(c)(1) permits a debtor-in-possession to enter into transactions in the ordinary course of
business. R. at 8–9. However, it has long been held that specific statutory provisions should control more general provisions. *Bloate v. United States*, 130 S. Ct. 1345, 1354 (2010).

Generally, section 363(c)(1) allows a debtor-in-possession to “enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing ….” 11 U.S.C. § 363(c)(1). However, subsection (c)(2) specifically forbids a debtor-in-possession from using cash collateral under (c)(1) unless secured creditors consent or the court authorizes such use. 11 U.S.C. § 363(c)(1). Here, Congress’s prohibition on the use of cash collateral in (c)(2), is a specific limitation on the general provision in (c)(1). Thus, the Debtor was not authorized to transfer the cash collateral even though the transfer occurred in the ordinary course of business.

3. *An equitable remedy should not be implied when Congress abstained from fashioning the exception.*

Congress provided exceptions to a trustee’s avoidance in the context of involuntary petitions and real property. In section 549, Congress allowed for the avoidance of unauthorized transfers, but specifically carved out an exception for a transferee of value within subsection (b). 11 U.S.C. § 549(b). However, this specific carve out is limited to transactions occurring between the filing of an involuntary petition in bankruptcy and the entry of the order for relief. *See id.* Congress also specifically carved out an exception for good faith, innocent transferees for transactions in subsection (c), but only in the context of real property. 11 U.S.C. § 549(c).

When Congress provides exceptions in a statute, courts do not have authority to create others. Instead, “the proper inference is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth.” *U.S. v. Johnson*, 529 U.S. 53, 58 (2000) (the fundamental canon of construction, *expression unius est exclusion alterius*). Thus, the proper inference is that Congress chose not to accept initial transferees of personal property subsequent to a voluntary petition.
If Congress had intended to except the transfer in this case, it certainly knew how to do so. *See Delco*, 628 F.3d at 1263. Congress has passed multiple exceptions for good faith and harmless transfers, but in different contexts. Under section 547, “new value” and “ordinary course” are affirmative defenses to a preference claim. 11 U.S.C. § 547(c)(2) & (4). Similarly, a trustee may avoid a fraudulent transfer when the debtor “received less than equivalent value.” 11 U.S.C. § 548(a)(2). Congress has also stated that a transferee’s giving of value may defeat certain bankruptcy avoidance claims, but this defense is only in the context of preferences and fraudulent transfers.⁴ *See id.* 11 U.S.C. § 547.

From the time Congress drafted the first Bankruptcy Code provisions addressing post-petition transfers, Congress has abstained from providing an exception applicable to the Vendor in this case. *See 2 Collier on Bankruptcy* § 549 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011). Between the 1938 Chandler Act and the 2005 BAPCPA, Congress has never codified the exception which the appellate court now takes license to craft. *Id.* Prior to the 1938 Act, there was no statutory law with respect to post-petition transactions in bankruptcy cases. *Id.* at [1]. The judges’ right to rule on post-petition transfers, based on equity, was supplanted by the 1938 Act with an exception that only applied to involuntary cases. *Id.* In 1978 and 1984, Congress only added exceptions for certain transferees of real property. *Id.* at [2] & [3]. After this legislation, the only additional amendments came in BAPCPA by amending the real property

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⁴ The appellate court’s dissent rightly noted that “sections 547 and 548 serve different purposes” than 549, and thus warrant different exceptions. *R.* at 19. Sections 547 and 548 apply to pre-petition transfers. 11 U.S.C. §§ 547 & 548. Hence, they are aimed at recovering assets before the court has jurisdiction over them, when a vendor may likely not be aware of a pending bankruptcy filing, just as in the involuntary gap exception to section 549. *See Vern Countryman, The Concept of a Voidable Preference in Bankruptcy*, 38 Vand. L. Rev. 713, 748 & 778 (1985). (“The function of the preference concept is to avoid prebankruptcy transfers that distort the bankruptcy policy of distribution. Transfers that do distort this policy do so without regard to the state of mind of either the debtor or the preferred creditor.”) Conversely, section 549 applies to transfers of assets for which the court has exclusive jurisdiction and where the transferee is likely to know of the filing. Section 549 serves the purpose then of enforcing the bankruptcy court’s authority to supervise and control the bankruptcy estate. *In re Straightline Inv., Inc.*, 525 F.3d 870, 879 (9th Cir. 2008).
exception to include all good faith lenders taking a lien on property and carving out all real property exemptions from the automatic stay. *Id.* at [4]. This legislative history clearly indicates the Appellate Court took too broad of an interpretative license by crafting an exemption that Congress has abstained from codifying for the last 74 years. *See id.*

C. The Appellate Court’s interpretation is inconsistent with Bankruptcy Code policy.

The goal of a chapter 11 reorganization is to maximize creditor returns while permitting the debtor a fresh start. *Florida Dep’t. of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 33 (2008). As the appellate court rightly noted, this fundamental goal requires the reorganization of viable businesses. R. at 9. It also requires that a court preserve and equally distribute the estate. *Piccadilly*, 554 U.S. at 33. The appellate court’s reading defeats these goals and is at odds with recent developments in bankruptcy policy.

1. The Appellate Court’s equitable exception renders an absurd result.

Interpreting a statute in a manner that produces an absurd result should be avoided if alternative interpretations consistent with legislative purpose are available. *Griffing v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). As noted, section 363(c)(2) balances the tension between the debtor’s need to run a business and the creditor’s need to protect a secured interest. *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984). The appellate court’s interpretation tips this balance by allowing a debtor to circumvent section 362(c)(2)’s prohibition on the use of cash collateral to serve business needs. *Delco*, 599 F.3d at 1260–61. Thus a debtor could distribute cash proceeds subject to a security interest knowing that once distributed, the creditor’s lien would be stripped according to the UCC, and would no longer be defined as cash collateral under 363(a). *Id.* This is a patently absurd result that abrogates Congress’s clear intent to protect secured creditors’ interests. *See H.R. Rep. No. 95-595, at 181–83 (1978), reprinted in* 1978 U.S.C.C.A.N 5787 (“*HR 8200 … provides protection
for both the debtor, in the operation of the business, and the secured creditor, in his interest in the property used …. This is protection that secured creditors do not have today. The bill as written is a significant boon to secured lenders.”).

Here, the Appellate Court held that permitting the Trustee to recover the Debtor’s unauthorized transfer would render an absurd result by undermining the fundamental goal of chapter 11 to reorganize viable businesses. R. at 9. Admittedly, the Delco court’s interpretation mandates caution for vendors supplying goods or services to a debtor in possession. However, this does not allow Congress’ explicit goal of protecting the secured creditor’s interest to be completely circumvented. Delco, 599 F.3d at 1261. Thus, “the Bankruptcy Court cannot allow the secured interest to be threatened by improper use of cash proceeds.” In re George Ruggiere Chrysler-Plymouth, Inc., 727 F.2d 1017, 1019 (11th Cir. 1984).

The Appellate Court’s concern for “sophisticated tracing” by a vendor appears overstated given that it is the creditor’s burden to prove that transferred funds are cash collateral. See R. at 9. Vendors need only take a few simple steps to protect themselves from the appellate court’s alleged absurd result. See Shane G. Ramsey, Avoiding the Pitfalls of in Re Delco Oil, Am. Bankr. Inst. J., April 2011, at 62, 63. First, vendors should monitor the credit of all companies with which they are doing business to determine whether the business has filed for bankruptcy. Id at 62. Secondly, once a vendor is aware that it is receiving payments for products from a chapter 11 debtor, the vendor must confirm whether the payments constitute cash collateral. Id. Third, vendors should verify that the payments are within the authorized budget approved by the court or the secured creditor. Id. If the debtor cannot verify payments are authorized, a vendor should not enter into a transaction with the debtor. Id at 63. Thus, if the Vendor in this case had demonstrated due diligence when agreeing to bake an unprecedented $250,000 cake for the
Debtor, the Vendor would have known that a portion of the payment through cash collateral was not authorized and therefore avoidable.

2. The conflict between sections 502 and 503 should be resolved to give the Vendor an administrative claim.

As noted by the Appellate Court, there is an apparent conflict between Sections 502(h) and 503(b). R. at 11. Here, the Trustee sought recovery through section 550. R. at 11. Section 502(h) provides: “A claim arising from the recovery of property under section … 550 … of this title shall be determined, and shall be allowed … the same as if such claim had arisen before the date of the filing of the petition.” 11 U.S.C. § 502(h). This would give a creditor the status of an unsecured creditor. See id. On the other hand, section 503(b) provides that any actual, necessary costs and expenses of preserving the estate are administrative expenses entitled to priority treatment. 11 U.S.C. § 503(b).

Instead of crafting an exception to section 549, the Appellate Court should have given the Vendor an administrative claim under section 503(b) for two reasons. First, a conflict should be resolved within the confines of the code itself. See Dewsnup v. Timm, 502 U.S. 410 (1992) (resolving an ambiguity between sections 506(a) & (d) within the confines of the Code).

