No. 18-0918

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

IN RE BACKSTREETS PLOWING, INC., DEBTOR

STEVEN VIN SANT, CHAPTER 7 TRUSTEE, PETITIONER

V.

MILTON WEINBERG, RESPONDENT.

On Writ of Certiorari to the
United States Court of Appeals for the Thirteenth Circuit

Brief for Petitioner

Team P15
Counsel for Petitioner

QUESTIONS PRESENTED

I. Under section 362(a)(3) a creditor violates the automatic stay by performing any post-petition "act . . . to exercise control of estate property." The common understanding of "control" stems from notions of the power to deny access. After lawfully repossessing Backstreet's trucks pre-petition, Milton Weinberg's post-petition refusal to return the trucks prevented Backstreet from using property in which it had legal and equitable title. Did Weinberg's post-petition control of the trucks violate the automatic stay?

II. Bankruptcy Code section 503(b)(3)(D) addresses substantial contribution administrative expenses sought by creditors, and limits its own application to substantial contributions made "in a case under chapter 9 or 11." Milton Weinberg made a substantial contribution to the bankruptcy estate, but only after the case was converted to chapter 7. Can he nevertheless receive administrative expense priority under section 503(b)(3)(D)?

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OPINIONS BELOW

In unreported opinions, the Bankruptcy Court for the District of Moot held (1) that Weinberg's post-petition passive retention of Backstreet's snow plow trucks did not violate the automatic stay and (2) that Weinberg was entitled to a substantial contribution administrative expense under section 503(b). The Bankruptcy Appellate Panel affirmed. (R. at 3). The Thirteenth Circuit also affirmed; its opinion is reproduced as the record in this appeal.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

The relevant statutory provisions involved in this case are listed below and are reproduced in Appendices A through F.

11 U.S.C. § 102(3)

11 U.S.C. § 105(a)

11 U.S.C. § 362(a)

11 U.S.C. § 363(e)

11 U.S.C. § 503(b)

11 U.S.C. § 542(a)

STATEMENT OF THE CASE

For years, Christopher Clemons, known to his friends and the community as "Big Man," has operated a seasonal snow plow business in the City of Badlands—Backstreets Plowing ("Backstreet"). (R. at 2–3). As the spring of 2015 arrived, Clemons recognized that Backstreet needed a technological upgrade to remain competitive—an upgrade that would require newer, more fuel-efficient snow plow trucks. (R. at 3). Fuel-efficient and environmentally friendly, these new trucks would allow Backstreet to reduce repair costs and operating expenses, savings it planned to, and ultimately did, pass on to the taxpayers of the City of Badlands. (*See* R. at 4).

But new trucks cost money, which prompted Clemons to turn to his long-time bowling companion, Milton Weinberg. (*Id.*) Shortly thereafter, Weinberg made Backstreet a $450,000 loan, which Clemons personally guaranteed. (*Id.*) Weinberg, in return, received a security interest in Backstreet's new trucks. (*Id.*) Infused with cash, Backstreet purchased new trucks in August 2015, and immediately started preparing a bid for the snow plowing contract with the City of Badlands. (*Id.*) And as predicted, thanks to low overhead from its new cost-effective trucks, Backstreet's bid for the contract was far lower than the other bids. (*Id.*) Contract in hand, Backstreet got to work.

The relationship turned out to be a boon for both Backstreet and the City. (*See* R. at 5). The City enjoyed Backstreet's services at an extremely competitive rate; and a relatively mild winter gave Backstreet a reprieve from its usual overhead and maintenance expenses. (*Id.*) And as 2015 gave way to 2016, Backstreet's prospects had never been brighter.

The same could not be said of Weinberg and Clemons's relationship**.** In October 2015, Moot State and University of Moot played their annual "big game." Clemons, an alumnus of the University of Moot, and Weinberg, an alumnus of Moot State University, attended the game together. (R. at 4–5). A close loss by Weinberg's alma mater prompted an argument between the

two men, and they didn't speak for several weeks thereafter. (R. at 5). Despite this personal setback, Clemons pushed on; and notwithstanding a few administrative blemishes—here, loan payments that slipped through the cracks—Clemons led Backstreet to a successful end to 2015.

In February 2016, relations between Weinberg and Clemons soured further. After Weinberg drove to Backstreet Plowing's facility in late February 2016, Clemons once again found himself pulled into an argument with his one-time friend. (*Id.*) During that argument, nearly six months after his alma mater's loss to the University of Moot, Weinberg told Clemons to "lawyer up." (*Id.*) True to his word, in April 2016, Weinberg filed suit on the note and guarantee; he obtained a default judgment against Backstreet and Clemons in October 2016. (*Id.*)

During the winter of 2016–2017—due to unusually heavy snowfall—Backstreet struggled to fulfill its contractual obligations. (R. at 5–6). Making matters worse, Weinberg repossessed the snow plow trucks in January 2017, locking them in his warehouse and out of Clemons and Backstreet's reach. (R. at 6). Worse still, with the trucks sitting idly in his warehouse, Weinberg was depriving Backstreet of the equipment it needed to operate its snow plow business, which, in turn, prevented Backstreet from fulfilling its contract with the City. (*Id.*) Running out of cash and options, Backstreet filed for chapter 11 on February 4, 2017. (*Id.*)

More than once during the case, Backstreet asked Weinberg to return the trucks, and on every occasion, he refused. (R. at 6, 8). Backstreet then filed a motion, alleging that Weinberg's retention of the trucks violated the automatic stay. (R. at 6). The court found no stay violation, and Backstreet timely appealed. (*Id.*)

Without trucks, and with the summer offseason about to begin, Backstreet converted the case to chapter 7, and a trustee was appointed. (R. at 7). After conversion, the Trustee received a purchase offer from Tenth Avenue. (R. at 8). Under the offer, Tenth Avenue would purchase

substantially all of Backstreet's assets, but only if the Trustee included Backstreet's trucks in the sale. (*Id.*) The Trustee again asked Weinberg for the trucks, and again he refused. (*Id.*) As a result, Tenth Avenue withdrew its offer, and the Trustee then continued the appeal of the bankruptcy court's decision regarding the alleged stay violation. (*Id.*) A second buyer, Stone Pony, did step in with another offer; but without the ability to sell the trucks, Stone Pony's offer was $100,000 less than Tenth Avenue's. (*Id.*) Out of options, the Trustee accepted Stone Pony's reduced offer. (R. at 9). The bankruptcy court approved the sale to Stone Pony in February 2018 (R. at 9).

Around the same time, Weinberg, without consulting the Trustee or the court, hired a collection firm to investigate Clemons's financials. (*Id.*) Unexpectedly, the investigation uncovered a $100,000 fraudulent transfer from Clemons to his daughter, Patti. (*Id.*) The Trustee settled with Patti Clemons, and she agreed to pay $75,000. (*Id.*) Weinberg then sought an allowance of a substantial contribution administrative expense for the costs of hiring the collection firm. (*Id.*) The Trustee objected, noting that substantial contribution administrative expenses are not available in chapter 7 cases. (*Id.*) The court nevertheless granted Weinberg an $25,000 expense, and the Trustee timely appealed. (*Id.*)

The Thirteenth Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court's ruling that Weinberg did not violate the automatic stay, as well as its decision to award Weinberg a $25,000 substantial contribution administrative expense. (R. at 3). This appeal follows.

SUMMARY OF THE ARGUMENT

Section 362(a)(3) prohibits a secured creditor from passively retaining estate property post-petition. First, the text of section 362(a)(3) prohibits Weinberg's continuous post-petition passive control of the estate property. A passive act, like the control of snow plow trucks, is, nevertheless, an "act" that is prohibited by the automatic stay.

Second, by refusing to yield control of the estate property, Weinberg's post-petition control of the snow plow trucks amounted to an "exercise of control" as prohibited by the ordinary usage of section 362(a)(3). Post-petition control, to the exclusion of the bankruptcy trustee or debtor, is exactly the type of conduct the automatic stay seeks to prevent.

Third, the Thirteenth Circuit's interpretation of section 362(a)(3)'s phrase "any act . . . to exercise control" to mean the same thing as the phrase "any act to obtain possession" violates the canon against surplusage. In 1984, Congress amended section 362(a)(3) by adding the phrase "any act . . . to exercise control [.]" By treating the provisions of sections 362(a)(3) synonymously, the Thirteenth Circuit renders the 1984 amendment mere surplusage.

