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 RESPONDENT

Team R2
Counsel for Respondent

QUESTIONS PRESENTED

I. Does a creditor's passive retention of property violate the automatic stay under 11 U.S.C. § 362(a)(3) before a hearing to provide adequate protection for the creditor's rights?

II. Does 11 U.S.C. § 503(b) authorize courts to allow administrative expenses for substantial contribution claims in chapter 7 cases?

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OPINIONS BELOW

The unreported opinions of the Bankruptcy Court for the District of Moot and the Bankruptcy Appellate Panel for the Thirteenth Circuit held that retention of collateral does not violate the automatic stay and that courts may grant administrative expenses for a substantial contribution in a chapter 7 case. The Court of Appeals for the Thirteenth Circuit affirmed; its decision is reproduced in the record on 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 I.

11 U.S.C. § 102

11 U.S.C. § 362(a)

11 U.S.C. § 363(e)

11 U.S.C. § 503

11 U.S.C. § 507(a)

11 U.S.C. § 541

11 U.S.C. § 542

11 U.S.C. § 554

P.L. 75-696

STATEMENT OF THE CASE

Petitioner Backstreets Plowing, Inc. ("Debtor"), wholly owned by Christopher Clemons ("Clemons"), operated a snow plowing business in the city of Badlands. Working on a dream, Clemons approached Respondent Milton Weinberg ("Weinberg") in the spring of 2015 to secure a business loan for Debtor. R. at 4. Weinberg, willing to help out his long-time bowling buddy, agreed to lend Debtor $450,000 to purchase new snow plow trucks. R. at 4. In exchange for Weinberg's help, Debtor gave Weinberg a security interest in the trucks and Clemons personally guaranteed the loan. R. at 4. After purchasing the new trucks, Debtor obtained a valuable plowing contract with the City of Badlands by outbidding local competitors, risking small profit margins. R. at 4. By October of 2015, Clemons and Weinberg's relationship had taken a sharp decline, and Weinberg did not hear from Clemons for some time thereafter. R. at 4, 5.

The unusually mild winter of 2015 turned Badlands into the land of hope and dreams. R. at 5. Due to the lack of snow, Debtor turned a sizeable profit, with significant savings on labor, maintenance, and fuel costs. R. at 5. Despite the unexpected profits, Debtor did not make its first several loan payments to Weinberg as required by the promissory note. R. at 5. After several unanswered calls to Clemons, and with high hopes for an amicable resolution, Weinberg visited Debtor's headquarters in February of 2016. R. at 5. Clemons, thinking he was tougher than the rest, had Weinberg forcibly ejected from the property. R. at 5.

In October of 2016, Weinberg obtained a default judgment against Debtor and Clemons for the $450,000 plus interest and fees. R. at 5. By this time, Clemons had begun making cash transfers to his daughter, Patti Clemons ("Patti"), eventually totaling $100,000. R. at 7. Having afforded Debtor and Clemons ample opportunity to fulfill their obligations, Weinberg began

attempting to collect on his judgment in January 2017 by hiring E Street Auto Recovery to repossess the trucks from Debtor's lot. R. at 6.

Debtor filed chapter 11 bankruptcy on February 4, 2017 after failing to fulfill its plowing contract with the City of Badlands. R. at 6. Debtor's attorneys soon sent Weinberg a demand letter to turn over the trucks. R. at 6. Weinberg refused, believing that Debtor had the burden to bring a turnover action before jeopardizing Weinberg's interest in the trucks. R. at 6. Rather than commence a turnover action, Debtor filed a motion asking the Bankruptcy Court to declare Weinberg's possession of the trucks a violation of the automatic stay under § 362(a)(3). R. at 6. Instead, the Bankruptcy Court ruled that Weinberg had not violated the stay because his conduct did not fall within the scope of § 362(a)(3). R. at 6. In March 2017, Debtor appealed the Bankruptcy Court's ruling. R. at 6.

Debtor eventually ran out of cash and voluntarily converted from chapter 11 to chapter 7 bankruptcy. R. at 7. The Bankruptcy Appellate Panel stayed the pending appeal to give the newly-appointed Trustee time to familiarize himself with the case and substitute in for the Debtor. R. at 7. In an attempt to collect on his personal judgment against Clemons, Weinberg hired a collection law firm that took a creditor's examination of Clemons in May 2017, revealing Clemons' $100,000 transfer to Patti. R. at 7.

Weinberg willingly provided the Trustee with the evidence necessary to establish a fraudulent transfer claim against Patti. R. at 7. Consequently, the Trustee reached a quick settlement whereby Patti agreed to pay $75,000 to the estate. R. at 7. Having incurred $25,000 in legal fees investigating the transfers, Weinberg filed a motion seeking administrative fees for his substantial contribution to the estate pursuant to § 503(b). R. at 7. The Trustee agreed that Weinberg substantially contributed to the estate, and yet opposed his motion, arguing that

§ 503(b)(3)(D) expressly limits such expenses to cases under chapter 9 and 11. R. at 7, 8. The Bankruptcy Court approved Weinberg's motion and granted the $25,000 expense. R. at 8.

In September 2017, Debtor received a letter from another snow plowing business, Tenth Avenue, making a "going concern" offer to purchase most of Debtor's assets, including the trucks. R. at 8. The Trustee continued the appeal, intending to pressure Weinberg into turning over the trucks. R. at 8. The Trustee failed to close the deal with Tenth Avenue. R. at 8. A second snow plowing business, Stone Pony, then offered to purchase all of Debtor's assets (except the trucks) for $100,000 less than the offer made by Tenth Avenue. R. at 8. The Bankruptcy Court approved the sale to Stone Pony in February 2018. R. at 9.

SUMMARY OF THE ARGUMENT

The automatic stay in § 362(a)(3) is not self-effectuating. First, a plain reading of the provision reveals merely an explicit prohibition on creditors affirmatively jeopardizing or impairing the bankruptcy estate. The provision is silent in regard to passive retention of property that was lawfully repossessed prepetition. Second, the symbiotic relationship between the automatic stay and the turnover proceedings of § 542 require the court to allow a creditor to assert defenses to the stay before he or she can be dispossessed. To read § 362 as self-effectuating would undermine the potent creditor protections secured in § 542. Third, if the creditor has a claim of right to the property in question, equity dictates that the status quo be maintained to avoid the duplicative expense and confusion of transferring property back and forth. Additionally, § 542 safeguards the creditor's rights to property that might be used, sold, or otherwise disposed of by the debtor or trustee before a bankruptcy court can hold a turnover earing to protect the rights of the parties. Finally, long-standing precedent and practice allows creditors to insist upon the condition of a turnover proceeding before relinquishing property to

the debtor. The creditor has no obligation or duty to give away property to the debtor. Requiring a creditor to compromise his property interest contravenes the purpose and history of the Bankruptcy Code. The automatic stay solely prohibits creditors from affirmatively diminishing the property recoverable by the bankrupt estate. Preserving the status quo through the automatic stay is and has always been effectuated through the turnover order, issued after a hearing where the interests of the parties may be given proper consideration and protection.