Secondly, the policy behind 503(b) is to encourage vendors to do business with distressed vendors by affording them special protection. In re Jartran, 732 F.2d 584 (7th Cir. 1984).

However, the Code also seeks equal treatment among creditors. Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co., 547 U.S. 651, 653 (2006). In this case, there is no question that the transfer is actual and necessary for purposes of 503(b). See Reading Co. v. Brown, 391 U.S. 471 (1968) (holding ‘actual and necessary’ should be construed broadly). If the transfer were given an exception in this case, no conflict would exist here. Unfortunately, the absurd result of a debtor
circumventing the equal treatment of creditors would remain. By resolving this conflict through awarding the Vendor an administrative claim, both policy objectives would be satisfied.

3. The BAPCPA indicates a Congressional shift in favor of a secured creditor’s rights.

The Appellate Court’s equitable exception is inconsistent with the shift in Bankruptcy Policy following the BAPCPA. See Ransom v. FIA Card Services, 131 S. Ct. 716 (2011). Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) to correct perceived abuses of the bankruptcy system. Id. at 721. One of Congress’s core purposes behind the Act was to protect the interest of creditors. Id. at 729. Legislative history behind the act states:

With respect to the interests of creditors, the proposed reforms respond to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability, the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system. [emphasis added].

H.R. Rep. No. 109–31(I), at 2 (2005), reprinted in 2005 U.S.C.C.A.N 88. This Court has noted when interpreting a post-BAPCPA ambiguity, that the interest of the creditor was of prime concern for Congress. Ransom, 131 S. Ct. at 729. (the core purpose is “ensuring that debtors devote their full disposable income to repaying creditors.”). Allowing a debtor to completely circumvent the need for authorizing the transfer of cash collateral would not only diminish the goal Congress sought, but also create a loophole for abuse of the system. Id.

II. Article III of the Constitution permits a bankruptcy judge to hear and determine an action to recover unauthorized post-petition transfers pursuant to 11 U.S.C. §§ 549 and 550.

With Congress’ continued reluctance to grant bankruptcy judges the same life tenure as Article III judges, the jurisdictional hoops that relate to bankruptcy proceedings are a bit of a
headache.\textsuperscript{5} Congress attempted to grant broad Article III authority to bankruptcy courts in the Bankruptcy Act of 1978. 28 U.S.C. § 1471 (1976) (repealed 1982). However this Act was struck down in the \textit{Marathon} decision in 1982. \textit{N. Pipeline Construction Co. v. Marathon Pipe Line Co.}, 102 S. Ct. 2858 (1982) (holding that “28 U.S.C. §1471 has impermissibly removed most, if not all, of “the essential attributes of the judicial power” from the Art. III district court, and has vested those attributes in a non-Art. III adjunct.”). After this decision, Congress restructured the Bankruptcy Code to allow broad jurisdiction by bankruptcy courts. However, this jurisdiction would be overseen by a sanctioned Article III district court in an attempt to align the bankruptcy system with the Constitution. \textit{See} 28 U.S.C. § 1334(a); \textit{see also} U.S. Const., Art. III § 1. Thus, bankruptcy judges may hear cases through a referral by the district court. 28 U.S.C. § 157(a). Every district court has such a referral order in place. 28 U.S.C. 157(d)–(e); 1 Collier on Bankruptcy § 1.01[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011) (stating that “this reference can be withdrawn, and matter heard by a district judge with life tenure, however, for cause, and must be withdrawn in certain matters.”). Bankruptcy law is a federal law located in Title 11 of the United States Code. Although the Bankruptcy provisions are located in Title 11, the statutory jurisdiction requirements are located in Title 28 of the United States Code. 28 U.S.C. § 1334. Section 1334 grants district courts original, but not exclusive, jurisdiction over matters that arise under Title 11 or arise in a case under Title 11 of the Code. \textit{Id.} Bankruptcy proceedings that arise under Title 11 or arise in a Title 11 cases are

\textsuperscript{5} Article III of the United States Constitution requires federal judges to receive lifetime tenure as well as compensation that must never decrease while they are sitting. This provision was instituted to keep judges from falling under outside influences or being concerned that a certain ruling may cause them to lose their place on the bench. U.S. Const, Art. III § 1; 1 Collier on Bankruptcy § 3.01[1] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011).
known as core proceedings.\(^6\) \textit{Stern v. Marshall}, 131 S. Ct. 2594, 2603 (2011); 28 U.S.C. § 157(a). Section 157(b)(2) defines core proceedings as and to include:

matters concerning the administration of the estate, allowance or disallowance of claims against the estate or exemptions from property of the estate, counterclaims by the estate against persons filing claims against the estate, orders in respect to obtaining credit, orders to turn over property of the estate, proceedings to determine, avoid, or recover preferences, motions to terminate, annul, or modify the automatic stay, proceedings to determine, avoid, or recover fraudulent conveyances, determinations as to the dischargeability of particular debts, objections to discharges, determinations of the validity, extent, or priority of liens, confirmations of plans, orders approving the use or lease of property, including the use of cash collateral, orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate, other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims, and recognition of foreign proceedings and other matters under chapter 15 of Title 11. 28 U.S.C. § 157 (b)(2).

Although bankruptcy courts are courts of limited subject matter jurisdiction, Congress has given these courts the authority to enter final judgments\(^7\) in cases that involve core proceedings as defined above. 28 U.S.C. § 157(b). When a bankruptcy court is given the ability to enter a final judgment, the proceeding will follow the standard procedural steps of the federal court system. 1 Collier on Bankruptcy § 3.01[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2011). After a final judgment has been entered by a bankruptcy court, that final judgment is appealable by the parties to the district court under \textit{de novo} standards of review. \textit{Stern}, 131 S. Ct. at 2604.

The case at hand is brought by a the Trustee to recover a $150,000 transfer made by the Debtor to an outside Vender as an unauthorized post-petition transfer under sections 549(a) and 550(a)(1). R. at 6. Thus this case involves a core proceeding arising in, or under, Title 11 and is

\(^{6}\) Although there is another category of proceedings known as those relating to a bankruptcy, this category is not triggered by the facts at hand. Thus, to respect this Court’s valuable time, we will not discuss proceedings that are deemed to be “relating to” a case under Title 11.
\(^{7}\) With one minor exception outlined in \textit{Stern v. Marshall} below.
properly classified as a core proceeding and not a matter that is simply related to a case brought under Title 11. 28 U.S.C. § 157(b)(2). While the Vendor may argue that this is only a related matter, this case is not one that includes a non-core matter such as a debtor’s claim against a party who is not a creditor, and thus the claim in this case could not exist outside of the bankruptcy case. *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 & n. 8 (1995). Here, the Trustee’s only option for recovery against the Vendor is through an action brought within the bankruptcy proceeding. The action to recover the unauthorized post-petition transfer is not a claim independent to the Debtor but instead a claim by the Trustee on behalf of the estate. R. at 6. Thus, this action is purely a creation of the Bankruptcy Code and does not otherwise exist outside of Title 11. *In Re Innovative Commun. Corp.*, 2011 Bankr. LEXIS 3040 at 12–13 (when an action is the result of an action purely created by the bankruptcy code, that action is considered a core matter and thus a bankruptcy judge is able to enter a final judgment on the matter). The entire claim at hand is centered on the fact that the Debtor is in bankruptcy and proceeded to make a post-petition transfer of money from the bankruptcy estate that was not authorized. R. at 6. Thus, if the debtor were not in bankruptcy, the claim at issue would not exist. R. at 6.

As a passing matter, the issue of standing must be evaluated. Arguably, although this is a core proceeding, the Trustee must still have standing to bring this case before the bankruptcy court. *See In re Indian Capitol Distrib., Inc.*, 2011 WL 4711895, at *11 (Bankr. D.N.M. Oct. 5, 2011) (holding that the lack of injury deprives the estate of standing). Standing to sue is required for a case to be justiciable. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). In *In re Indian Capitol Distrib., Inc.* the trustee brought an adversary proceeding to recover funds under section 549. WL 4711895, at *2. The debtor had paid $97, 860.01 for gasoline. *Id.*
court held the trustee lacked standing, because no injury in fact existed given that the estate received the reasonably equivalent value of the funds in the form of gasoline. *Id.* In this case, however, the Debtor did not purchase a non-perishable commodity similar to that in *Indian Capitol*. Gasoline is a commodity of value, whereas a giant cake is not. Here, the estate cannot sell the cake, nor claim it to be an asset of value, to equally distribute among creditors. *See R.* at 17 (Dissent: “Had the Debtor first purchased a gold bar with cash collateral and then given the gold bar to the Vendor, we might have a case suitable for the majority’s analysis.”). The Debtor’s transfer diminished the estate and thus caused injury.