Fourth, section 362(a)(3), in conjunction with sections 542(a) and 363(e), work to protect creditors, like Weinberg, while honoring the goal of reorganizational bankruptcy. Section 542(a) requires the automatic turnover of estate property post-petition, and Section 363(e) allows a creditor to protect its interests in estate property by requesting adequate protection from the court. The Thirteenth Circuit's holding that section 542(a) is an optional administrative procedure, violates the plain text interpretation of section 362(a)(3).

Finally, the purpose and legislative history of section 362(a)(3) confirm that Congress intended the phrase "any act . . . to exercise control" to prohibit post-petition retention of estate property. The debtor's assets are far more valuable to the estate when used to rehabilitate a business than when sitting idly on a creditor's lot. Weinberg's post-petition control of the trucks therefore deprived Backstreet of any opportunity to reorganize. Thus, this Court should reverse.

Turning to the second question, substantial contribution administrative expenses are not available to creditors in chapter 7 cases. First, the text of section 503(b) rejects the conclusion that Weinberg is entitled to a substantial contribution administrative expense. Congress included the

phrase "under chapter 9 or 11" in section 503(b)(3)(D), but made no mention of chapter 7. That omission was intentional.

Second, despite section 503(b)'s use of the word "including," chapter 7 creditors like Weinberg cannot recover substantial contribution administrative expenses because section 503(b)(3)(D)'s specific restrictions govern over the general permission inherent in section 503(b)'s use of the word "including."

Third, the Thirteenth Circuit's interpretation of section 503(b) violates the canon against surplusage, reading the phrase "under chapter 9 or 11" out of the statute entirely. What's more, the lower court's reading threatens to cut out every provision of section 503(b). If equity allows a court to re-write section 503(b)(3)(D), it allows a court to re-write every provision of section 503(b).

Fourth, the Thirteenth Circuit bases its decision on considerations of equity. Not only does equity fail to give a court the power to override express provisions of the Code, but the lower court's decision leads to an inequitable result. Weinberg is not the only creditor in this case, and every dollar in his pocket is one dollar that is unavailable for distribution to other creditors.

Fifth, the Thirteenth Circuit is incorrect that denying Weinberg a section 503(b)(3)(D) expense will deter creditor participation in future chapter 7 cases. There is no need for a judicially fashioned remedy for chapter 7 creditors who recover property for the estate. Congress already provided recourse to creditors like Weinberg in other provisions of section 503(b).

Finally, section 503(b)(3)(D)'s history and purpose confirm that chapter 7 creditors are not entitled to substantial contribution administrative expenses. Therefore, this Court should reverse.

ARGUMENT

The facts of this case are undisputed. (R. at 3 n.2). This appeal presents only questions of law, which are reviewed *de novo*. *In re Applied Theory Corp.*, 493 F.3d 82, 85 (2d Cir. 2007).

I. Section 362(a)(3) prohibits a secured creditor from passively retaining estate property post-petition, even if the creditor lawfully repossessed the property pre-petition.

The Thirteenth Circuit held that section 362(a)(3) does not automatically stay a creditor's "act" to "exercise control" over estate property unless there is affirmative, post-petition conduct. (R. at 11). Mere passive possession of estate property, the court held, is not enough. (*Id.*) To support this position, the Thirteenth Circuit stated, "that the 'passive violation' view is driven primarily by practical and policy considerations rather than a sound, principled interpretation of the statute." (R. at 20 (citations omitted)). Despite this assessment, the lower court's rationale is wholly focused on policy and practical considerations that favor the rights of individual creditors at the expense of the bankruptcy estate. While the Thirteenth Circuit's desire to protect the interests of individual creditors is admirable, they do so by rewriting section 362(a)(3) and supplying an alternate, omitted meaning. Accordingly, the Thirteenth Circuit's rationale cannot be reconciled with the plain text, structure, purpose, and legislative history of section 362(a)(3). For these reasons, this Court should reverse.

A. Both the text and structure of section 362(a)(3) require that passive retention of property of the estate violates the automatic stay.

Under 11 U.S.C. § 362(a)(3), the automatic stay forbids "*any* act to obtain possession of property of the estate . . . or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3) (2012) (emphasis added). Accordingly, section 362(a)(3) forbids two actions: (1) any act to obtain possession of property of the estate; and (2) any act to exercise control over property of the estate. *Id.* This case principally concerns the scope of the second category of forbidden conduct under section 362(a)(3)—specifically, whether post-petition retention of estate property by a creditor is an impermissible "act to . . . exercise control over property of the estate."

The first provision of section 362(a)(3), "any act to obtain possession," prevents creditors

from seizing a debtor's property during a bankruptcy case. *Id.* The meaning of the second phrase in section 362(a)(3), "any act . . . to exercise control," is contested and requires this Court to determine whether the text of section 362(a)(3) forbids post-petition, passive retention of estate property. *Id.* Here, the Thirteenth Circuit drew an arbitrary distinction between affirmative and passive actions, disregarding Weinberg's "exercise of control" over Backstreet's snow plow trucks. The lower court's narrow focus interpreted the term "act" in a way that impermissibly modified the statute beyond its text.

1. A passive act, or an act in which the creditor takes no active or positive effort to change the status quo, is still an "act" that the automatic stay enjoins.

The term "act" is defined as "the process of doing or performing; an occurrence that results from a person's will being exerted on the external world." *Act*, Black's Law Dictionary 29 (10th ed. 2014). In other bankruptcy contexts, courts have recognized a passive act is nonetheless an act. Section 542(a)(2) "operates as an injunction against . . . an *act*, to collect . . . [discharged debt] as a personal liability of the debtor." 11 U.S.C. § 542(a)(2) (emphasis added). Courts have broadly interpreted the term "act" in this context to include passive acts. Passive acts that violate the discharge injunction include a university's refusal to provide a student with her transcripts (*In re Kuehn*, 563 F.3d 289, 291 (7th Cir. 2009) (rejecting the university's argument that "a passive failure to do what the debtor desires is not an 'act'")); a credit union allowing, but not requiring, a debtor to execute a new note for a discharged debt (*Mickens v. Waynesboro Dupont Emps. Credit Union (In re Mickens)*, 229 B.R. 114, 119 (Bankr. W.D. Va.1999)); and a creditor's failure to update a credit report. *Torres v. Chase Bank USA, N.A. (In re Torres)*, 367 B.R. 478, 486–87 (Bankr. S.D.N.Y. 2007). Just as these passive acts are "acts" within the meaning of the discharge injunction, so too is a passive act an "act" within the meaning of section 362(a)(3).

Under the Bankruptcy Act—the predecessor to the current Bankruptcy Code—a debtor

could commit an "act of bankruptcy" by doing nothing. *Wilson Bros. v. Nelson,* 183 U.S. 191, 194 (1901) (quoting Bankruptcy Act of 1898, ch. 541, § 3a, 30 Stat. 544). Section 3a of the Bankruptcy Act provided that "Acts of bankruptcy by a person shall consist of his having," among other things "(3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings . . . ." *Id.* at 194–95. This passive act of suffering or permitting a creditor to obtain a lien stands in sharp disposition to other more active acts listed in the statute, such as a debtor that has "conveyed, transferred, concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them." *Id.* at 195, 211. Nonetheless, the text and structure of section 3a of the Bankruptcy Act indicate that both the passive action of suffering or permitting a lien is equally an "act" of bankruptcy, as are the affirmative actions of conveying, transferring, or removing property.

2. Ordinary usage of the phrase "any act . . . to exercise control" in section 362(a)(3) demonstrates an intent to forbid a creditor's post-petition passive retention of estate property.

By retaining the snow plow trucks post-petition, Weinberg exercised control over bankruptcy estate property. It is undisputed that the phrase "any act . . . to exercise control" in section 362(a)(3) prohibits conduct where a creditor takes an affirmative, post-petition action that prevents the debtor/trustee from using bankruptcy estate property. *See WD Equip., LLC v. Cowen (In re Cowen)*, 849 F.3d 943, 948 (10th Cir. 2017) (citations omitted). The controversy in this case is, accordingly, whether "any act . . . to exercise control" also prohibits a creditor's post-petition passive retention of estate property. The ordinary meaning of "exercise control" answers that question in the affirmative. *See, e.g.*, *Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 81 (2d Cir. 2013); *Thompson v. Gen. Motors Acceptance Corp.*, 566 F.3d 699, 703 (7th Cir. 2009).