Section 503(b) allows courts to grant administrative expenses for substantial contributions in chapter 7 cases. First, the text and structure of § 503(b) combine to create a contextual framework of allowable administrative expenses. Congress assigned § 503(b) a non-exhaustive reading by its deliberate use of the term "including," which holds a statutory meaning of non-limitation. The term "including" therefore applies equally throughout the various subsections of § 503(b) and renders the *expresio unius* canon inapplicable. The plain language of § 503(b) serves the long-standing purpose of maximizing estate value through creditor incentivization. Second, the equitable jurisdiction of bankruptcy courts calls for a fair and pragmatic approach to administrative expenses on a case-by-case basis. This approach is effective for furthering the statute's purpose because of the requirements of a substantial contribution, which, by its very nature, confers a tangible benefit on the estate. Creditor participation is often necessary to the administration of the bankrupt estate, even once a trustee has been appointed. Thus, an arbitrary restriction on substantial contribution claims based on chapter classifications constitutes a complete divergence from the history and purpose of § 503(b). Creditors, regardless of bankruptcy chapter, have always played a critical role in bankruptcy proceedings. Chapter 7 creditors who successfully prove their actual and necessary

expenses incurred from a substantial contribution to the estate may be reimbursed under § 503(b).

ARGUMENT

The parties do not dispute the facts on appeal. R. at 3 n. 2. The only issues on appeal involve questions of law and are reviewed de novo. *Shamus Holdings, LLC v. LBM Fin., LLC* (*In re Shamus Holdings, LLC*), 642 F.3d 263, 265 (1st Cir. 2011). Under a de novo standard, the Court reviews the bankruptcy court directly for clear error in conclusions of law. *Brandt v. Repco Printers & Lithographics (In re Healthco Int'l)*, 132 F.3d 104, 208 (1st Cir. 1997).

I. A secured creditor may passively retain possession of collateral lawfully repossessed prepetition without violating the automatic stay of § 362(a)(3).[1]

Section 362(a)(3) allows creditors to passively retain lawfully repossessed property, prohibiting only affirmative "acts … to exercise control over property of the [bankruptcy] estate." 11 U.S.C. § 36(a)(3). The plain language of the statute is clear and unambiguous, requiring the Court to settle its analysis through a plain reading of the text. *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004). Congress intended only to prohibit affirmative acts by creditors under § 362(a)(3) and did so in the plain text of the statute. However, in the event the Court determines that reasonable minds could differ in the interpretation of § 362(a)(3), further analysis of the statute yields the same result. Creditors who lawfully repossess property are permitted to retain such property until they have received adequate protection of their interests.

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq*. Specific sections of the Code are set forth herein as "§ ____."

A. The text, structure, purpose, and history of § 362(a)(3) indicate that passive lawful retention of property falls outside the injunctive function of the automatic stay.

When interpreting a statute, the Court must look to the text of the statute itself, the structure of the statute as a whole, the purpose of the statute, and the history of the statute. *Torres v. Lynch*, 136 S.Ct. 1619 (2016) (courts must read the statute as a whole); *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (The Court is "reluctant to accept arguments that would interpret the Code … to effect a major change in … practice that is not the subject of at least some discussion in the legislative history."). The automatic stay provision of § 362 operates as an injunction to prohibit creditors from taking certain enumerated actions regarding estate property. *WD Equipment, LLC v. Cowen* (*In re Cowen*), 849 F.3d 943, 948 (10th Cir. 2017). Other sections of the Bankruptcy Code, such as the provisions of § 363(e), provide strong indications that the stay was not intended to divest creditors of lawful possession of property before a § 542 turnover proceeding where their rights would be protected. The purpose of the automatic stay is to "maintain the status quo" during the pendency of the bankruptcy process, by enjoining affirmative acts of creditors. *Billings v. Portnoff Law Assoc. (In re Billings)*, 687 Fed. Appx. 163, 165 (3d Cir. 2017). Maintaining the status quo is best achieved by maintaining the location of property, whether it be in the possession of the debtor or the creditor, until the bankruptcy court holds a hearing to provide adequate protection for the rights of the parties. The legislative and precedential history of § 362 also indicate that the automatic stay does not encompass passive retention of lawfully possessed property. Taking into consideration all of these factors, the best and most logical interpretation of § 362(a)(3) is that it encompasses only affirmative acts by creditors.

1. Absent a turnover order, creditors may passively retain lawfully repossessed property under § 362(a)(3).

The plain language of the Bankruptcy Code indicates that creditors in lawful possession of property face penalties for retaining possession of the property only after a judicial proceeding and issuance of a turnover order. A court will find that a statute is ambiguous when the statute "is susceptible to more than one reasonable interpretation or more than one accepted meaning." *U.S. v. Nam Van Hoang*, 636 F.3d 677, 682 (5th Cir. 2011). After the Court determines that the statutory language at issue is ambiguous, statutory construction "begin[s] with the language of the statute." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002). The operative language in § 362(a)(3) prevents creditors from "any act to … exercise control over property of the estate…" The terms "act" and "exercise control" are not defined in § 362, but they refer to affirmative, post-petition acts when given their everyday meaning.

Ambiguous terms that are not explicitly defined within the statute itself are given their ordinary dictionary definition. *U.S. v. Santos*, 553 U.S. 507, 511 (2008) ("When a term is undefined, we give it its ordinary meaning.") (internal citations omitted). An "act" is defined by Merriam-Webster's Collegiate Dictionary as "the doing of a thing." *Act*, Merriam-Webster's Collegiate Dictionary 11 (10th ed. 1998). Other definitions of "act" include to "take action," and "do something." *Act*, New Oxford American Dictionary 15 (3d ed. 2010). Notably, the various definitions of "act" indicate that § 362(a)(3) exclusively refers to affirmative actions not passive omissions.

Congress also did not explicitly define the term "exercise control" in § 362. The Court must, therefore, also give it its ordinary meaning. *Santos*, 553 U.S. at 511. The verb "exercise" is defined by Merriam-Webster's Collegiate Dictionary as "to make effective in action." *Exercise*, Merriam-Webster's Collegiate Dictionary 406 (10th ed. 1998). The word "control" is defined by

the same dictionary as "the act or instance of controlling." *Control*, Merriam-Webster's Collegiate Dictionary 252 (10th ed. 1998). Therefore, an ordinary dictionary definition of the term "exercise control" means to make an affirmative action to control.

The words "exercise control" cannot include inaction in § 362(a)(3) because they must be read in conjunction with the word "acts." Section 362(a) cannot encompass omissions because "acts" to "exercise control" does not place a duty upon creditors to return any and all property to which the debtor claims he is entitled, even if he is mistaken in believing that property to be part of the estate. *See* 11 U.S.C. § 541(b) (listing types of property which do not belong to the estate). Section 362(a)(3) must be read to allow creditors, such as Weinberg, lawfully in possession of property to refrain from acting pending a judicial determination as to whether or not such property falls under an exception to the automatic stay. Any other reading would effectively be reading the word "act" out of the statute, which is impermissible. *Setser v. U.S.*, 566 U.S. 231, 239 (2012) (noting that the Court must "give effect to every clause and word" of the statute being interpreted) (internal citations omitted). Therefore, the most logical reading of § 362(a)(3) does not include passive retention of property within its prohibition on creditor "acts" "to exercise control."

2. Requiring turnover before a hearing deprives creditors of their opportunity to raise defenses and is inconsistent with the purpose of § 362(a)(3).