**A. The holding of Stern v. Marshall does not control the case at bar.**

*Stern v. Marshall* has sent bankruptcy courts into a jurisdiction dither trying to determine how broadly, or narrowly, to interpret the holding and the effect the holding will have on the courts jurisdictional authority. *See* Mark A. McDermott & George A. Zimmerman, *Chapter 11 Litigation After ‘Stern v. Marshall’*, New York Law Journal. In *Stern*, this Court was asked to determine if all types of counterclaims constitute core proceeding in which a bankruptcy court could enter a final judgment. *Stern*, 131 S. Ct. at 2602. However, the facts of *Stern*, are very unique and thus should not be interpreted so broadly as to group all counterclaims into the category of not being constitutionally decidable by a Bankruptcy Judge. *See id.* In that case, Vickie Marshall (‘Vickie’) filed for bankruptcy in the Central District of California. *Id.* at 2601. Vickie’s stepson, Pierce, filed a complaint in the bankruptcy proceeding, contending that Vickie had defamed him by inducing her lawyers to tell members of the press that he had engaged in fraud to gain control of his father’s assets. *Id; In re Marshall*, 600 F.3d 1037 (9th Cir. 2010) *cert. granted in part*, 131 S. Ct. 63, 177 L. Ed. 2d 1152 (U.S. 2010) and *aff’d sub nom. Stern v. Marshall*, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (U.S. 2011) *reh’g denied*, 132 S. Ct. 56, 180 L. Ed. 2d 924 (U.S. 2011). The complaint sought a declaration that Pierce’s defamation claim was not

Pierce subsequently filed a proof of claim for the defamation action seeking to recover damages for the claim from Vickie’s bankruptcy estate. Stern, 131 S. Ct. at 2601; see 28 U.S.C. § 501(a).

Vickie responded to Pierce’s complaint by filing a counterclaim for tortious interference with the inheritance she had expected from her late husband. Stern, 131 S. Ct. at 2601. Vickie alleged that her stepson had prevented her late husband from taking the legal steps necessary to provide her with her agreed inheritance. Id. By applying the 9th Circuit’s reasoning in Castlerock, the Bankruptcy Court concluded that Marshall’s tortious interference claim was in fact a core proceeding. Piombo Corp. v. Castlerock Props. (In re Castlerock Props.), 781 F.2d 159, 161–162 (9th Cir. 1986). Thus, by determining that the counterclaim was filed voluntarily after Pierce’s defamation claim, the court had the authority to enter a final judgment. Id. (holding that the adversary proceeding at issue was not a core proceeding because it was filed before the creditor filed its claim in the bankruptcy case); In re Marshall, 257 B.R. 35, 39 (Bankr. C.D. Cal. 2000) aff’d in part, vacated in part, rev’d in part, 264 B.R. 609 (C.D. Cal. 2001). On September 27, 2000, after a bench trial, the Bankruptcy Court issued a judgment on Vickie’s counterclaim in her favor, awarding Vickie over $400 million in compensatory damages and $25 million in punitive damages. In Re Marshall, 600 F.3d, 1037, 1045 (9th Cir. 2010) cert. granted in part, 131 S. Ct. 63 (2010) and aff’d sub nom., Stern v. Marshall, 131 S.Ct. 2594 (2011).

The District Court disagreed with the Bankruptcy Court and concluded that although Marshall’s counterclaim for tortious interference falls within the literal language of the statute, it would be unconstitutional to hold that any and all counterclaims are core. In Re Marshall, 264 B.R. 609, 629–30 (C.D. Cal. 2001); see also 28 U.S.C. § 157(b)(2)(C). The District Court concluded that a counterclaim should not be characterized as core when it is only somewhat
related to the claim against which it is asserted, and when the unique characteristics and context of the counterclaim place it outside of the normal type of counterclaims that customarily arise. *Id.* at 632. Because the District Court concluded that Vickie's counterclaim was not core, the court determined that it was required to treat the Bankruptcy Court's judgment as proposed rather than final and engage in an independent review of the record. *Id.* at 633.

The Court of Appeals reversed the District Court on a different ground, 392 F.3d at 1137, and this Court reversed the Court of Appeals on that issue. *Marshall v. Marshall*, 126 S.Ct. 1735 (2006). On remand, the Court of Appeals held that there is a two-step approach under which a bankruptcy judge can issue a final judgment in a proceeding that both “meets Congress' definition of a core proceeding and arises under or arises in Title 11.” *In re Marshall*, 600 F.3d at 1055. The Court of Appeals concluded that “a counterclaim under §157 (b)(2)(C) is a core proceeding ‘arising in a case under’ Title 11 only if the counterclaim is so closely related to a proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself.” *Id.* at 1058. The court ruled that Vickie's counterclaim did not meet that test. *Id.* at 1059.

This Court agreed, to an extent, with the Court of Appeals, holding that a bankruptcy court has no constitutional authority to enter a final judgment on a state law counterclaim not stemming from the bankruptcy itself or is not necessarily resolved in the claim allowance process. *Stern*, 131 S. Ct. at 2619. This proposition, that some counterclaims by the estate against persons filing claims against the estate may not be constitutionally determined by a bankruptcy court was surprising because it is contrary to traditional case law and the language of Congress. *Stern*, 131 S. Ct. at 2618; 28 U.S.C. § 157 (b)(2)(C).
Contrary to the holding of the Appellate Court below, the recent holding of Stern has no impact on the case at bar for three reasons. Primarily, the claim at issue is not the type of counterclaim core proceeding addressed in Stern and thus, the holding in Stern has no bearing. Secondly, even if the claim is a counterclaim similar to that addressed in Stern, it is not a state law counterclaim and does in fact stem from the bankruptcy. Finally, the public rights exception to Article III applies, giving the bankruptcy court the ability to hear and enter a final judgment.

1. The action to recover an unauthorized post-petition transfer is a matter concerning the administration of the estate and therefore is a core proceeding arising under section 157 (b)(2)(C).

The Appellate Court here applied Stern too broadly. R. at 11–12 (holding that it is “clear that the bankruptcy court lack[ed] authority to enter a final order in this matter under the principles announced in Stern v. Marshall.). As stated above, Stern stands for the proposition that Congress, in one very limited respect, exceeded its Constitutional authority. Stern, 131 S. Ct. at 2620. This Court held that the congressional grant of authority for bankruptcy courts to enter final judgments in core proceedings arising under Title 11, or arising in a case under Title 11, was unconstitutional only to the extent that it allowed bankruptcy courts to enter final judgments on state law counterclaims that are not resolved by a ruling on a creditor’s proof of claim. Id. This narrow holding has no impact on this case for two reasons: 1) the action at issue does not involve a counterclaim; and 2) the action at issue does not involve state law.

2. The action to recover unauthorized post-petition transfers does not involve a counterclaim by the estate against persons filing claims against the estate.

Looking to the language of section 157 (b)(c), it is evident that the Trustee’s claim does not fall into the subset of counterclaims discussed in Stern as being unconstitutionally decidable by this Court. See e.g. Stern v. Marshall, 131 S. Ct. 2594 (2011). Again, Stern was addressing a tortious interference counterclaim brought by Vickie, the debtor, in response to a claim against
her estate. *Stern*, 131 S. Ct. at 2601. Thus the claim in *Stern* mirrors the language of the statute stating that a core proceeding includes “counterclaims by the estate against persons filing the claims against the estate.” 28 U.S.C. § 157 (b)(2)(C). In *Stern*, there was a counterclaim (tortious interference) by Vickie’s estate against a person (Pierce), filing a claim against the estate (a claim seeking damages for defamation). *Stern*, 131 S. Ct. at 2601.

The action at issue does not mirror the language of the statute in *Stern*. Compare *Stern*, 131 S. Ct. at 2601, with R. at 5–6. In this case, there is a claim by the Trustee, on behalf of the estate, against an outside vendor to recover an unauthorized post-petition transfer of cash collateral. R. at 6. The most basic definition of a counterclaim is “a claim for relief asserted against an opposing party after an original claim has been made.” Black’s Law Dictionary, 402 (9th ed. 2009). This definition illustrates that in order to have a counterclaim there must first be a claim with which to counter. See id. The Vendor here asserted no claim against the estate, and thus the claim by the Trustee cannot possibly be a counterclaim. R. at 6. If the Vendor was instead a creditor to which the Debtor owed money prior to filing for bankruptcy, then this might be a different case.\(^8\) In that circumstance, the Vendor would be filing a claim against the estate, as a creditor, and the estate would be filing a counterclaim against the Vendor. However, these are not the facts before the Court today. R. at 2–6. The Vendor has filed no such claim against the estate, and thus the claim filed against the Vendor does not constitute a counterclaim. See Black’s Law Dictionary, 402 (9th ed. 2009).