As with all statutory interpretation cases, the analysis begins with the text. *United States v.*

Ron Pair Enters., Inc., 489 U.S. 235, 240–41 (1989). And in the absence of a statutory definition, courts should construe statutory terms "in accordance with their ordinary meaning." *Sebelius v. Cloer*, 596 U.S. 369, 376 (2013). The ordinary meaning of a statutory term can typically be determined by reference to its dictionary definition. *See Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). Here, the statute fails to define the words "control," "any," and "act."

The ordinary meaning of section 362(a)(3)'s key phrase—"any act . . . to exercise control over property of the estate"—is plain and unambiguous. The term "control" is defined as, "to exercise power or influence over. To regulate or govern. To have a controlling interest in." *Control*, Black's Law Dictionary 403 (10th ed. 2014). Crucially, the common understanding of "control" stems from notions of the power to deny access. And bankruptcy courts have held that a creditor exercises control over estate property when it places the estate property beyond the reach of the debtor. *E.g.*, *Harcher v. United States*, 393 B.R. 160, 183 (Bankr. N.D. Ohio 2008).

Logically, then, "[e]xercising power or influence over an asset" by "refusing to return it, and otherwise prohibiting a debtor's beneficial use of an asset" fits within the legal definitions of "act" and "exercise control." *Thompson*, 566 F.3d at 702. In section 362(a)(3), the "act" that the statute prohibits is the exercise of control. That is, the "act" is accomplished and completed by the creditor's exercise of control over estate property. *In re Weber*, 719 F.3d at 81; *Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996). No additional affirmative act is required for a creditor to violate the automatic stay.

Section 362(a)(3)'s reference to "*any* act" confirms that "any act . . . to exercise control" over estate property refers to all manner of actions that could affect the ultimate disposition of estate property. This Court's cases interpreting the word "any" to mean "all" are legion. *See, e.g.*, *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218–19 (2008). And under that expansive definition,

"any act . . . to exercise control" includes a creditor's post-petition refusal to return property of the estate to the debtor or the chapter 7 trustee. *See In re Rozier*, 376 F.3d 1323, 1324 (11th Cir. 2004) (affirming a district court decision that creditor's post-petition refusal to turnover collateral lawfully repossessed prepetition violated the automatic stay). Indeed, "common understanding dictates that if the exercise of control means anything, it means the ability to keep others from access to or use of an object." *In re Yates*, 332 B.R. 1, 4 (B.A.P. 10th Cir. 2005), *rev'd on other grounds*, *In re Cowen*, 849 F.3d 943 (10th Cir. 2017).

Moreover, courts have recognized that an owner's right to control its property is itself a property interest. *United States v. Carlo*, 507 F.3d 799, 802 (2d Cir. 2007) (finding for purposes of a mail fraud statute, that control of assets is a property interest); *Matson v. Grease Monkey Int'l, Inc. (In re BEV of Va., Inc.)*, 237 B.R. 311, 315 (Bankr. E.D. Va. 1998) (holding that control constitutes an estate property interest); *WJM, Inc. v. Mass. Dept. of Public Welfare*, 840 F.2d 996, 1007 (1st Cir. 1988) (analyzing the definition of "transfer" in 11 U.S.C. § 101(54), and concluding that control is an interest in property that can be transferred). When a creditor controls estate property it is exercising a right that belongs to the debtor. "Any attempt therefore to exercise derivatively those rights which belong exclusively to the [] debtor would run afoul of 11 U.S.C. § 362(a)(3) which prohibits 'any act to . . . exercise control over property of the estate.'" *In re Interpictures, Inc.*, 86 B.R. 24, 28 (Bankr. E.D.N.Y 1988).

A simple example illustrates this fact. Checking out a library book requires an affirmative act. The borrower must select the book and complete the check-out process. While the borrower has the book checked out, the borrower is enjoying the book to the exclusion of others. But no one would say that passively retaining the library book constitutes anything other than the borrower exercising continuous control over the book, even though the exercise of control requires nothing

more than simple, passive possession. So too here.

Weinberg's continued possession of the plow trucks is the type of conduct the automatic stay—particularly the phrase "act . . . to exercise control"—seeks to prevent. Weinberg's refusal to surrender the plow trucks was an "act" because he was in "the process of doing" something that "exerted [his will] on the external world." *See Act*, Black's Law Dictionary, *supra*, at 29. Weinberg "exercised power of influence over" and "had a controlling interest in" the trucks such that he (1) deprived Debtor of the opportunity to rehabilitate his business; and (2) deprived the estate of the opportunity to sell the assets as a whole, resulting in a $100,000 loss. *See id.*

There is nothing in the statutory text that indicates that some affirmative step by the creditor is required to violate the automatic stay. Applying this argument to hypothetical cases shows the fallacy of the Thirteenth Circuit's logic. While the trucks were just sitting on Weinberg's lot and not running, he was not, according to the Thirteenth Circuit, acting to exercise control. This would change, however, if Weinberg started the engines or moved the snow plows, or began plowing operations himself. This illogic creates an arbitrary distinction without a functional difference: in either scenario, Backstreet is deprived of its exclusive right to control the snow plows.

3. Interpreting the phrase "exercise control" to mean the same thing as the phrase "obtain possession" violates the canon against surplusage.

The Thirteenth Circuit nevertheless concluded that the word "act" in section 362(a)(3) shows that "some affirmative, post-petition conduct is required in order for a stay violation to be found." (R. at 10). According to the court below, the contrary view—that the word "act" encompasses active and passive exercises of control over estate property—"is driven by practical and policy considerations rather than a sound, principled interpretation of the statute." (*Id.*) Ironically, however, the Thirteenth Circuit's decision suffers from those same defects. And there exists, in short, no textual basis for the lower court's decision.

It is "a cardinal principle of statutory construction" that "a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Were this Court to adopt the lower court's reading of section 362(a)(3), the phrase "any act . . . to exercise control" would be cut out of the statute entirely, violating the canon against surplusage.

When Congress amended the Bankruptcy Code in 1984, it was well aware that post-petition acts to "obtain possession" of estate property were already prohibited. *In re Weber*, 719 F.3d at 80. Congress is presumed to choose its words deliberately, intending that every word shall have a binding effect. Antonin Scalia & Bryan A. Garner, *Reading Law: Interpretation of Legal Texts* 173 (2012). To be sure, sometimes legislators repeat themselves. But not here. The 1984 Amendments confirm this—Congress does not amend statutory language just to say "we really meant what we said in 1898 and 1979." By adding the phrase "to exercise control" over estate property, Congress intended to prohibit something different, something more than mere possession. *See United States v. Butler*, 297 U.S. 1, 65 (1936) ("These words cannot be meaningless, else they would not have been used."). Obtaining possession is already forbidden, and defining "exercise control" as a redundant, additional bar to retaining estate property renders the 1984 Amendment mere surplusage. Therefore, section 362(a)(3) must prohibit two distinct acts with two separate meanings.

Here, the moment the Backstreet filed for bankruptcy, the snow plow trucks became property of the estate. Because the snow plow trucks are property of the estate, they fall within the protections created by the statutory effects of section 362(a)(3). The automatic stay forbids Weinberg from "exercising control over property of the estate." On multiple occasions, both the Debtor and the Trustee demanded the return of the snow plow trucks. (R. at 6, 8). Yet, Weinberg

would not yield. (R. at 8). Under the common meanings of the terms in section 362(a)(3), Weinberg's refusal to return the trucks amounted to an exercise of control of estate property.

By interpreting the phrase "any act . . . to exercise control" as synonymous with "any act to obtain possession," the Thirteenth Circuit effectively renders the 1984 Amendment mere surplusage. However, when read as a whole, with meaning given to every term, section 362(a)(3) makes clear that there is no textual basis for the lower court's holding.

4. The broader structure of the Bankruptcy Code confirms that the plain text interpretation of section 362(a)(3)'s phrase "to exercise control" is correct.

It is axiomatic that isolated words or phrases of a statute cannot be read in isolation, and instead "must be read in their context and with a view to their place in the overall statutory scheme." *Food & Drug Admin. v. Brown & Williams Tobacco Corp.*, 529 U.S. 120, 133 (2000). In this case, the phrase "any act . . . to exercise control" cannot be read apart from the rest of section 362(a)(3), which, in turn, cannot be read apart from section 542.

Section 542(a), commonly referred to as the turnover power, provides that a creditor who has possession of bankruptcy estate property at the time of filing "shall" turn over that property to the trustee. 11 U.S.C. § 542(a) (2012). Focusing on the word "shall," this Court concluded in *United States v. Whiting Pools* that section 542(a) imposed on a creditor a mandatory duty to return estate assets, and that this duty is triggered as soon as the bankruptcy petition is filed. 462 U.S. 198, 202–03 (1983). And as provided in the statute, the phrase "an entity . . . *shall* deliver" requires a creditor to return estate property as soon as the creditor receives notice of the petition. *Thompson*, 566 F.3d at 704 (emphasis in original). That is, the turnover power is automatic and self-executing.