The underlying purpose of the automatic allows creditors to present defenses in a turnover proceeding before they are required to turn over the property. The automatic stay provision of § 362 is intended to ultimately benefit creditors as well as debtors. *See Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 69 (5th Cir. 1986) ("The purpose of the automatic stay is to protect creditors in a manner consistent with the bankruptcy goal of equal treatment.") (citing

H.R. REP. NO. 95-595, at 340 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6297 ("The automatic stay also provides creditor protection."). The stay prevents creditors from collecting property before the trustee can liquidate the estate, protecting the estate from being divided prematurely. *Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1197 (6th Cir. 1983) ("The stay of proceedings was intended to promote an orderly reorganization or liquidation of the debtor's estate thereby benefiting … creditors of the estate). The 1984 amendment to § 362(a)(3) expands this protection of estate property by preventing these creditors from acting in ways that might jeopardize the division of the estate, such as encumbering the property.[2] Cases interpreting this amended language involve creditor actions that curtail or diminish the interest debtor retained in the repossessed property. For example, the D.C. Circuit noted that someone who files a motion to dismiss a suit filed by the debtor does not violate the automatic stay. *U.S. v. Inslaw Inc.*, 932 F.2d 1467, 1473 (D.C. Cir. 1991). This is the case even though a dismissal may burden rights asserted by the bankrupt. *Id*.

Maintaining possession of property in anticipation of an adversary proceeding does not jeopardize the goal of dividing the estate proportionately among creditors. If the property is not part of the estate, the creditor's rights to the property are protected from accidental destruction or hasty liquidation. If the property is part of the estate, its value is preserved and may be gathered by the trustee pursuant to a turnover order. The reason why the Trustee failed to liquidate the estate was not that Weinberg maintained possession of the property, but rather, the Trustee neglected to file a turnover action. R. at 6. Had the Trustee filed a turnover action, Weinberg could protect his interest in the trucks through the proceeding required by § 542. During the

[2] *In re Bernstein* 252 B.R. 846, 848 (2000) (holding that "a creditor who files a covenant not to encumber or convey real property belonging to the estate" is an affirmative act to exercise control prohibited by § 362(a)(3))(internal citations omitted).

required § 542 turnover proceeding, the Trustee would have had a fair opportunity to argue his belief that the trucks were part of the estate. It is an injustice to the goal of creditor protection if creditors lawfully in possession of property must give up possession without adequate protection of their rights immediately upon demand of a trustee or debtor in possession.

Adequate protection of creditors' rights has been a touchstone of bankruptcy law since its inception. *In re Hall*, 502 B.R. 650, 664 (Bankr. D.D.C. 2014). This protection was absolutely contemplated from the initial enactment of § 362(a)(3). H.R. REP. NO. 95-595, at 122 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6083 ("The section governing the stay also provides for relief from the stay in certain circumstances, in order to protect the creditor's rights…[and] does not affect the creditor's substantive rights in any way."); S. REP. NO. 95-989, at 50 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5836 ("The purpose of [paragraph (3)] is to prevent dismemberment of the estate."). Until the 1984 amendment, there was no question that creditor protection was provided in the requisite turnover proceedings before creditors were required to give up possession of property to the trustee. *In re Young*, 193 B.R. 620, 626 (1996). Changing this practice by requiring creditors to turn over property before a hearing allows for the destruction of creditors' rights.[3]

This destruction of creditors' rights is the exact result that this Court contemplated and rejected in the *Strumpf* case. *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 21 (1995). The Court in *Strumpf* reasoned that "it would be an odd construction" to require a creditor to turn over property which the creditor was excused from turning over under the Code. *Id.* at 20. In the *Strumpf* case, the Bankruptcy Court required the Creditor to turn over property to which the Bankruptcy Court later granted it relief from the automatic stay. *Id.* at 18. However, by the time

[3] For instance, if the property was discarded under § 554 or sold by the trustee before a proceeding is held, the creditor's rights may never be vindicated. 11 U.S.C. § 554.

the matter had been adjudicated, the Debtor had destroyed the property, thereby destroying the Creditor's setoff interest. *Id.* The Court reasoned that the Creditor's placement of a hold on the Debtor's account was not a violation of the automatic stay because it was a "false premise that [Creditor's] administrative hold took something from [Debtor], or exercised dominion over property that belonged to [Debtor]." *Id*. at 21. Instead, the Court characterized the hold as a "temporary refusal ... neither a taking of possession of respondent's property nor an exercising of control over it." *Id*. The Court held that the "temporary refusal" to return property at the debtor's request did not violate the automatic stay. *Id*.

Had Weinberg immediately turned over the property to the Debtor in the initial chapter 11 proceeding and the Debtor destroyed the property or sold it before a hearing, Weinberg would never have received adequate protection for his interests in the property. Similarly, had Weinberg turned over the property to the Trustee after the chapter 7 conversion, the Trustee could have consummated the sale to Tenth Avenue, destroying Weinberg's interest in the trucks. Requiring creditors lawfully in possession of property to turn over the property before a hearing to protect their rights under the Code contravenes the purpose of the exceptions to the automatic stay, and thus the purpose of the stay itself. To remain faithful to the underlying and unwavering goals of bankruptcy, the protection of creditors' interests must remain paramount. *In re Hall*, 502 B.R. 650, 664 (Bankr. D.D.C. 2014). Allowing for debtors in possession or trustees to demand possession of property before a proceeding contravenes the purpose of § 362.

3. Congress did not intend to deprive creditors of their right to raise defenses before turnover of lawfully possessed property.

The operative language of § 362(a)(3) and its legislative history indicate that Congress did not intend to leave creditors without opportunity to raise defenses to a trustee or debtor in possession's request for turnover. Congress amended § 362(a)(3) with the 1984 Federal

Judgeship Act, expanding the automatic stay to include "acts to exercise control" in addition to "acts to obtain possession." *WD Equipment, LLC v. Cowen* (*In re Cowen*), 849 F.3d 943, 949 (10th Cir. 2017). The language in dispute in this case comes from the 1984 amendment, and the precedent attached to the Bankruptcy Code before the 1984 amendment must be considered when interpreting § 362(a)(3). *IRS v. Murphy*, 892 F.3d 29 (1st Cir. 2018) (The presumption that Congress did not intend to change common practice" is particularly appropriate when the new legislation invokes and builds off an existing statutory framework."); *See, e.g.*, *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985). Using turnover orders to gain possession of property of the estate was common practice, indicating that the 1984 expansion of the automatic stay is limited in order to allow creditors the requisite opportunity to raise defenses to the automatic stay.

Common practice in bankruptcy courts before the 1984 Bankruptcy Amendments Act uniformly allowed "secured creditor[s] [to] insist upon a condition precedent to the turnover of property…" in order to raise defenses relating to the repossessed property. *In re Young*, 193 B.R. 620, 626 (Bankr. D.D.C. 1996). Therefore, the evolution of § 362(a)(3) must be harmonized with the turnover powers codified of § 542(a) in order to give effect to the history and precedent of both provisions.