Instead, this action is merely a matter concerning the administration of the estate under section 157(b)(2)(A) and does not fall within the narrow holding of *Stern*. See 131 S. Ct. at 2601; 28 U.S.C. § 157(b)(2)(A). Numerous other courts have examined this issue and held that

\(^8\) If the Vendor were a creditor, the Trustee would then be asserting a counterclaim in response to the Vendor's claim for money against the bankruptcy estate. This would mirror the fact pattern in *Stern*, where Vickie asserted a counterclaim in response to Pierce's claim for damages from the bankruptcy estate.
bankruptcy courts have the constitutional authority to enter final judgments on actions to recover unauthorized post-petition transfers. *Springel v. Prosser (In re Innovation Commun. Corp.)*, 2011 Bankr. LEXIS 3040, 12–13 (Bankr. D.V.I. Aug. 5, 2011); *In re Sitka Enters.*, 2011 U.S. Dist. LEXIS 90243 (D.P.R. Aug. 12, 2011). For example, the courts in *In re Innovative Communications Corporation* and *In re Sitka Enters.* both held that bankruptcy courts have jurisdiction over fraudulent transfer actions brought under sections 548 and 549 of the Bankruptcy Code. 2011 Bankr. LEXIS 3040 at 12–13; 2011 U.S. Dist. LEXIS 9024. The present action is similarly brought under sections 549 and 550 of the Bankruptcy Code. 11 U.S.C. §§ 549, 550. Section 549 defines what constitutes a post-petition transfer while section 550 enables a post-petition transfer to be avoided by the trustee. *Id.* Accordingly, the narrow holding in *Stern* is inapplicable because the core proceeding here is a matter concerning the administration of the estate, and not a counterclaim.

Because *Stern* is the only case where this Court has found that Congress exceeded its constitutional authority to grant bankruptcy courts the ability to enter final judgments in cases involving core proceedings arising under Title 11, the Bankruptcy Court suffered no constitutional infirmity when it entered a final judgment. *See In re Safety Harbor Resort & Spa,* 456 B.R. 703, 715 (Bankr. M.D. Fla. 2011) (holding that nothing in *Stern* limits the bankruptcy court’s authority to enter final judgments in other core proceedings identified in 28 U.S.C. § 157 (b)(2)).

3. The action to recover an unauthorized post-petition transfer does not implicate state law.

In addition to not constituting a counterclaim, the Trustee’s claim does not involve state law. *See R.* at 5–6; 11 U.S.C. §§ 549, 550. In *Stern*, this Court held that the bankruptcy court lacked the authority to enter a final judgment on Vicki’s counterclaim because it was a state law.
common law action independent of Federal Bankruptcy law and thus not resolvable by a ruling on a creditor’s proof of claim under Title 11. *Stern*, 131 S. Ct. at 2611. This Court determined that adjudication of the state common law claim was a “prototypical exercise of judicial power: the entry of a final, binding judgment by a court with broad substantive jurisdiction, on a common law cause of action, when the action neither derives from nor depends upon any agency regulatory regime;” and to allow a bankruptcy court to adjudicate such a prototypical claim would “transform Article III into mere wishful thinking.” *Id.* at 2615.

This reasoning is inapposite here. Contrary to the action in *Stern*, the action to recover the unauthorized post-petition transfer is not a state common law action. *See* R. at 5–6; 11 U.S.C. §§ 549, 550. Instead, as stated in *In re Innovative Communication Corporation*, the action is purely a creation of the Bankruptcy Code and does not otherwise exist outside of Title 11. 2011 Bankr. LEXIS 3040 at 12–13. Further, *Stern*’s reasoning that the bankruptcy court’s adjudication of such a claim would render Article III useless is unsupported. *See Stern*, 131 S. Ct. at 2615. This is not a prototypical common law claim that should be heard by a district court. R. at 5–6; 11 U.S.C. §§ 549, 550. Instead, this claim directly pertains to the administration of the bankruptcy estate and should be determined by the court overseeing that estate. To determine that a district court, instead of a bankruptcy court, should hear such a claim would seem to render the Bankruptcy Code unnecessary. If this was what Congress intended, bankruptcy proceedings holding complex jurisdictional issues would be a judicial nightmare. The bankruptcy court could start the proceeding and then whenever an unauthorized post-petition transfer was alleged, halt the case in the bankruptcy court and transfer it to the district court. Then the bankruptcy court would have to wait until the district court resolved the claim, and only
after resolution continue with litigation on the other elements of the bankruptcy proceeding. This time consuming and expensive process would clearly be ineffective.

B. If the action to recover an unauthorized post-petition transfer was a counterclaim under *Stern*, the counterclaim stemmed from the bankruptcy itself and the Bankruptcy Court’s adjudication of the claim was constitutional.

In the alternative, if this Court finds that the action to recover the unauthorized post-petition transfer was a counterclaim as defined by section 157 (b)(2)(C), the holding of *Stern* applies. *Stern*, 131 S. Ct. at 2618. According to *Stern*, Congress exceeded it constitutional authority by granting bankruptcy courts the authority to enter a final judgment on a state law counterclaim that does not stem from the bankruptcy itself. *Id.* In this case, the action to recover the unauthorized post-petition transfer was constitutional because it did, in fact, stem from the bankruptcy. R. at 6.

The action at issue arises under sections 549 and 550 of the Bankruptcy Code. 11 U.S.C. §§ 549, 550. Thus it is clearly not a common law state cause of action.9 Sections 549 and 550 allow a trustee to recover an unauthorized transfer of assets made after the bankruptcy petition is filed. 11 U.S.C. §§ 549, 550. This Court, in *Stern*, held that it is not enough that an action may have some bearing on a bankruptcy case, rather that the action must stem from the bankruptcy itself in order to be constitutional. *Stern*, 131 S. Ct. at 2618. The action to recover the unauthorized post-petition transfer stems directly from the bankruptcy. *See* 11 U.S.C. §§ 549, 550. If the Debtor were not in bankruptcy, there would be no problem with the transfer. *See id.* Thus, this action stems from the bankruptcy, and therefore escapes *Stern*’s narrow holding. *Stern*, 131 S. Ct. at 2618. Therefore, even if the action to recover the unauthorized post-petition

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9 If a claim arises from a federal regulation, it is properly classified as a manifestation of federal law and not of state common law.
transfer was a counterclaim under section 157(b)(2)(C), the *Stern* test is met and the Bankruptcy Court’s adjudication of the claim was constitutional.

C. **In the alternative, the action to recover an unauthorized post-petition transfer pursuant to sections 549 and 550 falls within the public rights exception to Article III and therefore the Bankruptcy Court had authority to adjudicate the claim.**

In the event that this Court finds the action to recover the unauthorized post-petition transfer was neither a matter concerning administration of the estate nor a counterclaim that meets the Stern test, the Bankruptcy Court’s entry of a final judgment was constitutional because it falls within the public rights exception to Article III. *N. Piperline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 69–72 (1982).

For Congress to allow a non-Article III court to adjudicate a claim, the claim must fall within a recognized exception. *See Stern*, 131 S. Ct. at 2597. One such exception is the public rights doctrine. This doctrine recognizes that there are some forms of seemingly private rights that may be susceptible to the delegation to non-Article III judges. *Marathon*, 458 U.S. at 69–72. Several cases have held those actions within the reach of the public rights exception, to those actions arising between the Government and persons subject to its authority and those that are instead matters of private right, that is, where liability exists between one individual and another under state law. *Stern*, 131 S. Ct. at 2598, citing *Crowell v. Benson*, 285 U.S. 22, 50–52 (1932). Shortly after *Marathon*, this Court broadened the reach of the public rights exception beyond actions involving the Government as a party. *Stern*, 131 S. Ct. at 2598. However, this Court has continued to limit the exception to cases in which the claim at issue derives from a federal regulatory scheme, or in which resolution of the claim by an expert government agency is deemed essential to a limited regulatory objective within the agency's authority. *Stern*, 131 S. Ct. at 2613; *See United States v. Jicarilla Apache Nation*, 131 S. Ct 2313 (2011).
This action falls within the public rights exception because the claim at issue derives from a federal regulatory scheme. Stern, 131 S. Ct. at 2613. The public rights doctrine gives Congress some freedom to create new federal rights in a particularized area of law that are integral to a federal regulatory scheme. See Stern, 131 S. Ct. at 2611–15, & 2618. Here the federal regulatory scheme is the Bankruptcy Code, which regulates debtor-creditor relations. R. at 6. (Solow, J., dissenting). One critical part of this regulatory scheme is judicial oversight, and the ability to recover assets that were wrongfully transferred away from the bankruptcy estate. 11 U.S.C. §§ 549, 550. Finally, as previously mentioned, outside of the federal Bankruptcy Code, the ability to recover unauthorized post-petition transfers pursuant to § 549 of the Bankruptcy Code would not exist. See 11 U.S.C. § 549. The public rights doctrine applies in cases where Congress has created a new federal right in an area governed by a federal regulatory scheme. Jicarilla Apache Nation, 131 S. Ct at 2341 (2011). The present case perfectly exemplifies an applicable fact scenario for this doctrine. See id; R. at 2–6. Congress has created the right to recover unauthorized post-petition transfers in an area of the law that is governed by the federal Bankruptcy Code. 11 U.S.C. §§ 549, 550. Accordingly, the public rights exception to Article III is applicable and Congress constitutionally delegated the authority to adjudicate sections 549 and 550 and enter a final judgment in the present case.