Section 363(e) protects third parties who have an interest in estate property, providing "at any time, on request of an entity that has an interest in property . . . 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." 11 U.S.C. § 363(e) (2012). Sections 542(a) and 363(e) work in tandem to protect the secured creditor and allow the debtor to maintain possession of the estate property while a creditor's motion for adequate protection is pending. *Thompson*, 566 F.3d at 705.

Prior to the 1984 expansion of section 362(a)(3), if a creditor refused to return property of the estate, the debtor had to seek a court order requiring turnover pursuant to section 542(a). Hon. Eugene R. Wedoff, *The Automatic Stay Under § 362(a)(3)—One More Time*, 38 BANKR. L. LETTER 7, July 2018, at 2. In response, the creditor could request adequate protection of their interests under section 363(e). *Id.* While a motion for adequate protection was pending, the creditor would maintain possession of the estate property. *Id.*

Post-1984 Amendment, the turnover process is reversed. *Id.* Because section 362(a)(3) prohibits a creditor from "exercising control" over property of the estate, the creditor must return the estate property to the trustee or debtor in possession while the court considers the creditor's motion for adequate protection. *Id.* The 1984 Amendment to section 362(a)(3) reaffirms the basic policy underlying the automatic stay: the debtor is entitled to use all estate property until the creditor asks the court for relief. *Id.* As explained by this Court in *Whiting Pools* "[a]ny other interpretation of § 542(a) would deprive the bankruptcy estate of the assets and property essential to its rehabilitative effort and thereby would frustrate the congressional purpose behind reorganization provisions." *Whiting Pools*, 462 U.S. at 208.

The Thirteenth Circuit, however, maintains the turnover power is not self-executing. (R. at 12). The court stated, "section 542(a) merely provides a procedure whereby a trustee can seek entry of an order compelling turnover of property of the estate that is held by another." (*Id.*) However, this interpretation contradicts the plain language of the statute as well as *Whiting Pools.*

The mandatory–permissive canon is useful in interpreting the text of this statute. Mandatory words, like "shall," impose a duty. Scalia & Garner, *supra*, at 112. Whereas, permissive words, like "may," grant discretion. *Id.* For example, a document stating "[t]he tenant *shall* provide written notice of an intent to vacate no fewer than 30 days before moving out" states an obligation on behalf of the tenant. *Id.* While a document stating "[t]he tenant may vacate the premises on 30 days' written notice" grants conditional permission to the tenant. *Id.*

Here, section 542(a) states that creditors "shall" deliver estate property to the trustee. *See Kingdomware Tech. Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016). By choosing to use the obligatory "shall" as opposed to the permissive "may," Congress requires the immediate turnover of estate property. *Id.* This interpretation is supported by the legislative history of Section 542(a). At the House and Senate hearings from which section 542(a) emerged, several witnesses voiced "the need for a provision authorizing the turnover of property of the debtor in the possession of secured creditors." *Whiting Pools,* 462 U.S. at 206 n.12 (citations and quotations omitted). Because Weinberg did not promptly return the snow plow trucks to Backstreet, as required by section 542(a), he is in violation of the automatic stay.

Moreover, the Thirteenth Circuit erroneously argued that *Whiting Pools* acknowledges that section 363 serves as an "explicit limitation" to section 542(a), thereby concluding the turnover power is not self-effectuating. (R. at 12). The Thirteenth Circuit correctly stated that section 363(e) requires the bankruptcy court to "prohibit or condition" turnover of collateral "as is necessary to provide adequate protection of the non-debtor's interests of the property." (R. 13). But the lower court's conclusion that "[t]hese limitations evidence that the turnover power is not self-effectuating" is incorrect. (*Id.*)

In *Whiting Pools,* this Court identified three exceptions to turnover actions, none of which

include a creditor's right to adequate protection. *Whiting Pools*, 462 U.S. at 206 n.12. Rather, limitations on the turnover power include (1) when the property is of inconsequential value or benefit to the estate; (2) when the holder of the property transferred it in good faith without knowledge of the petition; and (3) when the transfer of property is automatic to pay a life insurance premium. *Id.* This Court held that that the turnover power, although limited, is self-effectuating. If a creditor wants adequate protection, they must explicitly ask for it. *Id.* at 208–09; *see In re Sharon,* 234 B.R. 676, 684 (B.A.P. 6th Cir. 1999) ("[I]f you don't ask for it, you won't get it.").

B. Both the purpose and legislative history of section 362(a)(3) confirm that Congress intended for passive retentions of property of the estate to violate the automatic stay.

To hold that "exercising control" over an asset only encompasses affirmative acts, such as selling or destroying property, is improper given the central purpose of the statute. "The primary goal of reorganization bankruptcy is to group *all* of the debtor's property together in his estate such that he may rehabilitate his credit and pay off his debts; this necessarily extends to all property, even property lawfully seized pre-petition." *Thompson*, 566 F.3d at 702; *see Whiting Pools*, 462 U.S. at 203–04. The purpose of section 362's automatic stay in general, and section 362(a)(3) in particular, is to protect property of the debtor's estate. *Martin-Trigona v. Champion Fed. Sav.*, 892 F.2d 575, 577 (7th Cir. 1989) (concluding that the statute's purpose "is to protect the bankrupt's estate from being eaten away by creditors' lawsuits and seizures of property before the trustee has had a chance to martial the estate's assets and distribute them equitably among the creditors").

An asset, such as a snow plow truck, that a debtor actively uses to generate revenue during bankruptcy serves a far greater purpose to both the debtor and his creditors than an asset idly sitting on a creditor's lot. In *Whiting Pools,* the Supreme Court stated "[t]he [bankruptcy] reorganization effort would have small chance of success, however, if property essential to running the business

were excluded from the estate." *Whiting Pools*, 462 U.S. at 203. Moreover, the debtor's assets are far more valuable when used to rehabilitate a business than when "sold for scrap." *Id.* at 202 (citing H.R. Rep. No. 95-595, pg. 220 (1977)).

Here, Weinberg deprived Backstreet of access to the snow plows beginning in January 2017. (R. at 6). As a result of this deprivation, Backstreet was unable to fulfill its plowing contract with the City of Badlands, who threatened to cancel the contract and sue Backstreet for damages. (*Id.*) Shortly thereafter—on February 4, 2017—and as a result of the unfulfilled contract, Backstreet filed for chapter 11. (*Id.*) Even after Backstreet filed for bankruptcy, Weinberg, seeking to exact his pound of flesh further still, continued his refusal to return Backstreet's trucks. (*Id.*) Weinberg's continued retention of the trucks, during prime snow plowing season, deprived Backstreet of the opportunity to rehabilitate its business and salvage its contract with the City of Badlands. (*Id.*)

Moreover, after the conversion of the case to chapter 7, and after repeated demands to do so, Weinberg still refused to return the trucks to the chapter 7 trustee. (R. at 8). Despite an offer from Tenth Avenue to purchase substantially all of Backstreet's assets, including the snow plow trucks, Weinberg would not yield possession. (*Id.*) Weinberg's refusal to surrender possession of the trucks caused Tenth Avenue to withdraw its offer and allowed Stone Pony to purchase the estate assets, excluding the plow trucks, for $100,000 less. (*Id.*) Thus, this Court should reverse.

II. Substantial contribution administrative expenses are not available to creditors in chapter 7 cases.

The Thirteenth Circuit held that creditors may receive substantial contribution administrative expenses in chapter 7 cases. (R. at 21). In its view, that conclusion is compelled by the prefatory text of section 503(b) and is "rooted in the overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." (R. at 20 (citations omitted)). As

explained below, however, the plain text, structure, and history of section 503(b) make clear that substantial contribution administrative expenses are only available in chapter 9 and chapter 11 cases; and the bankruptcy court's equitable jurisdiction does not empower it to override that clear textual mandate. And because the bankruptcy court's judgment went beyond the bounds of section 503(b), a judgment affirmed by the Thirteenth Circuit, this Court should reverse.

A. Substantial contribution administrative expenses are not available to creditors in chapter 7 cases because the text and structure of section 503(b) limit the availability of those expenses to chapter 9 and chapter 11 cases.