Before the 1984 Bankruptcy Amendments Act, all courts construed the automatic stay as preventing only affirmative acts on the part of creditors. *In re Young*, 193 B.R. 620 at 626. When the language "or to exercise control over property of the estate" was added in 1984, lower courts lost sight of the nature of Section 362(a)(3) and began ruling turnover as mandatory. *Knaus v. Concordia Lumber Co.* (*In re Knaus*), 889 F.2d 773 (8th Cir. 1989) (first circuit court to change the practice after the 1984 amendment). This Court has stated that it "will not read the

Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (internal citation omitted). Congress did not expressly extend the prohibition on creditors' actions to passive omissions and the history of § 362(a)(3) excludes passive omissions. This Court must not add language into the statute that prohibits passively retaining repossessed property. *Dean v. U.S.*, 556 U.S. 568, 572 (2009) (the Court "ordinarily resist[s] reading words or elements into a statute that do not appear on its face."). While the 1984 amendment did expand the prohibition on certain actions by creditors, the prohibition does not expressly extend to passive retention of property.

B. The automatic stay provision of § 362(a)(3) must be read in light of § 542(a), indicating that the turnover power is not self-effectuating.

This Court, along with the majority of courts interpreting the language of § 362, has found that § 362 must be construed in conjunction with § 542. *See Citizens Bank v. Strumpf*, 516 U.S. 16, 21 (1995); *In re Cowen*, 849 F.3d 943, 949 (10th Cir. 2017); *see also Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 75 (2nd Cir. 2013). Specifically, this Court has stated that it "will not give § 362(a)(3) … an interpretation that would proscribe what § 542 [was] plainly intended to permit." *Strumpf*, 516 U.S. 16 at 21. The Court must harmonize all provisions in order to give effect to every word of the statute. *Setser v. United States*, 566 U.S. 231, 239 (2012). A plain reading of § 542 indicates that it is not self-effectuating, and therefore, neither is § 362(a)(3). However, even if the Court determines that reasonable minds could differ as to the interpretation of § 542, the text, structure, history, and purpose of § 542 yield the same conclusion; § 542 is not self-effectuating. Reading § 542 as self-effectuating by requiring creditors to automatically turn over all repossessed property, makes the turnover procedures outlined in the provision superfluous. Because the language of § 542 and judicial precedent indicate that the turnover

power is not self-effectuating, § 362's automatic stay cannot be read as self-effectuating so as not to undermine Congressional intent by effectively sublimating § 542. *See In re Hall*, 502 B.R. 650, 655 (Bankr. D.D.C. 2014).

1. The language of § 542(a) indicates that it is not self-effectuating.

Turnover is only required after a hearing and issuance of a turnover order by a court. The only language in § 542(a) that courts have considered to indicate that the turnover power is self-effectuating is the word "shall." *Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 75 (2d Cir. 2013). However, the word "shall" in § 542(a) must be read in conjunction with the rest of § 542 to determine its meaning. *Maracich v. Spears*, 570 U.S. 48, 62 (2013) ("phrases…which are capable of many meanings can be construed in light of their accompanying words in order to avoid giving the statutory interpretation unintended breadth) (internal citations and quotations omitted). Section 542(b) uses "shall," but is not construed as self-effectuating. *In re Bernstein*, 252 B.R. 846, 852 (Bankr. D.D.C. 2000) ("Section 542(b) is simply an acknowledgement that the trustee… is entitled to receive payment of monetary obligations owed to the debtor, not a self-executing provision giving rise to contempt…"). Further, the word "shall" in the turnover provision of § 542(a) was never interpreted as self-effectuating before the 1984 amendment to § 362(a)(3). *In re Hall*, 502 B.R. 650 at 657. The meaning of "shall" in § 542(a) should also be consistent with judicial precedent interpreting other provisions of the same statute. *St. Regis Mohawk Tribe v. Brock*, 769 F.2d 37 (2d Cir. 1985) (When Congress adopts new law incorporating sections of prior law, it can be presumed to have had knowledge of that interpretation given to the incorporated law, at least insofar as it effects the new statute.). The Court should presume that the meaning of the word "shall" in § 542 is consistent with its meaning in other provisions of the same statute and is consistent with decades of judicial

interpretation. Therefore, the word "shall" does not indicate that the turnover power of § 542 is self-effectuating.

The turnover power provided in § 542(a) extends only to "property that the trustee may use, sell, or lease under § 363." 11 U.S.C. § 542(a). Section 363(e) provides that the court may "prohibit or condition" the trustee's proposed "use, sale, or lease" of certain property "as is necessary to provide adequate protection of [the creditor's] interest." 11 U.S.C. § 363(e). The bankruptcy court determines which property fits this definition during a turnover proceeding, where the creditor may present defenses to the stay or prove that the property in its possession is not part of the estate. *See Whiting Pools*, 674 F.2d 144, 153-56 (2nd Cir. 1982), *aff'd*, 462 U.S. at 209 n. 16 (1983) ("unassailable" discussion of the legislative history of § 542 and holding that the turnover power is held by the bankruptcy court). Therefore, § 542 does not necessarily extend to all property that the trustee believes to be part of the estate. Obligating the creditor to turn over such property before proceedings are held contravenes the purpose of the proceeding, and the ultimate goal of the automatic stay to preserve the status quo. *Billings v. Portnoff Law Assoc. (In re Billings)*, 687 Fed. Appx. 163, 165 (3d Cir. 2017).

2. Secured creditors must be given an opportunity to raise defenses before they are required to turn over property.

Turnover proceedings must be held to protect creditors' rights before creditors are mandated to give up possession of property they lawfully acquired pre-petition. The turnover provision of § 542(a) provides a statutory basis for bankruptcy courts to "empower the trustee in bankruptcy to get hold of the property of the debtor, some of which will be in the possession, custody, or control of third parties." *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (In re United States Diversified Prods.)*, 100 F.3d 53, 56 (7th Cir. 1996); H.R. REP. NO. 95-595, at 367 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5967, 6325; S. REP. NO. 95-989, at 82

(1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5868 ("the Code's turnover provisions…allow the trustee to recover property that was merely out of the possession of the debtor, yet remained property of the debtor."); *see also Whiting Pools*, 462 U.S. at 204-09 & n. 11. This empowerment has always been conducted through the issuance of injunctive relief in the form of the turnover order, consistent with the pre-Code practice § 542 codified. *Whiting Pools*, 462 U.S. at 208; *In re Young*, 193 B.R. at 626. If the debtor in possession or trustee were able to demand all property believed to be part of the estate without affording the creditor an opportunity to oppose the turnover, inevitably, some of this property may fall outside the scope of the estate and the entire process would be a waste of resources and time for all parties involved.

Section 542(a) and legislative history accompanying it explicitly caution that the turnover provisions only apply to property that the "trustee or debtor in possession may use, sell, or lease … under § 363." U.S.C.S. § 542(a); H.R. REP. NO. 95-595 at 367 *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5868. Congress clearly intended for the turnover powers to be limited; the debtor in possession or trustee may not demand immediate possession of any and all property that they believe is or should be part of the estate because bare belief alone does not make property subject to § 363. Given that § 542 is limited in scope, the boundaries of its limitation are frequently litigated. However, the litigation contemplated by § 542 (turnover proceedings) was common practice before the Bankruptcy Code was enacted and, historically, was held before the creditor turned over the property. *In re Young*, 193 B.R. at 626; *see also Whiting Pools*, 462 U.S. at 208 (1983). Requiring the creditor to turn over possession of the property before a turnover hearing would essentially amount to an *ex parte* injunction.