CONCLUSION

For the foregoing reasons, Blockbuster’s, Inc. and Ms. Natallie Santana respectfully request that this Court reverse the United States Court of Appeals for the Thirteenth Circuit and hold that: (1) a chapter 11 trustee has the authority to avoid an unauthorized post-petition transfer of cash collateral to a good faith vendor who provides reasonably equivalent value in the ordinary course of business, and (2) the Bankruptcy
Court did have jurisdictional authority to hear and enter a final judgment in the case at bar.

Respectfully Submitted,

Team P35
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APPENDIX A

U.S. CONSTITUTION ARTICLE III – THE JUDICIAL BRANCH

SECTION 1. – JUDICIAL POWERS

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

SECTION 2. – TRIAL BY JURY, ORIGINAL JURISDICTION, JURY TRIALS

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. - TREASON

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attaintder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.
APPENDIX B


In this title-- the following definitions shall apply:

(1) The term “accountant” means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized.

(2) The term “affiliate” means--
   (A) entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--
      (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
      (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
   (B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--
      (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
      (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
   (C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
   (D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement.

(3) The term “assisted person” means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $175,750.

(4) The term “attorney” means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law.

(4A) The term “bankruptcy assistance” means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.
(5) The term “claim” means--
(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

(6) The term “commodity broker” means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title.

(7) The term “community claim” means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case.

(7A) The term “commercial fishing operation” means--
(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or
(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A).

(7B) The term “commercial fishing vessel” means a vessel used by a family fisherman to carry out a commercial fishing operation.

(8) The term “consumer debt” means debt incurred by an individual primarily for a personal, family, or household purpose.

(9) The term “corporation”--
(A) includes--
(i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
(ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
(iii) joint-stock company;
(iv) unincorporated company or association; or
(v) business trust; but
(B) does not include limited partnership.

(10) The term “creditor” means--
(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(i) of this title; or
(C) entity that has a community claim.

(10A) The term “current monthly income”--
(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on--
(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or
(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and
(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism.

(11) The term “custodian” means--
(A) receiver or trustee of any of the property of the debtor, appointed in a case or proceeding not under this title;
(B) assignee under a general assignment for the benefit of the debtor's creditors; or
(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors.

(12) The term “debt” means liability on a claim.

(12A) The term “debt relief agency” means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include--
(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;
(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;
(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;
(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or
(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.

(13) The term “debtor” means person or municipality concerning which a case under this title has been commenced.

(13A) The term “debtor's principal residence”--

(A) means a residential structure if used as the principal residence by the debtor, including incidental property, without regard to whether that structure is attached to real property; and

(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer if used as the principal residence by the debtor.

(14) The term “disinterested person” means a person that--

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.

(14A) The term “domestic support obligation” means a debt that accrues before, on, or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is--

(A) owed to or recoverable by--

(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

(ii) a governmental unit;

(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

(C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of--

(i) a separation agreement, divorce decree, or property settlement agreement;

(ii) an order of a court of record; or

(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt.

(15) The term “entity” includes person, estate, trust, governmental unit, and United States trustee.

(16) The term “equity security” means--
(A) share in a corporation, whether or not transferable or denominated “stock”, or similar security;
(B) interest of a limited partner in a limited partnership; or
(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph.

(17) The term “equity security holder” means holder of an equity security of the debtor.

(18) The term “family farmer” means--
(A) individual or individual and spouse engaged in a farming operation whose aggregate debts do not exceed $3,792,650\(^1\) and not less than 50 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse unless such debt arises out of a farming operation), on the date the case is filed, arise out of a farming operation owned or operated by such individual or such individual and spouse, and such individual or such individual and spouse receive from such farming operation more than 50 percent of such individual's or such individual and spouse's gross income for--
(i) the taxable year preceding; or
(ii) each of the 2d and 3d taxable years preceding; the taxable year in which the case concerning such individual or such individual and spouse was filed; or
(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and
(i) more than 80 percent of the value of its assets consists of assets related to the farming operation;
(ii) its aggregate debts do not exceed $3,792,650\(^1\) and not less than 50 percent of its aggregate noncontingent, liquidated debts (excluding a debt for one dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a farming operation), on the date the case is filed, arise out of the farming operation owned or operated by such corporation or such partnership; and
(iii) if such corporation issues stock, such stock is not publicly traded.

(19) The term “family farmer with regular annual income” means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title.

(19A) The term “family fisherman” means--
(A) an individual or individual and spouse engaged in a commercial fishing operation
(i) whose aggregate debts do not exceed $1,757,475\(^1\) and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the
principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

(B) a corporation or partnership--

(i) in which more than 50 percent of the outstanding stock or equity is held by--

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

(ii) (I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation; 

(II) its aggregate debts do not exceed $1,757,475¹ and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for a dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

(III) if such corporation issues stock, such stock is not publicly traded.

(19B) The term “family fisherman with regular annual income” means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title.

(20) The term “farmer” means (except when such term appears in the term “family farmer”) person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person.

(21) The term “farming operation” includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state.

(21A) The term “farmout agreement” means a written agreement in which--

(A) the owner of a right to drill, produce, or operate liquid or gaseous hydrocarbons on property agrees or has agreed to transfer or assign all or a part of such right to another entity; and
such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property.

(21B) The term “Federal depository institutions regulatory agency” means--
(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) for which no conservator or receiver has been appointed, the appropriate Federal banking agency (as defined in section 3(q) of such Act);
(B) with respect to an insured credit union (including an insured credit union for which the National Credit Union Administration has been appointed conservator or liquidating agent), the National Credit Union Administration;
(C) with respect to any insured depository institution for which the Resolution Trust Corporation has been appointed conservator or receiver, the Resolution Trust Corporation; and
(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation.

(22) The term “financial institution” means--
(A) a Federal reserve bank, or an entity that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer (whether or not a “customer”, as defined in section 741) in connection with a securities contract (as defined in section 741) such customer; or
(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940.

(22A) The term “financial participant” means--
(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding (aggregated across counterparties) at such time or on any day during the 15-month period preceding the date of the filing of the petition, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) at such time or on any day during the 15-month period preceding the date of the filing of the petition; or
(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991).
The term “foreign proceeding” means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding.

The term “forward contract” means--

(A) a contract (other than a commodity contract, as defined in section 761) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into, including, but not limited to, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in this section)² consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562.

The term “forward contract merchant” means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade.
The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

The term “health care business”—

(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; and

(ii) surgical, drug treatment, psychiatric, or obstetric care; and

(B) includes—

(i) any--

(I) general or specialized hospital;

(II) ancillary ambulatory, emergency, or surgical treatment facility;

(III) hospice;

(IV) home health agency; and

(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

(ii) any long-term care facility, including any--

(I) skilled nursing facility;

(II) intermediate care facility;

(III) assisted living facility;

(IV) home for the aged;

(V) domiciliary care facility; and

(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living.

The term “incidental property” means, with respect to a debtor's principal residence--

(A) property commonly conveyed with a principal residence in the area where the real property is located;

(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

(C) all replacements or additions.

The term “indenture” means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against
the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor.

(29) The term “indenture trustee” means trustee under an indenture.

(30) The term “individual with regular income” means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker.

(31) The term “insider” includes--
   (A) if the debtor is an individual--
       (i) relative of the debtor or of a general partner of the debtor;
       (ii) partnership in which the debtor is a general partner;
       (iii) general partner of the debtor; or
       (iv) corporation of which the debtor is a director, officer, or person in control;
   (B) if the debtor is a corporation--
       (i) director of the debtor;
       (ii) officer of the debtor;
       (iii) person in control of the debtor;
       (iv) partnership in which the debtor is a general partner;
       (v) general partner of the debtor; or
       (vi) relative of a general partner, director, officer, or person in control of the debtor;
   (C) if the debtor is a partnership--
       (i) general partner in the debtor;
       (ii) relative of a general partner in, general partner of, or person in control of the debtor;
       (iii) partnership in which the debtor is a general partner;
       (iv) general partner of the debtor; or
       (v) person in control of the debtor;
   (D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;
   (E) affiliate, or insider of an affiliate as if such affiliate were the debtor; and
   (F) managing agent of the debtor.

(32) The term “insolvent” means--
   (A) with reference to an entity other than a partnership and a municipality, financial condition such that the sum of such entity’s debts is greater than all of such entity’s property, at a fair valuation, exclusive of--
       (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity’s creditors; and
       (ii) property that may be exempted from property of the estate under section 522 of this title;
with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation-

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's nonpartnership property, exclusive of property of the kind specified in subparagraph (A) of this paragraph, over such partner's nonpartnership debts; and

with reference to a municipality, financial condition such that the municipality is--

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due.

(33) The term “institution-affiliated party”--

(A) with respect to an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act), has the meaning given it in section 3(u) of the Federal Deposit Insurance Act; and

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act.

(34) The term “insured credit union” has the meaning given it in section 101(7) of the Federal Credit Union Act.

(35) The term “insured depository institution”--

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs (21B) and (33)(A) of this subsection).

(35A) The term “intellectual property” means--

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law.

(36) The term “judicial lien” means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding.

(37) The term “lien” means charge against or interest in property to secure payment of a debt or performance of an obligation.
(38) The term “margin payment” means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments.