Under 11 U.S.C. § 503(b)(3)(D), a creditor may receive as an administrative expense "the actual, necessary expenses" that arise from "making a substantial contribution in a case under chapter 9 or 11 of this title[.]" As with any statute, courts interpreting the Bankruptcy Code begin with the text. *Hartford Underwriters Ins. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). In this case, the text of section 503(b)(3)(D) presents Weinberg with three affirmative requirements to receive an administrative expense: (1) Weinberg must be a creditor—he is; (2) Weinberg must have made a "substantial contribution"—he did; and (3) Weinberg must have made that substantial contribution in a chapter 9 or chapter 11 case—he did *not*. *See* 11 U.S.C. § 503(b)(3)(D) (2012). And because he did not, there is no textual basis for the Thirteenth Circuit's decision.

1. Section 503(b)(3)(D) requires that substantial contributions be made "in a case under chapter 9 or 11," and the ordinary meaning of that phrase makes section 503(b)(3)(D) expenses unavailable in chapter 7 cases.

Statutory interpretation begins with the text, "giving the words used their ordinary meaning." *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 100 (2012) (citations omitted). Here, the phrase "under chapter 9 or 11," a prepositional phrase operating as an adjective phrase, modifies the word "case." The word "case," in turn, restricts situations in which a creditor may receive a substantial contribution administrative expense. Against that grammatical backdrop, a simple

syllogism resolves this case: the word "case" in section 503(b)(3)(D) restricts which substantial contributions may receive administrative expense priority; and the phrase "under chapter 9 or 11" restricts "case"; therefore, the phrase "under chapter 9 or 11" restricts which substantial contributions may receive administrative expense priority.

Notably absent from section 503(b)(3)(D) is any reference to chapters 7, 12, 13, or 15—an omission that makes the plain text of section 503(b)(3)(D) dispositive. "The principle that a matter not covered is not covered is so obvious that it seems absurd to recite it." Scalia & Garner, *supra*, at 93–94. And it is well-settled that this Court refuses to "add an extra clause" to the text of a statute because doing so "is not a construction of a statute, but, in effect, an enlargement of it by the court." *Nichols v. United States*, 136 S. Ct. 1113, 1118 (2016) (citation omitted).

Reading the term "chapter 7" into the text of section 503(b)(3)(D) would supplement the statute in just that impermissible way. "Congress knew how to create a 'substantial contribution' administrative expense for cases it believed were appropriate for that benefit." *In re Hackney*, 351 B.R. 179, 201 (Bankr. N.D. Ala. 2006). *But see Mediofactoring v. McDermott (In re Connolly N. Am., LLC)*, 802 F.3d 810, 817 (6th Cir. 2015). As this Court has explained, "[d]rawing meaning from [Congressional] silence is particularly inappropriate" where "Congress has shown that it knows how to [address an issue] in express terms." *Kimbrough v. United States*, 552 U.S. 85, 103 (2007). Had Congress wanted substantial contribution administrative expenses to be available for creditors in chapter 7 cases, it would have added the term "chapter 7" or deleted the phrase "under chapter 9 or 11." It did neither. Therefore, section 503(b)(3)(D)'s plain text precludes Weinberg from receiving a substantial contribution administrative expense in this case.

Undeterred, the court below insisted that substantial contribution administrative expenses could be granted to creditors in chapter 7 cases. "[I]t is fair to infer," the court reasoned, "that

chapters 9 and 11 were expressly referenced in the statute because such cases require creditors to . . . make a substantial contribution to the estate far more frequently than chapter 7 cases do." (R. at 19). And whatever words Congress used in section 503(b)(3)(D), the Thirteenth Circuit argued, "[s]ection 503(b) simply cannot be read" to exclude substantial contribution administrative expenses in chapter 7 cases. (R. at 20).

But that's exactly how the statute should be read. First, if it is true that Congress did not include "chapter 7" in section 503(b)(3)(D) because only in rare chapter 7 cases do creditors need to perform the function of the trustee, then that fact would support the conclusion that Congress's omission of chapter 7 from the text of the statute was intentional. *See O'Melveny & Myers v. FDIC*, 512 U.S. 79, 86 (1994). More to the point, this Court does not expect Congress to legislate in the negative. *See Nichols*, 136 S. Ct. at 1118. That is, this Court does not expect Congress to expressly exclude the situations to which a provision does not apply. And expecting Congress to do so is contrary to grammar usage in its most natural sense. *See id.*

For example, if someone orders a cocktail made "with gin or vodka," that person would not expect the drink to include brandy, tequila, rum, or whiskey. *See NLRB v. Sw. Gen., Inc.*, 137 S. Ct. 929, 940 (2017) ("If a sign at the entrance to the zoo says, 'come see elephant, lion, hippo, and giraffe' and a temporary sign is added saying 'the giraffe is sick,' you would reasonably assume the others are in good health."). It would be onerous to require people to exclude liquors they do not want in their cocktails; and it would be equally absurd to "with gin or vodka" as "with gin or vodka, or also whiskey, rum, tequila, or brandy." And in the same way people don't order cocktails in the negative, legislators do not write statutes by excluding any and all situations in which they do *not* want a provision to apply.

The negative-implication canon clarifies the propriety of this conclusion. In statutory interpretation, negative inferences that the expression of one item in a statute is intended to signal the exclusion of another are appropriate when the included and excluded items are "members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 148, 168 (2003).

For example, in *Lindh v. Murphy*, this Court addressed the proper construction of section 107(c) of the Antiterrorism and Effective Death Penalty Act. *Lindh v. Murphy*, 521 U.S. 320, 327 (1997). Section 107(c) provided that "Chapter 154 . . . shall apply to cases pending on or after the date of enactment of [AEDPA,]" but made no mention of Chapter 153. *Id.* The question before this Court was whether Chapter 153, despite its exclusion from the text of section 107(c), should apply to cases that were pending when AEDPA was enacted. *Id.* at 326. This Court held that the logical inference from Congress's words was that Chapter 153 should not apply to cases pending on or after AEDPA's enactment. *Id.* at 327 (citations omitted). From this Court's perspective, because Chapters 153 and 154 were similar in structure and subject matter, it made little sense to imagine that Congress would have expressly mentioned only one chapter if it had wanted both chapters to apply. *See id.* at 329. In light of that fact, this Court concluded that "[n]othing . . . but a different intent explains the different treatment." *Id.* at 329.

The same conclusion is called for here. Chapters 9, 11, and 7 constitute an "associated group or series." There are only six types of bankruptcy cases. And in section 503(b)(3)(D), two of six were included; four of six were excluded. Congress knew how to provide for substantial contribution administrative expenses in chapter 7 cases, and it therefore makes sense that Congress would have simply dropped the phrase "under chapter 9 or 11" if it intended substantial contribution administrative expenses to be available in chapter 7 cases. *See In re Hackney*, 351

B.R. at 201. But Congress didn't drop "under chapter 9 or 11"; nor did it add "under chapter 7." And because it did not, it makes little sense to imagine that Congress would have expressly mentioned only two chapters if it wanted more than two to apply. *Cf. Lindh*, 521 U.S. at 321. Thus, in this case, Congress's use of the phrase "under chapter 9 or 11" prevents Weinberg from receiving an administrative expense under section 503(b)(3)(D).

2. The word "including" in section 503(b) does not allow a court to circumvent the text of section 503(b)(3)(D) because doing so would violate the general/specific canon and the canon against surplusage.

This is not to say that the phrase "under chapter 9 or 11" invariably means "*only* chapter 9 or 11" when used in a statute. Congress is, of course, free to give the phrase a more expansive meaning. But before assuming Congress has done so, this Court has made clear that "there must be *some* indication Congress intended such a result." *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 455 (2012) (emphasis in original). No such indication exists in section 503(b)(3), however, and the plain language of section 503(b)(3)(D) is therefore dispositive. *See Hartford Underwriters*, 530 U.S. at 6.

The Thirteenth Circuit nevertheless held that substantial contribution administrative expenses are available in chapter 7 cases, reading section 503(b)(3)(D)'s third requirement out of the statute entirely. Relying on Bankruptcy Code section 102(3), and its directive that the "terms 'includes' and 'including' are not limiting," the court below reasoned that section 503(b)'s "[use] of the word 'including' . . . provides bankruptcy courts with much needed flexibility in dealing with specific factual situations where the grant of an administrative expense is warranted." (R. at 19). According to the Thirteenth Circuit, that equitable flexibility gives a bankruptcy court the power "to award substantial contribution administrative expenses where, as here, the grant of such an award is equitable based on the totality of the circumstances." (R. at 21).