Even the Eighth Circuit has recognized that if "relinquishment of possession will in and of itself destroy the creditor's rights," the creditor is entitled to refuse to deliver possession of the

property until the creditor receives adequate protection of its rights. *N. Am. Banking Co. v. Leonard (In re WEB2B Payment Sols., Inc.)*, 488 B.R. 387, 393 (B.A.P. 8th Cir. 2013). The onus to initiate turnover proceedings has always been on the trustee or debtor in possession, consistent with the goal of the automatic stay provisions to preserve the status quo. *In re Billings*, 687 F. App'x 163, 165 (3d Cir. 2017). Reversing the order of the turnover proceedings and the trustee's injunctive relief has no basis in the text, history, or purpose of § 542.

3. The current § 542(a) is a codification of the preexisting power of bankruptcy courts to enter injunctive orders to compel turnover after an adversarial hearing.

The turnover provisions in the Bankruptcy Code are merely codifications of common law bankruptcy practice, which allowed courts to issue turnover orders after a turnover hearing. This Court has stated that it is "reluctant to accept arguments that would interpret the Code, however vague the particular language under consideration might be, to effect a major change in … practice that is not the subject of at least some discussion in the legislative history." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992). Before § 362(a)(3) was amended in 1984, § 542(a) was regarded as a codification of injunctive authority requiring turnover only after proceedings during which creditors could present defenses. *In re Riding*, 44 B.R. 846, 848-49 (Bankr. D. Utah 1984); *see also Whiting Pools*, 462 U.S. at 208 (Section 542 is a codification of "judicial precedent predating the Bankruptcy Code."). The historic turnover power of the bankruptcy courts as codified in § 542 was, and has always been, implemented through the issuance of a turnover order by the bankruptcy court. *See Maggio v. Zeitz*, 333 U.S. 56, 68 (1948), *superseded by statute,* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat 2549, *as recognized in* Bailey v. Suhar (In re Bailey), 380 B.R. 486 (B.A.P. 6th Cir. 2008) (before the Bankruptcy Code was enacted, courts issued turnover orders to collect estate property from third parties); *see also*

Whiting Pools, 462 U.S. at 201-02 (turnover order issued against the Internal Revenue Service for return of estate property). The turnover order is the injunctive remedy to recover possession of estate property by third parties under § 542. Requiring creditors to turn over lawfully repossessed property before a turnover order (and requisite notice and hearing) circumvents creditor protections explicitly preserved by statute, effectively negating the underlying purpose of the turnover. Furthermore, Congress did not provide any legislative history to explain the 1984 amendment to § 362(a)(3). *Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 80 (2d Cir. 2013); *WD Equip., LLC v. Cowen (In re Cowen)*, 849 F.3d 943, 949 (10th Cir. 2017). The established practice of providing a hearing and issuance of an order before requiring creditors to turn over property they lawfully possess cannot be upended without any supporting legislative history. *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992).

Not only is the turnover order itself a precedential method that prevents a reading of § 542 as self-effectuating, but the adversary hearing required before the turnover order prevents such a reading. Turnover proceedings under § 542 provide creditors with the "adequate protections" required by § 363(e) and this Court's precedence. *Whiting Pools*, 462 U.S. at 207–08. While the scope of the automatic stay and turnover proceedings is broad, it is limited by the protections of creditors' rights as required under the Code. Creditors are not just working on a dream when they demand adequate protections of their rights.

II. Administrative expenses for substantial contribution claims in chapter 7 cases are allowable under § 503(b).

This case raises a second issue of statutory interpretation that must begin with the language of the statute itself. *Ross v. Blake*, 36 S.Ct. 1850 (2016). The precise statutory provision at issue states, in relevant part, "After notice and a hearing, there shall be allowed, administrative expenses … including the actual, necessary expenses … incurred by a creditor … in making a substantial contribution in a case under chapter 9 or 11 of this title."

In construing statutory language, courts first ask whether Congress has spoken on the subject. *Sebelius v. Cloer*, 569 U.S. 369, 380 (2013). If so, courts must give effect to the unambiguously expressed intent of Congress. *Id.* Where statutory language is ambiguous, courts utilize the canons of construction as a means of effectuating congressional policy. *U.S. v. Kimbell Foods*, 440 U.S. 715 (1979). In doing so, courts look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy. *Torres v. Lynch*, 136 S.Ct. 1619 (2016). To determine whether Congress intended § 503(b) to create a *per se* bar against substantial contribution claims in chapter 7 proceedings, the Court "must retain all traditional interpretive tools—text, structure, history, and purpose." *Arlington Cent. Sch. Dist. Bd. Of Educ. v. Murphy*, 548 U.S. 291, 324 (2006) (Breyer, J., dissenting).

A. Allowing administrative expenses for substantial contribution claims in chapter 7 cases is consistent with the text and structure of § 503(b).

Both the text and structure of § 503(b) indicate that courts may allow administrative expenses for substantial claims in chapter 7 cases. In determining the meaning of a statute, courts look not only to the particular statutory language, but also to the design of the statute as a whole. *Torres v. Lynch*, 126 S.Ct. 1619 (2016). Statutory language must therefore be read in context, not in isolation. *Boumediene v. Bush*, 553 U.S. 723 (2008). Accordingly, the best understanding of

§ 503(b) harmonizes text and structure in consideration of the interrelatedness of various subsections under § 503, as well as other Code provisions.

1. The statutory text mandates a non-exhaustive reading of § 503(b).

The statutory text of § 503(b) mandates a non-exhaustive reading by the deliberate use of the term "including." 11 U.S.C. § 503(b). Judicial construction has long given illustrative meaning to lists preceded by the word "includes" or "including." *Samantar v. Yousef*, 560 U.S. 305 (2010); *P.R. Mar. Shipping Auth. v. Interstate Commerce Comm'n*, 645 F.2d 1102, 1112 n.26 (D.C. Cir. 1981). Yet this Court need not look further than the Bankruptcy Code itself. Section 102 of the Code, the "Rules of Construction," expressly and unequivocally states that the term "including" is "not limiting." 11 U.S.C. § 102(3). Congress's unambiguous directive under § 102(3) invokes several cardinal canons of construction which guide this textual analysis.

When Congress expressly defines a given term, that express definition excludes all other meanings and controls the construction of the term "*wherever it appears throughout the statute*." *In re Etchin*, 128 B.R. 662, 668 (W.D. Wis. 1991) (emphasis added); *see also Burgess v. United States*, 553 U.S. 124 (2008). In any analysis of § 503(b), "including" must reflect this meaning of non-limitation. The proper application of the meaning of "including," creates a non-exhaustive list of allowable administrative expenses that serves as a contextual framework intended to provide guidance, not restriction. *See Mediofactoring v. McDermott* (*In re Connolly N. Am., LLC) (Connolly I)*, 802 F.3d 810, 816-17 (6th Cir. 2015). The contextual framework under § 503(b) provides bankruptcy courts with the flexible authority to grant "reasonable administrative expenses of creditors whose efforts substantially benefit the bankruptcy estate and its creditors in a Chapter 7 proceeding." *Id*. at 819.