(38A) The term “master netting agreement”--
(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and
(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a).

(38B) The term “master netting agreement participant” means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor.

(39) The term “mask work” has the meaning given it in section 901(a)(2) of title 17.

(39A) The term “median family income” means for any year--
(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and
(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year

(40) The term “municipality” means political subdivision or public agency or instrumentality of a State.

(40A) The term “patient” means any individual who obtains or receives services from a health care business.

(40B) The term “patient records” means any record relating to a patient, including a written document or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) The term “person” includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that--
(A) acquires an asset from a person--
(i) as a result of the operation of a loan guarantee agreement; or
(ii) as receiver or liquidating agent of a person;
(B) is a guarantor of a pension benefit payable by or on behalf of the debtor or an affiliate of the debtor; or
(C) is the legal or beneficial owner of an asset of--
(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or
(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986; shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit.

(41A) The term “personally identifiable information” means--
(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes--
(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;
(ii) the geographical address of a physical place of residence of such individual;
(iii) an electronic address (including an e-mail address) of such individual;
(iv) a telephone number dedicated to contacting such individual at such physical place of residence;
(v) a social security account number issued to such individual; or
(vi) the account number of a credit card issued to such individual; or
(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)--
(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or
(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically.

(42) The term “petition” means petition filed under section 301, 302, 303 and 31504 of this title, as the case may be, commencing a case under this title.

(42A) The term “production payment” means a term overriding royalty satisfiable in cash or in kind--
(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and
(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs.

(43) The term “purchaser” means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee.
(44) The term “railroad” means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier.

(45) The term “relative” means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree.

(46) The term “repo participant” means an entity that, at any time before the filing of the petition, has an outstanding repurchase agreement with the debtor.

(47) The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)--

(A) means--

(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement
or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

(B) does not include a repurchase obligation under a participation in a commercial mortgage loan.

(48) The term “securities clearing agency” means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934, or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission, or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A.


(49) The term “security”--

(A) includes--

(i) note;
(ii) stock;
(iii) treasury stock;
(iv) bond;
(v) debenture;
(vi) collateral trust certificate;
(vii) pre-organization certificate or subscription;
(viii) transferable share;
(ix) voting-trust certificate;
(x) certificate of deposit;
(xi) certificate of deposit for security;
(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is required to be the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933, or is exempt under section 3(b) of such Act from the requirement to file such a statement;

(xiii) interest of a limited partner in a limited partnership;
(xiv) other claim or interest commonly known as “security”; and
(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but

(B) does not include--

(i) currency, check, draft, bill of exchange, or bank letter of credit;
(ii) leverage transaction, as defined in section 761 of this title;
(iii) commodity futures contract or forward contract;
(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;
(v) option to purchase or sell a commodity;
(vi) contract or certificate of a kind specified in subparagraph (A)(xii) of this paragraph that is not required to be the subject of a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 from the requirement to file such a statement; or
(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered.

(50) The term “security agreement” means agreement that creates or provides for a security interest.

(51) The term “security interest” means lien created by an agreement.

(51A) The term “settlement payment” means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade.

(51B) The term “single asset real estate” means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor who is not a family farmer and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental thereto.

(51C) The term “small business case” means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term “small business debtor”—
(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than $2,343,300\(^1\) (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

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\(^1\) The maximum amount is adjusted annually for inflation.
(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,343,300\(^1\) (excluding debt owed to 1 or more affiliates or insiders).

(52) The term “State” includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title.

(53) The term “statutory lien” means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute.

(53A) The term “stockbroker” means person--
(A) with respect to which there is a customer, as defined in section 741 of this title; and
(B) that is engaged in the business of effecting transactions in securities--
   (i) for the account of others; or
   (ii) with members of the general public, from or for such person's own account.

(53B) The term “swap agreement”--
(A) means--
   (i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is--
      (I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;
      (II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement;
      (III) a currency swap, option, future, or forward agreement;
      (IV) an equity index or equity swap, option, future, or forward agreement;
      (V) a debt index or debt swap, option, future, or forward agreement;
      (VI) a total return, credit spread or credit swap, option, future, or forward agreement;
      (VII) a commodity index or a commodity swap, option, future, or forward agreement;
      (VIII) a weather swap, option, future, or forward agreement;
      (IX) an emissions swap, option, future, or forward agreement; or
      (X) an inflation swap, option, future, or forward agreement;
   (ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that--
      (I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives

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markets (including terms and conditions incorporated by reference therein); and

(II) is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(iii) any combination of agreements or transactions referred to in this subparagraph;

(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(53C) The term “swap participant” means an entity that, at any time before the filing of the petition, has an outstanding swap agreement with the debtor.

(56A) The term “term overriding royalty” means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized.

(53D) The term “timeshare plan” means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental
agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A “timeshare interest” is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan.

(54) The term “transfer” means--
(A) the creation of a lien;
(B) the retention of title as a security interest;
(C) the foreclosure of a debtor's equity of redemption; or
(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with--
   (i) property; or
   (ii) an interest in property.

(54A) The term “uninsured State member bank” means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(55) The term “United States”, when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest--

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that--

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title--

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.
APPENDIX D


(a) In this section, “cash collateral” means cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

(b) (1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

(2) If notification is required under subsection (a) of section 7A of the Clayton Act in the case of a transaction under this subsection, then—

(A) notwithstanding subsection (a) of such section, the notification required by such subsection to be given by the debtor shall be given by the trustee; and

(B) notwithstanding subsection (b) of such section, the required waiting period shall end on the 15th day after the date of the receipt, by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice, of the notification required under such subsection (a), unless such waiting period is extended—

(i) pursuant to subsection (e)(2) of such section, in the same manner as such subsection (e)(2) applies to a cash tender offer;

(ii) pursuant to subsection (g)(2) of such section; or

(iii) by the court after notice and a hearing.

(c) (1) If the business of the debtor is authorized to be operated under section
721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

(3) Any hearing under paragraph (2)(B) of this subsection may be a preliminary hearing or may be consolidated with a hearing under subsection (e) of this section, but shall be scheduled in accordance with the needs of the debtor. If the hearing under paragraph (2)(B) of this subsection is a preliminary hearing, the court may authorize such use, sale, or lease only if there is a reasonable likelihood that the trustee will prevail at the final hearing under subsection (e) of this section. The court shall act promptly on any request for authorization under paragraph (2)(B) of this subsection.

(4) Except as provided in paragraph (2) of this subsection, the trustee shall segregate and account for any cash collateral in the trustee's possession, custody, or control.

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section--

(1) in the case of a debtor that is a corporation or trust that is not a moneyed business, commercial corporation, or trust, only in accordance with nonbankruptcy law applicable to the transfer of property by a debtor that is such a corporation or trust; and

(2) only to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.

(e) Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest. This subsection also applies to property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.
(g) Notwithstanding subsection (f) of this section, the trustee may sell property under subsection (b) or (c) of this section free and clear of any vested or contingent right in the nature of dower or curtesy.

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—
(1) partition in kind of such property among the estate and such co-owners is impracticable;
(2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
(3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
(4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

(i) Before the consummation of a sale of property to which subsection (g) or (h) of this section applies, or of property of the estate that was community property of the debtor and the debtor's spouse immediately before the commencement of the case, the debtor's spouse, or a co-owner of such property, as the case may be, may purchase such property at the price at which such sale is to be consummated.

(j) After a sale of property to which subsection (g) or (h) of this section applies, the trustee shall distribute to the debtor's spouse or the co-owners of such property, as the case may be, and to the estate, the proceeds of such sale, less the costs and expenses, not including any compensation of the trustee, of such sale, according to the interests of such spouse or co-owners, and of the estate.

(k) At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

(l) Subject to the provisions of section 365, the trustee may use, sell, or lease property under subsection (b) or (c) of this section, or a plan under chapter 11, 12, or 13 of this title may provide for the use, sale, or lease of property, notwithstanding any provision in a contract, a lease, or applicable law that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title concerning the debtor, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian, and that effects, or gives an option to effect, a forfeiture, modification, or termination of the debtor's interest in such property.
(m) The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

(n) The trustee may avoid a sale under this section if the sale price was controlled by an agreement among potential bidders at such sale, or may recover from a party to such agreement any amount by which the value of the property sold exceeds the price at which such sale was consummated, and may recover any costs, attorneys' fees, or expenses incurred in avoiding such sale or recovering such amount. In addition to any recovery under the preceding sentence, the court may grant judgment for punitive damages in favor of the estate and against any such party that entered into such an agreement in willful disregard of this subsection.

(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

(p) In any hearing under this section--
   (1) the trustee has the burden of proof on the issue of adequate protection; and
   (2) the entity asserting an interest in property has the burden of proof on the issue of the validity, priority, or extent of such interest.
APPENDIX E


(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or
proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3) of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide, and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

(c) There shall be estimated for purpose of allowance under this section--

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e) (1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;
(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or
(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.
A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if--

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)--

(i) was made at least 60 days before the date of the filing of the petition; and
(ii) provided for payment of at least 60 percent of the amount of the
debt over a period not to exceed the repayment period of the loan,
or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is
nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence,
that--

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration
of the 60-day period specified in paragraph (1)(B)(i).