The lower court's reasoning, however, misses the mark. And as the rest of section 503(b) confirms, the phrase "case under chapter 9 or 11" means exactly what it sounds like—a chapter 9 or a chapter 11 case. Admittedly, the Thirteenth Circuit's conclusion—that the word "including" in section 503(b), when read in conjunction with section 102(3), forecloses the inquiry—has some appeal, but only if the two sections are read in a vacuum, isolated from the other provisions of section 503(b). "Statutory construction, however, is a holistic endeavor." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). And courts must not use "a single sentence or member of a sentence" as a statutory guide, but should instead "look to the provisions of the whole law, and to its object and policy." *John Hancock Mut. Life Ins. Co. v. Harris Tr. & Sav. Bank*, 510 U.S. 86, 95 (1993) (citations and quotations omitted). Indeed, a provision that might seem clear or controlling in isolation is often restricted or tempered by the rest of the statutory scheme. *See Timbers of Inwood Forest*, 484 U.S. at 371. That is the case here.

It is undisputed, as the Thirteenth Circuit correctly notes, that section 102(3) states as a rule of construction that the term "including" is "not limiting." 11 U.S.C. § 102(3) (2012). It is also undisputed that, as a result of section 102(3), the nine categories of administrative expenses allowable under section 503(b) are not exhaustive. And in the absence of section 503(b)(3)(D), section 503(b)'s introductory paragraph, with an assist from section 102(3), might have resolved this case in favor of Weinberg. But section 503(b)(3)(D) does, in fact, exist, and its existence "casts an entirely different light on the analysis of [section 503(b)]." *In re Hackney*, 351 B.R. at 201.

That new light throws into sharp relief the head-on conflict between the word "including" in section 503(b) and the restrictions in section 503(b)(3)(D). A conflict that falls squarely within the ambit of the "well-established canon of statutory interpretation" that "the specific [provision] governs the general [provision.]" *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S.

639, 645 (2012). As the Supreme Court recently reaffirmed, "[t]he general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission." *RadLAX*, 566 U.S. at 645. This is particularly true where, as in this case, "the two [contradictory provisions] are interrelated and closely positioned, both in fact being parts of [the same statutory scheme]." *See HCSC-Laundry v. United States*, 450 U.S. 1, 6 (1981) (per curiam).

Here, the contradiction between the word "including" and the phrase "under chapter 9 or 11" is exactly the sort that calls out for the general/specific canon. *See RadLAX*, 556 U.S. at 645. Section 503(b) addresses the entire universe of administrative expenses contemplated by the Code. Section 503(b)(3)(D), on the other hand, is a detailed provision that spells out the requirements for a creditor to receive a substantial contribution administrative expense, one specific type of administrative expenses contemplated by section 503(b). And the two conflict because they cannot apply at the same time, to the same facts, in the same case.

When such a contradiction exists between two sections of the Code, the law is clear: "To eliminate the contradiction, the specific provision is construed as an exception to the general one." *Id.*; *see also Bloate v. United States*, 559 U.S. 196, 207–08 (2010); *D. Ginsburg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932) (applying general/specific canon to former Bankruptcy Act).

For example, in *RadLAX v. Amalgamated Bank*, this Court considered a Bankruptcy Code provision that created three exceptions to the rule that confirming a chapter 11 bankruptcy plan requires creditor consent. *RadLAX*, 566 U.S. at 642. The second exception—the credit-bid clause—provided that a plan authorizing the sale of a debtor's assets free and clear of a creditor's lien could be approved without that creditor's consent, but only if the affected creditor was permitted to "credit bid" at the sale. *Id.* at 643–44. The third exception—the indubitable-equivalent

clause—did not specifically address the elimination of a creditor's lien or credit bidding, and instead generally authorized confirmation of a non-consensual plan if it provided the affected creditor with the "indubitable equivalent" of its claim. *Id.* at 644. In *RadLAX*, the question was whether a debtor could use the general language of the indubitable-equivalent clause to circumvent the specific restrictions of the credit-bid clause. *Id.*

Applying the general/specific canon, this Court held that the indubitable-equivalent clause could not be used as an end-run around the credit-bid clause, even though the indubitable-equivalent clause's general language, read in isolation, was "broad enough" to authorize plan confirmation. *Id.* at 646. That was true because the credit-bid clause specifically "spell[ed] out the requirements for selling collateral free of liens," whereas the indubitable-equivalent clause was "a broadly worded provision that sa[id] nothing about such a sale." *Id.* Citing the principle that the specific governs the general—particularly where "Congress . . . has deliberately targeted specific problems with specific solutions"—this Court reasoned that because the credit bid clause addressed the conduct at issue, its requirements could not be circumvented by proceeding under a more general provision like the indubitable-equivalent clause. *Id.* at 647. In other words, in *RadLAX*, the sale of collateral free and clear of a creditor's liens was the problem; the credit-bid clause was the solution. This Court therefore concluded that the credit-bid clause was the exclusive "rule for plans under which the property is sold free and clear of the creditor's lien." *Id.*

Applied here, this Court's formulation of the general/specific canon from *RadLAX* dictates that section 503(b)(3)(D) should be construed as an exception to section 503(b). *See id.* In this case, the question is whether Weinberg—a creditor—may recover a substantial contribution administrative expense in a chapter 7 case. In section 503(b)'s comprehensive scheme to address administrative expenses, Congress provided an answer to that exact question: section

503(b)(3)(D). In that section, Congress outlined who may receive a substantial contribution administrative expense and under what circumstances. Section 503(b), by contrast, provides nothing more than a general permissive statement about administrative expenses, one which makes no mention of creditors, substantial contributions, or chapters 7, 9, or 11. Thus, as in *RadLAX*, application of the general/specific canon makes clear that section 503(b)'s "general language," despite being broad enough to include substantial contribution administrative expenses, "will not be held to apply to a matter specifically dealt with" in section 503(b)(3)(D). *See id.* at 646.

To be sure, as the court below observed, section 503(b)(3)(D) does not *expressly* forbid substantial contribution administrative expenses in chapter 7 cases. (*See* R. at 19). But the whole point of the general/specific canon is to address situations in which the general provision at least arguably covers the situation before the court. *See Bloate*, 559 U.S. at 207–208 ("General language of a statutory provision, *although broad enough to include it*, will not be held to apply to a matter specifically dealt with in another part of the same enactment.") (citation omitted) (emphasis added). The canon would serve no useful purpose if it were rendered inapplicable simply because Congress failed to enact an explicit exception to the general provision. *See Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 524 (1989).

More crucially, the general/specific canon gives teeth to the fundamental rule that "effect shall be given to every clause and part of a statute." *RadLAX*, 566 U.S. at 645 (citations omitted). Seizing on this interpretive principle—known as the canon against surplusage—the Thirteenth Circuit argued that the only way to give meaning to the word "including" in section 503(b) "is to acknowledge that administrative expenses other than the statutory examples are permissible." (R. at 18). But this argument conflates the *illustrative nature* of sections 503(b)(1)–(9) with the *contents* of those sections and subsections. The fact that the list of administrative expenses in

section 503(b) is illustrative does not weaken the conclusion that an administrative expense that falls *within* the type of expense contemplated in section 503(b)(3)(D) is governed by the limits in that subsection. *See Bloate*, 559 U.S. at 208–09. Stated differently, the word "including" in section 503(b) allows a bankruptcy court to contemplate a hypothetical section 503(b)(10) in addition to sections 503(b)(1)–(9). It does not, however, allow a court to then further impute the word "including" into subsections like section 503(b)(3) and sub-subsections like section 503(b)(3)(D).

And far from preserving the syntactical integrity of the word "including" in section 503(b), the Thirteenth Circuit's interpretation reads the phrase "under chapter 9 or 11" out of the statute entirely—a result that actually brings about the harm the court below tried so hard to avoid. When a statute provides for a general permission—here, the word "including" in section 503(b)—followed by a specific prohibition—here, the phrase "under chapter 9 or 11" in section 503(b)(3)(D)—the only way to give effect to both parts of the statute is to treat the specific prohibition as an exception to the general permission. *See, e.g.*, *Bloate*, 559 U.S. at 208–09.