As opposed to this non-exhaustive reading, Debtor's restrictive reading of § 503(b) necessarily negates the statutory meaning of the term "including." An elementary canon of construction is that a statute should be interpreted so as not to render one part inoperative. *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985). Yet to strictly construe § 503(b) as an exclusive list, prohibitive of substantial contribution claims in chapter 7, violates congressional intent and deprives the term "including" of all operative meaning.[4] *See In re George Worthington Co.* (*Worthington I*), 913 F.2d 316, 326 (6th Cir. 1990) (Jones, J., dissenting), *vacated*, 921 F.2d 626 (6th Cir. 1990) (viewing Congress's own construction of "including" as "the best indication of Congressional intent that we can find").

Rather than glean congressional intent from the very words of Congress, Debtor places an improper focus on the statute's mention of chapter 9 or 11; this is nothing more than a red herring. Only by reading "Chapter 9 or 11" in a vacuum—conveniently detached from its preceding provision—could the statutory silence regarding chapter 7 creditors translate into a *per se* bar against them. *See also Girouard v. United States*, 328 U.S. 61, 69 (1946) ("It is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law."). Debtor's interpretation would effectively require the Court to strike-through one part of the statute, while inserting restrictions into another. As the Sixth Circuit has pointed out,

> "Nowhere does the Act say, 'expenses incurred by a creditor in securing the removal of a Chapter 7 trustee are not allowable'; or, 'expenses incurred in making a substantial contribution in a case under Chapters 9 or 11, but not Chapter 7, may be allowed'; or, 'only the enumerated expenses shall be allowed.'

Connolly I, 802 F.3d at 816. The text of the statute plainly does not preclude substantial contribution claims for chapter 7 creditors, which the Thirteenth Circuit has also recognized. R.

[4] Under the contextual framework construction, the words "Chapter 9 or 11" retain their operative meaning as illustrative examples of the more common administrative expenses intended to be allowed. *Connolly I*, 802 F.3d at 817.

at 19. Absent a clear intent to deny reimbursement to chapter 7 creditors, "such expenses should rise or fall based on the facts of the case and other guiding caselaw," in accordance with the non-exhaustive nature of § 503(b). *In re Maust Transp., Inc.*, 589 B.R. 887, 898 (Bankr. W.D. Wash. 2018). Use of the term "including" could not have been more deliberate. Congress legislates with knowledge of the basic canons of statutory construction, relying on courts to give operative effect to a statutorily defined term. *McNary v. Haitian Refugee Ctr. Inc.*, 498 U.S. 479 (1991).

2. The statutory structure mandates a non-exhaustive reading of § 503(b).

Likewise, the statutory structure mandates a non-exhaustive reading of § 503(b). A court's construction of a statute must, to the extent possible, ensure that the statutory scheme is coherent and consistent. *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214 (2008). The construction of § 503(b)(3)(D) as a *per se* bar to substantial contribution claims in chapter 7 cases is neither coherent nor consistent with the statutory scheme of § 503(b) because it directly contradicts the construction of other subsections.

For example, §§ 503(b)(1)(B)-(C) allow administrative expenses for certain taxes, fines, and penalties. 11 U.S.C. §§ 503(b)(1)(B)-(C). Although the word "interest" appears nowhere in the text, courts have routinely held that the interest accrued on prepetition taxes is an allowable administrative expense pursuant to § 503(b). *See United States v. Flo-Lizer, Inc.* (*In re Flo-Lizer, Inc.*), 916 F.2d 363 (6th Cir. 1990); *United States v. Cranshaw* (*In re Allied Mechanical Serv., Inc.*), 885 F.2d 837 (11th Cir. 1989); *United States v. Ledlin* (*In re Mark Anthony Constr., Inc.*), 886 F.2d 1101 (9th Cir. 1989); *United States v. Friendship College, Inc.* (*In re Friendship College, Inc.*), 737 F.2d 430 (4th Cir. 1984). [5] Similarly, § 503(b)(1)(A) authorizes

[5] In deciding this issue, the Ninth Circuit noted the unambiguous congressional directive under § 102(3), specifically stating that "the structure of section § 503(b) is inconsistent with a restrictive interpretation of its list of administrative expenses." *In re Mark Anthony*, 886 F.2d at 1106.

administrative expenses for official creditor committees, without any express mention thereof. *In re Glob. Int'l Airways Corp.*, 45 B.R. 258, 261 (Bankr. W.D. Mo. 1984); *In re J.E. Jennings, Inc.*, 96 B.R. 500, 501–02 (E.D. Pa. 1989); *see also In re Kaiser Steel Corp.*, 74 B.R. 885 (Bankr. D. Colo. 1987); *In re George Worthington Co.* (*Worthington II*), 921 F.2d 626 (6th Cir. 1990). To achieve structural coherency, the non-limiting effect of "including" must modify all subsections of § 503(b) equally. Consistent application of the statute's non-exhaustive reading means that chapter 7 creditors, having made a substantial contribution, can be allowed administrative expenses. The alternative yields absurd results: giving effect to the operative meaning of "including" for some provisions and denying it for others. *See United States v. Turkette*, 452 U.S. 576, 580 (1981) (Noting "absurd results are to be avoided and internal inconsistencies in the statute must be dealt with.").

Furthermore, the *per se* bar interpretation is contingent upon an erroneous application of *expresio unius*. The *expresio unius* canon has no application to § 503(b)(3)(D) in light of the non-exhaustive nature of § 503(b). Under *expresio unius*, courts interpret an associated group or series of items to impliedly exclude any items not expressly mentioned therein. *United States v. Vonn*, 535 U.S. 55, 65 (2002). However, the statute's express mention of chapter 9 or 11 does not impliedly exclude chapter 7 unless read in isolation. Courts do not view statutory language through blinders, and "[t]he force of any negative implication … depends on context." *NLRB v. SW Gen., Inc.*, 137 S.Ct. 929, 940 (2017). Accordingly, "the *expresio unius* canon applies only when circumstances support a sensible inference that the term left out must have been meant to be excluded." *Id*. (emphasis added). If Congress intended to categorically deny chapter 7 creditors, it would not have done so through mere implication—sensibility will not support such a leap.

B. Allowing administrative expenses for substantial contribution claims in chapter 7 cases is consistent with the overarching purpose and history of § 503(b).

The purpose and history of § 503(b) are consistent with allowing administrative expenses for substantial contribution claims in chapter 7 cases, pursuant to its text and structure. Benefit to the bankrupt estate is a paramount principle underpinning the Code. *See Toibb v. Radloff*, 501 U.S. 157, 163 (1991). Section 503(b) advances this principle by encouraging meaningful creditor participation in bankruptcy proceedings. The payment of administrative expenses under § 503(b) "allows [the] debtor to secure goods and services necessary to administer [the] estate, which ultimately accrues to [the] benefit of all creditors." *Microsoft Corp. v. DAK Indus.* (*In re DAK Indus.*), 66 F.3d 1091, 1097 (9th Cir. 1995). Importantly, administrative expenses allowed under § 503(b) receive high-priority status, ranked second only to claims for domestic support obligations. 11 U.S.C. 507(a). This priority payment status operates as an incentive to creditors by promising reimbursement for efforts that maximize estate value. Section 503(b)(3)(D) in particular serves "to encourage creditors *in whatever chapter a bankruptcy case is filed* to 'substantially contribute' to the estate by pursuing funds that will be available for distribution to claimants." *In re Maust Transp., Inc.*, 589 B.R. 887, 898 (Bankr. W.D. Wash. 2018) (emphasis added).