(a) An entity may timely file a request for payment of an administrative expense, or may tardily file such request if permitted by the court for cause.

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including--

1. (A) the actual, necessary costs and expenses of preserving the estate including--
   (i) wages, salaries, and commissions for services rendered after the commencement of the case; and
   (ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;

2. any tax--
   (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title; or
   (ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case;

3. any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; and

D. notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;

2. compensation and reimbursement awarded under section 330(a) of this title;

3. the actual, necessary expenses, other than compensation and reimbursement specified in paragraph (4) of this subsection, incurred by--

A. a creditor that files a petition under section 303 of this title;

B. a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor;
(C) a creditor in connection with the prosecution of a criminal offense relating to the case or to the business or property of the debtor;

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title;

(E) a custodian superseded under section 543 of this title, and compensation for the services of such custodian; or

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee;

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under subparagraph (A), (B), (C), (D), or (E) of paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title;

(6) the fees and mileage payable under chapter 119 of title 28;

(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);

(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

(A) in disposing of patient records in accordance with section 351; or

(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and

(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.

(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

(1) a transfer made to, or an obligation incurred for the benefit of, an insider of the debtor for the purpose of inducing such person to remain with the debtor's business, absent a finding by the court based on evidence in the record that--
(A) the transfer or obligation is essential to retention of the person because the individual has a bona fide job offer from another business at the same or greater rate of compensation;

(B) the services provided by the person are essential to the survival of the business; and

(C) either--

(i) the amount of the transfer made to, or obligation incurred for the benefit of, the person is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer is made or the obligation is incurred; or

(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before the year in which such transfer is made or obligation is incurred;

(2) a severance payment to an insider of the debtor, unless--

(A) the payment is part of a program that is generally applicable to all full-time employees; and

(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

(3) other transfers or obligations that are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired after the date of the filing of the petition.
APPENDIX G


(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt--
   (1) for a tax or a customs duty--
      (A) of the kind and for the periods specified in section 507(a)(3) or 507(a)(8) of this title, whether or not a claim for such tax was filed or allowed;
      (B) with respect to which a return, or equivalent report or notice, if required--
         (i) was not filed or given; or
         (ii) was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or
      (C) with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax;
   (2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--
      (A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;
      (B) use of a statement in writing--
         (i) that is materially false;
         (ii) respecting the debtor's or an insider's financial condition;
         (iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
         (iv) that the debtor caused to be made or published with intent to deceive; or
      (C) (i) for purposes of subparagraph (A)--
         (I) consumer debts owed to a single creditor and aggregating more than $600\textsuperscript{1} for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
         (II) cash advances aggregating more than $875\textsuperscript{1} that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and
      (ii) for purposes of this subparagraph--
         (I) the terms “consumer”, “credit”, and “open end credit plan” have the same meanings as in section 103 of the Truth in Lending Act; and
         (II) the term “luxury goods or services” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;
(3) neither listed nor scheduled under section 521(a)(1) of this title, with the name, if known to the debtor, of the creditor to whom such debt is owed, in time to permit--
(A) if such debt is not of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim, unless such creditor had notice or actual knowledge of the case in time for such timely filing; or
(B) if such debt is of a kind specified in paragraph (2), (4), or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request;

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny;

(5) for a domestic support obligation;

(6) for willful and malicious injury by the debtor to another entity or to the property of another entity;

(7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty--
(A) relating to a tax of a kind not specified in paragraph (1) of this subsection; or
(B) imposed with respect to a transaction or event that occurred before three years before the date of the filing of the petition;

(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for--
(A) (i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or
(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or
(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;

(9) for death or personal injury caused by the debtor's operation of a motor vehicle, vessel, or aircraft if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

(10) that was or could have been listed or scheduled by the debtor in a prior case concerning the debtor under this title or under the Bankruptcy Act in which the debtor waived discharge, or was denied a discharge under section 727(a)(2), (3), (4), (5), (6), or (7) of this title, or under section 14c(1), (2), (3), (4), (6), or (7) of such Act;

(11) provided in any final judgment, unreviewable order, or consent order or decree entered in any court of the United States or of any State, issued by a Federal depository institutions regulatory agency, or contained in any settlement agreement entered into by the debtor, arising from any act of fraud or defalcation...
while acting in a fiduciary capacity committed with respect to any depository institution or insured credit union;

(12) for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institutions regulatory agency to maintain the capital of an insured depository institution, except that this paragraph shall not extend any such commitment which would otherwise be terminated due to any act of such agency;

(13) for any payment of an order of restitution issued under title 18, United States Code;

(14) incurred to pay a tax to the United States that would be nondischargeable pursuant to paragraph (1);

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(14B) incurred to pay fines or penalties imposed under Federal election law;

(15) to a spouse, former spouse, or child of the debtor and not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, or a determination made in accordance with State or territorial law by a governmental unit;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed on a prisoner by any court for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under subsection (b) or (f)(2) of section 1915 of title 28 (or a similar non-Federal law), or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 (or a similar non-Federal law);

(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under--

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or

(19) that--

(A) is for--
the violation of any of the Federal securities laws (as that term is
defined in section 3(a)(47) of the Securities Exchange Act of
1934), any of the State securities laws, or any regulation or order
issued under such Federal or State securities laws; or
common law fraud, deceit, or manipulation in connection with the
purchase or sale of any security; and
results, before, on, or after the date on which the petition was filed, from--
any judgment, order, consent order, or decree entered in any
Federal or State judicial or administrative proceeding;
any settlement agreement entered into by the debtor; or
any court or administrative order for any damages, fine, penalty, citation,
restitutionary payment, disgorgement payment, attorney fee, cost, or other
payment owed by the debtor.

For purposes of this subsection, the term “return” means a return that satisfies the
requirements of applicable nonbankruptcy law (including applicable filing
requirements). Such term includes a return prepared pursuant to section 6020(a)
of the Internal Revenue Code of 1986, or similar State or local law, or a written
stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but
does not include a return made pursuant to section 6020(b) of the Internal
Revenue Code of 1986, or a similar State or local law.

Notwithstanding subsection (a) of this section, a debt that was excepted from discharge
under subsection (a)(1), (a)(3), or (a)(8) of this section, under section 17a(1), 17a(3), or
17a(5) of the Bankruptcy Act, under section 439A of the Higher Education Act of 1965,
or under section 733(g) of the Public Health Service Act in a prior case concerning the
debtor under this title, or under the Bankruptcy Act, is dischargeable in a case under this
title unless, by the terms of subsection (a) of this section, such debt is not dischargeable
in the case under this title.

Except as provided in subsection (a)(3)(B) of this section, the debtor shall be
discharged from a debt of a kind specified in paragraph (2), (4), or (6) of
subsection (a) of this section, unless, on request of the creditor to whom such debt
is owed, and after notice and a hearing, the court determines such debt to be
excepted from discharge under paragraph (2), (4), or (6), as the case may be, of
subsection (a) of this section.

Paragraph (1) shall not apply in the case of a Federal depository institutions
regulatory agency seeking, in its capacity as conservator, receiver, or liquidating
agent for an insured depository institution, to recover a debt described in
subsection (a)(2), (a)(4), (a)(6), or (a)(11) owed to such institution by an
institution-affiliated party unless the receiver, conservator, or liquidating agent
was appointed in time to reasonably comply, or for a Federal depository
institutions regulatory agency acting in its corporate capacity as a successor to
such receiver, conservator, or liquidating agent to reasonably comply, with
subsection (a)(3)(B) as a creditor of such institution-affiliated party with respect
to such debt.
(d) If a creditor requests a determination of dischargeability of a consumer debt under subsection (a)(2) of this section, and such debt is discharged, the court shall grant judgment in favor of the debtor for the costs of, and a reasonable attorney's fee for, the proceeding if the court finds that the position of the creditor was not substantially justified, except that the court shall not award such costs and fees if special circumstances would make the award unjust.

(e) Any institution-affiliated party of an insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).
APPENDIX H


(a) In this section—

(1) “inventory” means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) “new value” means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) “receivable” means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title.