For example, in *Bloate v. United States*, this Court addressed the conflict between two provisions of the Speedy Trial Act. *Id.* at 203. At issue was whether the word "including" in one subsection of the statute—section 3161(h)(1)—allowed a court to bypass the specific restrictions of the enumerated subparagraphs that followed—sections 3161(h)(1)(A)–(H). *Id.* at 199. This Court responded with a resounding "no," holding that where Congress has provided a list of specific subparagraphs that address specific circumstances, those subparagraphs should "govern, conclusively unless the subparagraph itself indicates otherwise[.]" *Id.* at 209. According to this Court, the word "including" supplemented section 3161(h)(1) only when subparagraphs (A)–(H) failed to address the situation before the Court. *Id.* But where a specific subparagraph covered the matter, that subparagraph governed. *Id.* Any other reading, this Court concluded, would violate

well-settled interpretive principles, "and in so doing render even the clearest of the subparagraphs indeterminate and virtually superfluous." *Id.* at 209.

Such is the case here. In enacting section 503(b)(3)(D), Congress turned its attention to a specific issue—substantial contribution administrative expenses sought by creditors—and responded with a specific solution. *In re Hackney*, 351 B.R. at 201; *United States Tr. v. Farm Credit Bank of Omaha (In re Peterson)*, 152 B.R. 612, 614 (D.S.D. 1993). Specifically, Congress outlined with particularity requirements that addressed the who, the what, and the when for section 503(b)(3)(D) administrative expenses. Who may seek them? Creditors. What must those creditors do? Make a "substantial contribution." When must those substantial contributions occur? In a "case under chapter 9 or 11 of this title[.]" Having so carefully defined the scope of substantial contribution administrative expenses, Congress could not have intended the word "including" in section 503(b) to sweep aside the carefully crafted strictures of section 503(b)(3)(D), leaving in their place only vague notions of equity to guide the bankruptcy court's analysis. *Cf. RadLAX*, 556 U.S. at 645. *See also In re Elder*, 321 B.R. 820, 829 (Bankr. E.D Va. 2005).

The best interpretation of section 503(b), then, would be to first read each subsection—e.g., section 503(b)(1)–(9)—as stating the requirements for each type of administrative expense; and second to construe each of the sub-subsections—e.g., section 503(b)(3)(D)—as conclusively governing the category of proceedings it addresses. *See Bloate*, 559 U.S. at 209. And under that interpretation, Weinberg is not entitled to administrative expense priority.

B. The Thirteenth Circuit's interpretation is contrary to the plain text of section 503(b)(3)(D) and threatens to render superfluous every subsection of section 503(b).

Making matters worse, the Thirteenth Circuit's interpretation threatens to effectively erase every single provision of section 503(b) that follows the word "including." Examining its structure

as a whole, section 503(b) contains nine subsections, twelve sub-subsections, and four more sub-sub-subsections, each of which Congress intended to govern exclusively where applicable. *See Lebron v. Mechem Fin., Inc.*, 27 F.3d 937, 945 (3rd Cir. 1994). But in the abstract, each provision stands on equal footing with every other provision. *See id.* That is, section 503(b)(3)(D) is no more and no less special than any other provision in section 503(b). Because of that fact, if equity empowers a court to erase from section 503(b)(3)(D) the phrase "under chapter 9 or 11," then it would empower a court to erase any phrase, from any provision, at any time. Thus, in future cases, relying on nothing more than free-floating notions of equity, a court following the Thirteenth Circuit's interpretation of section 503(b) could ignore, for example, section 503(b)(3)(B)'s requirement that a creditor seek bankruptcy court approval before prosecuting a fraudulent transfer action; or it could ignore section 503(b)'s recurring requirement that certain allowed expenses be limited to those that are "actual" and "necessary." *See, e.g.*, 11 U.S.C. § 503(b)(3).

This outcome would repeatedly violate the canon against surplusage. As noted above, it is a "cardinal rule of statutory interpretation" that no provision "shall be superfluous, void, or insignificant." *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001). With that principle in mind, where section 503(b)(3)(D) applies, it should do so to the exclusion of all other provision in section 503(b). Otherwise, the Bankruptcy Code would not need the "intricate phraseology," *see Timbers of Inwood Forest*, 484 U.S. at 373, of the twenty-five provisions that follow the word "including" in section 503(b), but instead would have simply said "[a]fter notice and a hearing, there shall be allowed administrative expenses, . . . which will include any expense the bankruptcy court deems appropriate as a matter of equity." To follow the Thirteenth Circuit's interpretation, then, has the potential to render every sub-provision of section 503(b) "a practical nullity." *See id.* at 375. The canon against surplusage therefore rejects the lower court's interpretation of section 503(b).

In short, there is no textual basis for the lower court's decision. Indeed, the Thirteenth Circuit all but admits this fact: "Importantly, our decision today is rooted in the overriding consideration that equitable principles govern the exercise of bankruptcy jurisdiction." (R. at 20 (citations and quotations omitted)). And there's the rub. The decision from the court below isn't rooted in the text of the statute. In fact, quite the opposite. The Thirteenth Circuit is saying the that section 503(b)(3)(D) doesn't mean what the text says it means; what the vast majority of courts to address the issue have said it means; or what interpretive canons say it means. Instead, the court below concluded that equity allows a bankruptcy court to re-write section 503(b)(3)(D) to mean something like this: a creditor may receive administrative priority for expenses incurred "in making a substantial contribution under chapter 9 or 11 of this title; or chapter 7; or chapter 12; or chapter 13; or even chapter 15." Such a re-write would impermissibly "transcend the judicial function." *Iselin v. United States*, 266 U.S. 245, 251 (1926).

C. Equity provides no more support for the Thirteenth Circuit's decision than does the text of section 503(b).

The Thirteenth Circuit's reliance on equity is misplaced. Even if the lower court's conclusion were correct, and its reading of section 503(b) did in fact lead to the most equitable outcome, it would make no difference. When the text of a statute is clear, courts need not and should not look to such extra-textual evidence. *E.g.*, *NLRB v. Sw. Gen., Inc.*, 137 S. Ct. 929, 942–43 (2017). Indeed, the Bankruptcy Code makes clear that equity cannot override the Code's provisions and may only be used to "carry out the provisions of this title." 11 U.S.C. § 105(a) (2012). Section 105 gives the Code some play in the joints. It's a patch to cover holes in the text, not a sledgehammer to create them. *See Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). And as this Court has reiterated, courts should interpret the Code as written and leave it to Congress "to address the difficulties that . . . follow [those] decision[s]." *Taylor v. Freeland &*

Kronz, 503 U.S. 638, 644–45 (1992). No matter the concerns, unwelcome results, or improper incentives that might arise from fidelity to the text of section 503(b)(3)(D), the Code says what it says, and substantial contribution administrative expenses are not available in chapter 7 cases.

Fortunately, however, giving effect to the plain text of section 503(b)(3)(D) does not lead to an inequitable result. In bankruptcy, equity cuts both ways. The assets in the bankruptcy estate are finite, a fact that reduces distribution of estate assets to a zero-sum game. Every dollar that goes into the pocket of one creditor is a dollar that cannot be distributed to the rest. Bankruptcy courts must therefore consider the equities for all creditors, not just creditors seeking administrative expense priority. *See, e.g.*, *In re Rice*, 78 F.3d 1144, 1151 (6th Cir. 1996). To do otherwise would allow courts to create substantive rights not in the text of the statute, and would constitute a "roving commission to do equity," in violation of the Code and at the expense of other creditors. *In re Smart World Tech., LLC*, 423 F.3d 166, 184 (2d Cir. 2005). So, while Weinberg might have made a "substantial contribution" to the estate, he is not the only creditor in this case.

D. Contrary to the Thirteenth Circuit's contention, a reading of the statute that is consistent with the plain text of section 503(b)(3)(D) will not deter creditor participation in future chapter 7 cases.

Drifting farther afield from the language of the statute, the Thirteenth Circuit turned to policy arguments in support of its extra-textual interpretation. But none of those arguments warrant a departure from the text of the statute.

The court below contends that "[f]ailing to award an administrative expense to a creditor like Weinberg . . . could deter creditors from participating in chapter 7 cases." (R. at 20 (citations omitted)). But in this case, Weinberg's participation was wholly untethered from the possibility of receiving section 503(b)(3)(D) administrative priority. After the case was converted to chapter 7, Weinberg hired a collection law firm for the purpose of "pursu[ing] collection efforts against

Clemons on the judgment related to his personal guarantee." (R. at 7). While investigating Clemons as part of its collection efforts, the firm happened across fraudulent transfers from Clemons to his family members. (*Id.*) Discovering the transfers from Clemons to his daughter played no part in Weinberg's decision to hire the collection firm. And while the information was certainly beneficial from the Trustee's perspective, it was the byproduct of an investigation that was meant to benefit Weinberg alone.