1. The equitable powers held by bankruptcy courts favor a case-by-case approach to administrative expenses.

Equity favors a case-by-case approach to the allowance of administrative expenses under § 503(b). The bankruptcy court's equitable powers are firmly rooted in decades-old Supreme Court precedent. *See Bank of Marin v. England*, 385 U.S. 99, 103 (1966), *superseded by statute,* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat 2549, *as recognized in In re Cent. Fla. Metal Fabrication,* 190 B.R. 119 (Bankr. N.D. Fla 1995) (noting the "overriding

consideration that equitable principles govern the exercise of bankruptcy jurisdiction."); *See also Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934), *superseded by statute,* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat 2549, *as recognized in In re Nadler*, 122 B.R. 162 (Bankr. D. Mass. 1990) (bankruptcy courts are "essentially courts of equity, and their proceedings [are] inherently proceedings in equity."). These equitable powers have a textual grounding in the Bankruptcy Code, which states "[t]he court may 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).

As specialized courts of equity, bankruptcy courts are fully equipped to assess administrative expenses on a case-by-case basis by considering the totality of the circumstances. *See Mediofactoring v. McDermott (In re Connolly N. Am., LLC) (Connolly I)*, 802 F.3d 810, 814-15 (6th Cir. 2015). The particular circumstances that warrant administrative expenses will inevitably vary from case to case. For example, § 503(b)(3)(B) allows expenses "incurred by a creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." 11 U.S.C. § 503(b)(3)(B). A creditor's attorney who conducted a § 2004 examination of the debtor and discovered hidden property, including a $14,000 lake cabin, was entitled to administrative expenses under the statute because the court found his efforts "instrumental" in the discovery of estate assets. *In re Rumpza*, 54 B.R. 107, 108 (Bankr. D.S.D. 1985). Although the attorney failed to obtain prior court approval, the *Rumpza* court lauded his initiative nonetheless: "Mr. Damgaard proceeded and took the risk that he might not be compensated out of estate funds for his efforts. Those efforts in total benefitted all the creditors of the estate. His risk, in this case, will be rewarded." *Id*. at 109.

Creditors have better memories than debtors, even in chapter 7. The *Rumpza* decision illustrates how equity encourages creditor participation for the benefit of the estate, thereby advancing the purpose of § 503(b). Rewarding the substantial contributions of chapter 7 creditors means that courts can advance this purpose further by considering the unique circumstances of each claim and granting expenses accordingly. Conversely, a categorical denial of administrative expenses under circumstances where reimbursement is appropriate would "impugn the fundamental notion of bankruptcy as equitable relief." *Connolly I,* 802 F.3d at 819.

2. By definition, substantial contributions benefit the bankrupt estate.

Substantial contributions benefit the estate, by their very nature. The principle test for the "substantial contribution" requirement of § 503(b)(3)(D) is the extent of benefit to both the debtor's estate and its creditors. *In re Rockwood Computer Corp.*, 61 B.R. 961 (BC SD Ohio 1986). Thus, a creditor's general involvement, standing alone, does not meet this requirement. *Gen. Elec. Capital Corp. v. Nigro* (*In re Appliance Store*), 181 B.R. 237 (1995). Courts will also deny claims based on duplicative actions taken by multiple creditors of the same case, as well as claims for minimal or incidental benefits. *See In re Am. Plumbing & Mech., Inc.*, 327 B.R. 273 (Bankr. W.D. Tex. 2005). Instead, the substantial contribution claimant must show a tangible benefit conferred on the estate and attributable to the claimant's actions. *In re AMR Corp.*, 523 B.R. 415 (S.D.N.Y. 2014).

Administrative expenses for a substantial contribution claim must also be "actual and necessary." 11 U.S.C. § 503(b). The "actual and necessary" requirement preserves the estate for the benefit of all creditors by keeping expenses to a minimum. *In re Transamerican Natural Gas Corp.*, 978 F.2d 1409 (5th Cir. 1992); *NLRB v. Walsh (In re Palau Corp.)*, 18 F.3d 746 (9th Cir. 1994). For example, a creditor insurance company will not receive an administrative expense for

estimated claims that it may or may not have to pay in the future, because such expenses are quite clearly projected rather than "actual" (*i.e.*, realized, incurred and paid by creditor). *Nat'l Union Fire Ins. Co. v. VP Bldgs., Inc.*, 606 F.3d 835 (6th Cir. 2010). Additionally, a claim "rooted entirely in prepetition conduct" that does nothing to preserve the bankrupt estate must be denied because such expenses are not necessary to the estate's administration. *Hensley v. Pace Airlines, Inc. (In re Pace Airlines, Inc.),* 483 B.R. 306, 311 (Bankr. M.D.N.C. 2012).

Substantial contribution claims are not easily proven, and a claimant who does not meet its burden of proof will not be reimbursed from estate funds. *See e.g.*, *In re Lason, Inc.*, 314 B.R. 296, 303 (Bankr. D. Del 2004) ("The burden of proof is on the claimant to show that claim is entitled to administrative expensive [sic] treatment") Because a contribution must be "tangible" and its expenses "actual and necessary," substantial contributions necessarily increase the value of the estate, the ultimate goal of § 503(b). The benefit to the estate can be measured objectively under any chapter proceeding, and the scrutiny imposed on this type of claim precludes bad faith claimants from gaming the system. Thus, when a chapter 7 creditor successfully proves a substantial contribution claim, allowing these expenses is critical to upholding the statute's underlying purpose.

3. Creditor participation is often necessary after the appointment of a trustee.

Although the bankruptcy trustee ideally assists with estate administration, creditor participation is still necessary. Indeed, circumstances often require creditors to step up and "tak[e] action that benefits the estate when no other party is willing or able to do so." *Mediofactoring v. McDermott (In re Connolly N. Am., LLC) (Connolly I)*, 802 F.3d 810, 818 (6th Cir. 2015). The demand for continual creditor participation is best demonstrated by the recent Sixth Circuit decision, granting substantial contribution claims to three creditors for their

successful removal of a grossly negligent chapter 7 trustee. *Id*. In *Connolly I*, the Trustee failed to secure over $3,200,000 for the bankrupt estate. *Shapiro v. Art Leather, Inc. (In re Connolly N. Am., LLC) (Connolly II)*, 340 B.R. 829, 831 at n. 3 (Bankr. E.D. Mich. 2006). *Connolly I* sheds light on the reality that trustees are imperfect, and where a trustee breaches his or her duty, creditors must be there to pick up the slack.