(c) The trustee may not avoid under this section a transfer—

(1) to the extent that such transfer was—

(A) intended by the debtor and the creditor to or for whose benefit such transfer was made to be a contemporaneous exchange for new value given to the debtor; and

(B) in fact a substantially contemporaneous exchange;

(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—
(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;

(3) that creates a security interest in property acquired by the debtor--

(A) to the extent such security interest secures new value that was--

(i) given at or after the signing of a security agreement that contains a description of such property as collateral;

(ii) given by or on behalf of the secured party under such agreement;

(iii) given to enable the debtor to acquire such property; and

(iv) in fact used by the debtor to acquire such property; and

(B) that is perfected on or before 30 days after the debtor receives possession of such property;

(4) to or for the benefit of a creditor, to the extent that, after such transfer, such creditor gave new value to or for the benefit of the debtor--

(A) not secured by an otherwise unavoidable security interest; and

(B) on account of which new value the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor;

(5) that creates a perfected security interest in inventory or a receivable or the proceeds of either, except to the extent that the aggregate of all such transfers to the transferee caused a reduction, as of the date of the filing of the petition and to the prejudice of other creditors holding unsecured claims, of any amount by which the debt secured by such security interest exceeded the value of all security interests for such debt on the later of--

(A) (i) with respect to a transfer to which subsection (b)(4)(A) of this section applies, 90 days before the date of the filing of the petition; or

(ii) with respect to a transfer to which subsection (b)(4)(B) of this section applies, one year before the date of the filing of the petition; or

(B) the date on which new value was first given under the security agreement creating such security interest;

(6) that is the fixing of a statutory lien that is not avoidable under section 545 of this title;

(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600; or

(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,850.

(d) The trustee may avoid a transfer of an interest in property of the debtor transferred to or for the benefit of a surety to secure reimbursement of such a surety that furnished a bond or other obligation to dissolve a judicial lien that would have been avoidable by the trustee under subsection (b) of this section. The liability of such surety under such bond
or obligation shall be discharged to the extent of the value of such property recovered by
the trustee or the amount paid to the trustee.

(e) (1) For the purposes of this section--
(A) a transfer of real property other than fixtures, but including the interest of
a seller or purchaser under a contract for the sale of real property, is
perfected when a bona fide purchaser of such property from the debtor
against whom applicable law permits such transfer to be perfected cannot
acquire an interest that is superior to the interest of the transferee; and
(B) a transfer of a fixture or property other than real property is perfected
when a creditor on a simple contract cannot acquire a judicial lien that is
superior to the interest of the transferee.

(2) For the purposes of this section, except as provided in paragraph (3) of this
subsection, a transfer is made--
(A) at the time such transfer takes effect between the transferor and the
transferee, if such transfer is perfected at, or within 30 days after, such
time, except as provided in subsection (c)(3)(B);
(B) at the time such transfer is perfected, if such transfer is perfected after
such 30 days; or
(C) immediately before the date of the filing of the petition, if such transfer is
not perfected at the later of--
(i) the commencement of the case; or
(ii) 30 days after such transfer takes effect between the transferor and
the transferee.

(3) For the purposes of this section, a transfer is not made until the debtor has
acquired rights in the property transferred.

(f) For the purposes of this section, the debtor is presumed to have been insolvent on and
during the 90 days immediately preceding the date of the filing of the petition.

(g) For the purposes of this section, the trustee has the burden of proving the avoidability of a
transfer under subsection (b) of this section, and the creditor or party in interest against
whom recovery or avoidance is sought has the burden of proving the nonavoidability of a
transfer under subsection (c) of this section.

(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative
repayment schedule between the debtor and any creditor of the debtor created by an
approved nonprofit budget and credit counseling agency.

(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year
before the date of the filing of the petition, by the debtor to an entity that is not an insider
for the benefit of a creditor that is an insider, such transfer shall be considered to be
avoided under this section only with respect to the creditor that is an insider.
APPENDIX I


(a) (1) The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily--

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(iii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;

(III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(2) A transfer of a charitable contribution to a qualified religious or charitable entity or organization shall not be considered to be a transfer covered under paragraph (1)(B) in any case in which--

(A) the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or

(B) the contribution made by a debtor exceeded the percentage amount of gross annual income specified in subparagraph (A), if the transfer was consistent with the practices of the debtor in making charitable contributions.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.
Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

For the purposes of this section, a transfer is made when such transfer is so perfected that a bona fide purchaser from the debtor against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer is made immediately before the date of the filing of the petition.

In this section--
(A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor;
(B) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;
(C) a repo participant or financial participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment;
(D) a swap participant or financial participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer; and
(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.

In this section, the term “charitable contribution” means a charitable contribution, as that term is defined in section 170(c) of the Internal Revenue Code of 1986, if that contribution--
(A) is made by a natural person; and
(B) consists of--
(i) a financial instrument (as that term is defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986); or
(ii) cash.

In this section, the term “qualified religious or charitable entity or organization” means--
(A) an entity described in section 170(c)(1) of the Internal Revenue Code of 1986; or
(B) an entity or organization described in section 170(c)(2) of the Internal Revenue Code of 1986.

(e)  (1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if--
   (A) such transfer was made to a self-settled trust or similar device;
   (B) such transfer was by the debtor;
   (C) the debtor is a beneficiary of such trust or similar device; and
   (D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by--
   (A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or
   (B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78l and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).
APPENDIX J


(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate--
   (1) that occurs after the commencement of the case; and
   (2) (A) that is authorized only under section 303(f) or 542(c) of this title; or
   (B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of an interest in real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of an interest in such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such real property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to such interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of--
   (1) two years after the date of the transfer sought to be avoided; or
   (2) the time the case is closed or dismissed.

(a) Except as otherwise provided in this section, to the extent that a transfer is avoided under section 544, 545, 547, 548, 549, 553(b), or 724(a) of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from--
   (1) the initial transferee of such transfer or the entity for whose benefit such transfer was made; or
   (2) any immediate or mediate transferee of such initial transferee.

(b) The trustee may not recover under section (a)(2) of this section from--
   (1) a transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or
   (2) any immediate or mediate good faith transferee of such transferee.

(c) If a transfer made between 90 days and one year before the filing of the petition--
   (1) is avoided under section 547(b) of this title; and
   (2) was made for the benefit of a creditor that at the time of such transfer was an insider; the trustee may not recover under subsection (a) from a transferee that is not an insider.

(d) The trustee is entitled to only a single satisfaction under subsection (a) of this section.

(e) (1) A good faith transferee from whom the trustee may recover under subsection (a) of this section has a lien on the property recovered to secure the lesser of--
   (A) the cost, to such transferee, of any improvement made after the transfer, less the amount of any profit realized by or accruing to such transferee from such property; and
   (B) any increase in the value of such property as a result of such improvement, of the property transferred.
   (2) In this subsection, “improvement” includes--
      (A) physical additions or changes to the property transferred;
      (B) repairs to such property;
      (C) payment of any tax on such property;
      (D) payment of any debt secured by a lien on such property that is superior or equal to the rights of the trustee; and
      (E) preservation of such property.

(f) An action or proceeding under this section may not be commenced after the earlier of--
   (1) one year after the avoidance of the transfer on account of which recovery under this section is sought; or
   (2) the time the case is closed or dismissed.
APPENDIX L


(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b) (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to--
   (A) matters concerning the administration of the estate;
   (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
   (C) counterclaims by the estate against persons filing claims against the estate;
   (D) orders in respect to obtaining credit;
   (E) orders to turn over property of the estate;
   (F) proceedings to determine, avoid, or recover preferences;
   (G) motions to terminate, annul, or modify the automatic stay;
   (H) proceedings to determine, avoid, or recover fraudulent conveyances;
   (I) determinations as to the dischargeability of particular debts;
   (J) objections to discharges;
   (K) determinations of the validity, extent, or priority of liens;
   (L) confirmations of plans;
   (M) orders approving the use or lease of property, including the use of cash collateral;
   (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
   (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
   (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.
(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c) (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.
APPENDIX M


(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (c)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but no exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(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.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction--

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.
APPENDIX N

28 U.S.C. § 1471


Pub.L. 98-353, Title I, § 121(d), July 10, 1984, 98 Stat. 346, was repealed by Pub.L. 98-353, Title I, §§ 114, 122(a), July 10, 1984, 98 Stat. 343, 346, eff. July 10, 1984. The repealed section had provided for transfer to the new court system of 1) cases, and matters and proceedings in cases, under the Bankruptcy Act [former Title 11] pending at the end of Sept. 30, 1983, in the courts of bankruptcy continued under section 404(a) of Pub.L. 95-598, with certain exceptions, and 2) cases and proceedings arising under or related to cases under Title 11 pending at the end of July 9, 1984, in the courts of bankruptcy continued under section 404(a) of Pub.L. 95-598, and directed that civil actions pending on July 9, 1984, over which a bankruptcy court had jurisdiction on July 9, 1984, not abate, that actions not finally determined before Apr. 1, 1985, be removed to a bankruptcy court under this chapter, and that all law books, publications, etc., furnished bankruptcy judges as of July 9, 1984, be transferred to the United States bankruptcy courts under the supervision of the Director of the Administrative Office of the United States Courts.
APPENDIX O


(a) [The Uniform Commercial Code] must be liberally construed and applied to promote its underlying purposes and policies, which are:
   (1) to simplify, clarify, and modernize the law governing commercial transactions;
   (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties; and
   (3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of [the Uniform Commercial Code], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.
APPENDIX P

U.C.C. § 9-332. (2002) Transfer of Money; Transfer of Funds from Deposit Account

(a) [Transferee of money.] A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) [Transferee of funds from deposit account.] A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party. <Revised Article 9 (2000), Secured Transactions, became effective July 1, 2001>