Weinberg's "participation" in this case was to hire a collection law firm. And he would have hired the collection firm with or without the prospect of section 503(b)(3)(D) administrative priority. This is clear because he *did* hire the collection firm *before* section 503(b)(3)(D) administrative priority was on the table. (*See* R. at 7–8). In short, uncovering the information about the fraudulent transfers was a wholly unexpected consequence. Section 503(b)(3)(D), of course, does not impose an altruism requirement on a creditor, and the fact that Weinberg acted in his own self-interest does not necessarily disqualify him from administrative priority. The fact that he acted in his own self-interest does, however, show that failing to award administrative priority for substantial contributions, when those contributions were a happy accident, had no deterrent effect on Weinberg in this case.

Nor will there be a chilling effect in future cases. Parenthetically, the court below mused that a "court should have the ability to fashion a remedy that will foster rather than hinder [creditor] actions for the benefit of the estate." (R. at 20 (quoting *In re Maust Transp., Inc.*, 589 B.R. 887, 898–99 (Bankr. W.D. Wash. 2018)). But there is no need for a judicially fashioned remedy for chapter 7 creditors who recover property on behalf of the estate. Congress already provided one in section 503(b)(3)(B). *Lebron*, 27 F.3d at 945 ("There are provisions of § 503 other than subsection (b)(3)(D) that authorize reimbursement of expenses incurred in connection with a chapter 7

proceeding, and we believe that post-conversion expenses were intended to be reimbursable under [section 503(b)(3)(B) or (C)] or not at all."). *See also Xiasfras v. Morad (In re Morad)*, 328 B.R. 264, 272–73 (B.A.P. 1st Cir. 2005) (concluding that fees related to investigating fraudulent transfers are the sorts of post-conversion expenses that Congress "intended to be reimbursable under [section 503(b)(3)(B) and (C)] or not at all"). Unfortunately for Weinberg, however, section 503(b)(3)(B) imposes an iron-clad requirement that a creditor seeking administrative priority under its terms must receive court approval before acting to recover the fraudulently transferred property—a requirement that Weinberg did not fulfill. Which is why he is seeking priority under section 503(b)(3)(D) when he should have done so under section 503(b)(3)(B). Ultimately, a ruling from this Court in favor of the Trustee's reading would not deter creditor participation in future chapter 7 cases. It would instead serve as a clear marker, telling future creditors that, with respect to administrative expenses in chapter 7 cases, it is far better to ask for permission than forgiveness.

E. Administrative expenses are to be narrowly construed, and the history and purpose of section 503(b)(3)(D) suggest that Congress intended substantial contribution administrative expenses be available only in reorganization cases.

The long-standing rule is that expenses are allowable under section 503(b)(3)(D) only if they "'directly and materially contributed to the reorganization.'" *In re Celotex Corp.*, 227 F.3d 1336, 1338–39 (11th Cir. 2000) (quoting *Lebron*, 27 F.3d at 943). *See also In re Ulen & Co.*, 130 F.3d 303 (2d Cir. 1942); *Stark v. Woods Bros. Corp.*, 109 F.2d 969 (8th Cir. 1940).

This rule derives from judicial construction of section 503(b)(3)(D)'s statutory antecedents—section 242 and section 243 of the former Bankruptcy Act. *Lebron*, 27 F.3d at 943. Sections 242 and 243 of the Bankruptcy Act "were, in turn, derived from former Section 77B(c)(9) of the Bankruptcy Act . . . ." *Id.* Under section 77B(c)(9), reimbursement of fees was authorized for efforts that "materially aided in the formulation or adoption of a plan." *In re Tudor Gables Bldg. Corp.*, 83 F.2d 871, 872 (7th Cir. 1936) (construing section 77B(c)(9)).

And when Congress enacted section 503(b)(3)(D) in 1978, it did so with full understanding of this historical practice. *See Dewsnup v. Timm*, 502 U.S. 410, 419 (1992). Because "[w]hen Congress amends the bankruptcy laws, it does not write on a clean slate." *Id.* Courts are therefore reluctant to "accept arguments that would interpret the Code . . . to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history." *Id.* at 419–20; *see Timbers of Inwood Forest*, 484 U.S. at 380.

Here, legislative history confirms that Congress intended section 503(b)(3)(D) to alter pre-Code practice in only one respect: substantial contribution administrative expenses need not lead to the *confirmation* of a reorganization plan. *See* S. Rep. No. 95-989, 95th Cong., 2d Sess. 67 (1978). In so doing, Congress recognized that "in many cases it will be a substantial contribution if the [creditor] involved uncovers facts that would lead to a denial of confirmation, such as fraud in connection with the case." *Id.* Congress did not, however, expand the scope of substantial contribution administrative expenses, nor did it untether section 503(b)(3)(D) from pre-Code practices. *Cf. Timbers of Inwood Forest*, 484 U.S. at 380. Thus, no matter how substantial a creditor's contribution to a chapter 7 case, that contribution can never affect, in any way, a debtor's *reorganization*. *See Lebron*, 27 F.3d at 944.

At bottom, the Thirteenth Circuit's reading of section 503(b) rests on the idea that statute's overriding purpose is equity with respect to administrative expenses. Weinberg's efforts, the court argues, "should be rewarded as they enhanced the pool of funds available for creditors." (R. at 20). This argument ignores, however, the presumption in bankruptcy cases that courts should narrowly construe administrative expenses. *Suplee v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, 479 F.3d 167, 172 (2d Cir. 2007). In reality, section 503(b) represents a compromise between the dual objectives of (1) encouraging meaningful creditor participation in the reorganization process

and (2) keeping administrative fees and expenses to a minimum to preserve as much of the estate as possible for creditors. *Lebron*, 27 F.3d at 944. But the Thirteenth Circuit's reading dilutes this compromise and answers a question that was never asked. The question in this case is not which reading leads to the most equitable result. Instead, the question is how to balance preserving estate assets against encouraging creditor participation in the reorganization process. Congress answered this question in the text of section 503(b)(3)(D): substantial contribution administrative expenses are not available to creditors in chapter 7 cases. This Court should therefore reverse.

CONCLUSION

First, Weinberg's refusal to return property of the estate violated the automatic stay provisions of section 362(a). Weinberg's subjective belief that he is entitled to adequate protection before turnover is immaterial. Weinberg's post-petition passive possession of the snow plow trucks deprived Backstreet of the opportunity to rehabilitate its business and ultimately caused the estate to lose $100,000. Congress provided other remedies for a creditor in this situation, remedies that do not include withholding property of the bankruptcy estate. We therefore ask this Court to conclude that Weinberg's refusal to return the snow plow trucks violated the automatic stay.

Second, Congress unambiguously intended that substantial contribution administrative expense claims be limited to "case[s] under chapter 9 or 11 of this title." Weinberg nevertheless asks for an administrative expense that the text of the Bankruptcy Code says he cannot have, that equity says he cannot have, that a majority of lower courts say he cannot have, and that practical considerations instruct he should not have. In so doing, Weinberg asks this Court to re-write section 503(b)(3)(D). But this Court has never sanctioned such a re-write of an unambiguous Code provision. And there is no reason to do so here. Accordingly, this Court should reverse.

APPENDIX A

11 U.S.C. § 102 (2012).

Rules of construction

In this title—

(1) "after notice and a hearing", or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) "claim against the debtor" includes claim against property of the debtor;

(3) "includes" and "including" are not limiting;

(4) "may not" is prohibitive, and not permissive;

(5) "or" is not exclusive;

(6) "order for relief" means entry of an order for relief;

(7) the singular includes the plural;

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and

(9) "United States trustee" includes a designee of the United States trustee.

APPENDIX B

11 U.S.C. § 105 (2012).

Power of court

(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 C

11 U.S.C. § 362(a) (2012).

Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

> **(1)** the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(2)** the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
>
> **(3)** any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
>
> **(4)** any act to create, perfect, or enforce any lien against property of the estate;
>
> **(5)** any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
>
> **(6)** any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
>
> **(7)** the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
>
> **(8)** the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

APPENDIX D

11 U.S.C. § 363(e) (2012).

Use, sale, or lease of property

(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).

APPENDIX E

11 U.S.C. § 503(b) (2012).

Allowance of administrative expenses

(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;
>
> **(B)** 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;
>
> **(C)** 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.

APPENDIX F

11 U.S.C. § 542(a) (2012).

Turnover of property to the estate

(a) Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.