In other cases, a creditor's active involvement is necessary due to unique circumstances, through no fault of the trustee. *See e.g.*, *In re Javed*, 592 B.R. 615 (Bankr. D. Md. 2018); *In re Maust Transp., Inc.*, 589 B.R. 887 (Bankr. W.D. Wash. 2018)*; Sharkey v. Stevenson & Bullock PLC*, (*In re Sharkey*), 2017 U.S. Dist. LEXIS 188689, at *19 (E.D. Mich. Nov. 15, 2017). For example, in *Javed* the chapter 7 creditor's early actions, prior to the trustee's active engagement in the case, resulted in the "swift recovery" of at least four vehicles fraudulently transferred by the debtor. *In re Javed*, 592 B.R. at 623. In granting the administrative expense, the court emphasized that the creditor's conduct "streamlined the Trustee's process for obtaining certain kinds of information". *Id*. In *Maust*, the creditor obtained counsel on a contingency basis to pursue a fraudulent transfer claim on behalf of the estate. *In re Maust Transp., Inc.*, 589 B.R. 887, 891 (Bankr. W.D. Wash. 2018). The creditor's efforts were crucial because the trustee failed in his efforts to obtain contingency counsel, lacked sufficient funds to pay counsel on an hourly basis, and was unable to reach a settlement with the transferee. *Id*. In *Sharkey*, a chapter 13 creditor undertook litigation efforts to object to debtor's claim of exemption, which included two annuity funds valued at $96,675. *In re Sharkey*, 2017 U.S. Dist. LEXIS 188689, at *2. Since the chapter 13 trustee failed to make the objections, the creditor's involvement was absolutely essential and enabled the debtor to pay 100% of all administrative expenses and unsecured claims. *Id*.

In construing statutes, absurd results are to be avoided. *Griffin v. Oceanic Contractors, Inc.*, 548 U.S. 564, 583 (1982). The categorical denial of substantial contribution claims to chapter 7 creditors creates an arbitrary restriction that yields absurd results. A trustee's role in no way diminishes a creditor's ability to substantially contribute to the estate; rather, "the public interest is best served by encouraging [creditors] to alert a Trustee of the existence of assets that will benefit the bankruptcy estate." *In re Integrity Supply, Inc.*, 417 B.R. 514, 522 (Bankr. S.D. Ohio 2009). Chapter 7 creditors must therefore be awarded administrative expenses for their substantial contributions, notwithstanding the appointment of a trustee.

4. The statutory and legislative history of § 503 corroborates Congress's intent to incentivize creditor participation.

Both the statutory and legislative history of § 503 corroborate Congress's intent to incentivize creditor participation through the payment of administrative expenses. Section 503(b) has its roots in § 64(a)(1) of the Bankruptcy Act of 1938. S. REP. NO. 95-989 66 *as reprinted in* 1978 U.S.C.C.A.N 5787. Section 64(a)(1) granted priority payment for expenses such as "the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition," as well as "the reasonable costs and expenses" of recovery "where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors." Bankruptcy Act of 1938, ch. 575, § 64(a)(1), 52 Stat. 840, 874 (1938) (current version at 11 U.S.C. § 503 (2012)).

Notably, no version of the statute contained the term "including" until Congress passed the Bankruptcy Reform Act of 1978. 11. U.S.C. § 503(b). The Act of 1978 significantly altered the legal landscape of bankruptcy by addressing several major areas of concern. One such area,

as explained by California congressman and bill sponsor Don Edwards, involved the lack of creditor participation:

> "The Brookings Report and the Bankruptcy Commission found that creditors were not getting enough money out of bankruptcy proceedings to make it worth their while to participate in attempting to recover their money. As a result, the administration of bankruptcy cases was left to professional administrators who do not act for the benefit of creditors, whose money is involved, but only for their own benefit. This is the infamous 'bankruptcy ring' we have heard so much about. The bankruptcy system essentially had gotten out of control of the creditors, even though it was designed to be controlled by creditors."

Representative Edwards (CA), *Bankruptcy Reform Act of 1978,* Cong. Rec.123:35446 (Oct. 27, 1977). Statements by legislators provide evidence of congressional intent when they are consistent with the statutory language and the legislative history. *Brock v. Pierce Cty.*, 476 U.S. 253, 263 (1986). Sponsor statements in particular deserve substantial weight in the interpretation of a statute. *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976). The "bankruptcy ring" described by Congressman Edwards confirms the purpose and design of § 503(b) as an improved incentive structure to increase overall participation of creditors.

In the absence of a conflict between a statute's plain language and its legislative history, the words of the statute must prevail. *Aaron v. S.E.C.*, 446 U.S. 680 (1980). Here, no conflict exists because the legislative history of § 503(b) clearly supports the statute's plain language. The Senate report discussing the Act of 1978 reveals that § 102(3), ascribing non-limiting meaning to "including," is a codification of this Court's 1933 decision in *American Surety*. *American Sur. Co. v. Marotta*, 287 U.S. 513, 517 (1933); S. REP. NO. 95-989, at 82 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6272. Under *American Surety*, the term "include" is frequently, if not generally, used as a word of extension or enlargement rather than as one of limitation or enumeration. *Id.* This codification corroborates the non-exhaustive reading of § 503(b) mandated by the textual and structural interpretations.

CONCLUSION

Congress has provided clear procedures to protect the property rights of creditors and incentivize their involvement in the bankruptcy process. These procedures require a hearing before a trustee may demand property that is lawfully held by a creditor. Under the current circuit splits, many deserving creditors who have emptied their pockets for the benefit of the bankrupt estate find themselves left with nothing but a long walk home. These unfortunate outcomes cast a chilling effect upon creditor participation. For the foregoing reasons, the Respondent respectfully asks this Court to affirm the judgments of the District Court for the District of Moot and the United States Court of Appeals for the Thirteenth Circuit.

Team R2
Counsel of Record

APPENDIX A

11 U.S. Code § 102 (2012)
Rules of construction

In this title—

(1) – (2) [omitted]

(3) “includes” and “including” are not limiting;

(4) – (9) [omitted]

APPENDIX B

11 U.S.C. § 362(a) (2018)
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 C

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 D

11 U.S. Code § 503 (2012)
Allowance of administrative expenses

(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;

(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 [11 USCS § 507(a)(8)]; 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.

(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 E

11 USC § 507(a) (2012)
Priorities

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title, unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (12 U.S.C. 343), and any fees and charges assessed against the estate under chapter 123 of title 28.

(3) – (10) [omitted]

APPENDIX F

11 U.S.C. §541 (2012)
Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is--

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date--

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include--

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that--

(A)

(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)

(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $ 6,425;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $ 6,425;

(7) any amount--

(A) withheld by an employer from the wages of employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986 ;
(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions--

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 198;
(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or
(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;
(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and
(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made--

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and
(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with

property of the debtor),unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but--

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds--

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(h) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $ 6,425.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c) — (f) [omitted]

APPENDIX G

11 U.S.C. §542 (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.

(b) Except as provided in subsection (c) or (d) of this section, an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.

(c) — (e) [omitted]

APPENDIX H

11 U.S.C. § 554 (2012)
Abandonment of property of the estate

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) Unless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title.

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

APPENDIX I

P.L. 75-696
52 Stat. 840 (1938)

Sec. 64. Debts Which Have Priority. —a. The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment, shall be (1) the actual and necessary costs and expenses of preserving the estate subsequent to filing the petition; the filing fees paid by creditors in involuntary cases; where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the cost and expense of one or more creditors, the reasonable costs and expenses of such recovery; the costs and expenses of administration, including the trustee's expenses in opposing the bankrupt's discharge, the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases and to the bankrupt in voluntary and involuntary cases, as the court may allow…