No. 18-0918

IN THE

Supreme Court of the United States

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 P. 7
Counsel for Petitioner

Oral Argument Requested

QUESTIONS PRESENTED

1) Does post-petition retention of property of the estate violate the automatic stay provision of 11 U.S.C. § 362(a)(3)?

2) Does 11 U.S.C. § 503(b) permit a court to grant an administrative expense for a substantial contribution in a case under chapter 7 of the Bankruptcy Code?

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OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot denied Backstreets's motion asking for a determination that Weinberg's continued retention of Backstreets's plow trucks constituted a violation of the automatic stay. R. at 6. The Bankruptcy Court also approved Weinberg's motion for an administrative expense for a substantial contribution. R. at 8. Both decisions were appealed, and the appeals were consolidated before the Bankruptcy Appellate Panel for the Thirteenth Circuit, which affirmed on both issues. R. at 9. The Court of Appeals for the Thirteenth Circuit likewise affirmed on both issues. R. at 3. The Supreme Court of the United States granted certiorari. The Thirteenth Circuit's opinion is reproduced as the record in this appeal.

STATEMENT OF JURISIDICTION

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

STATUTORY PROVISIONS

The relevant statutory provisions are listed below. The text of each provision is reproduced in Appendices A through I.

11 U.S.C. § 101(15)

11 U.S.C. § 102(3)

11 U.S.C. § 362(a)(3), (b)(3), (d)(1)

11 U.S.C. § 363(b)(1), (e)

11 U.S.C. § 503(b)(3)(D), (b)(4)

11 U.S.C. § 541(a)(1)

11 U.S.C. § 542(a)

11 U.S.C. § 546(b)(1)(b)

11 U.S.C. § 704(a)(4)

STATEMENT OF THE CASE

The Loan

Debtor Backstreets Plowing, Inc. ("Backstreets") operated a seasonal snow-plow business headquartered in Badlands, Moot. R. at 3–4. In 2015, Backstreets's sole shareholder, Christopher Clemons ("Clemons"), approached Milton Weinberg ("Weinberg") for a loan of $450,000 to upgrade Backstreets's fleet of plow trucks. R. at 4. Backstreets granted Weinberg a security interest in the trucks,[1] and Clemons personally guaranteed the loan. R. at 4. Backstreets agreed in a promissory note to make monthly payments to Weinberg beginning in December 2015. R. at 4. In August 2015, shortly after receiving the loan proceeds, Backstreets purchased the new trucks. R. at 4. Backstreets thereafter submitted an ultimately successful bid to the city of Badlands for a plowing contract. R. at 4.

Default and Repossession

Clemons failed to make the first few payments on the loan due under the promissory note. R. at 5. In April 2016, Weinberg filed suit in the State of Moot Circuit Court in Asbury Park County. R. at 5. The suit contained two actions: one against Backstreets on the promissory note, and the other against Clemons on his personal guarantee. R. at 5. In October 2016, Weinberg obtained a default judgment against Backstreets and Clemons, jointly and severally, for $450,000 plus interest and fees. R. at 5.

Weinberg waited until January 2017 to collect on his judgment. R. at 6. He hired a repossession company in late January to repossess the trucks from Backstreets's lot and deliver them to a warehouse he owned, where they remain to this day. R. at 6. Weinberg never commenced foreclosure proceedings, and the trucks remain titled to Backstreets. R. at 6 n.4.

[1] It is undisputed that Weinberg's security interest in the trucks is a perfected purchase-money security interest, and Weinberg does not assert that he obtained a security interest in any other property of the debtor. R. at 4 n.3.

Bankruptcy Proceedings

Prior to the repossession, the 2016–2017 winter was particularly snowy. R. at 5. The monthly payments Backstreets received from the City of Badlands were not enough to cover Backstreets's costs. R. at 5–6. Furthermore, without its plow trucks, Backstreets was unable to fulfill its contract with the City of Badlands and faced cancellation of the contract and a lawsuit for damages. R. at 6. Running out of cash and unable to operate its business, Backstreets filed a chapter 11 bankruptcy petition on February 4. R. at 6.

Shortly after the petition date, Backstreets sent Weinberg a letter demanding return of the plow trucks. R. at 6. Weinberg refused to return the trucks, and Backstreets promptly filed a motion in bankruptcy court for a determination that Weinberg's retention of the trucks violated the automatic stay under § 362(a)(3). R. at 6. The bankruptcy court denied the motion, and Backstreets timely appealed in March 2017. R. at 6. Soon after, Clemons decided that reorganization would be impossible, and Backstreets voluntarily converted its chapter 11 case to a chapter 7 case. R. at 7. Steven Vin Sant ("the Trustee") was appointed on April 13, 2017, to administer Backstreets's chapter 7 case. R. at 7.

Weinberg's Investigation

After Backstreets converted its bankruptcy case to a liquidation under chapter 7, Weinberg hired a collection law firm to take a creditors' examination of Clemons. R. at 7. This examination revealed that Backstreets had made fraudulent transfers totaling $100,000 to Clemons's daughter, Patti Clemons. R. at 7. Weinberg provided this information to the Trustee, and this enabled the Trustee to ultimately recover $75,000 for the estate through a settlement with Patti. R. at 7.

Weinberg, who incurred $25,000 in legal fees and expenses investigating the fraudulent transfers, filed a motion seeking payment of an administrative expense for a substantial contribution pursuant to § 503(b). R. at 7. The Trustee acknowledged that Weinberg had made a

substantial contribution, but he opposed the motion on the grounds that § 503(b)(3)(D) expressly limits such administrative expenses to cases under chapters 9 and 11. R. at 7–8. The bankruptcy court approved Weinberg's motion, and the Trustee timely appealed. R. at 8.

Sale of Assets

In September 2017, Tenth Avenue Freeze, Inc. approached the Trustee to purchase substantially all of Backstreets's assets, but when the Trustee was unable to negotiate with Weinberg for the return of the plow trucks so that they could be included in the sale, Tenth Avenue withdrew its purchase offer. R. at 8. Subsequently, Stone Pony Plowing, LLC offered to purchase Backstreets's assets, excluding the trucks, for $100,000 less than Tenth Avenue's offer. R. at 8. The Trustee agreed to this offer, and the bankruptcy court approved the sale to Stone Pony in February 2018. R. at 8–9.

The Appeals

The Trustee proceeded with the appeals of the automatic-stay and substantial-contribution issues. R. at 9. The appeals were consolidated before the Bankruptcy Appellate Panel, which affirmed on both issues. R. at 9. The Trustee timely appealed to the Thirteenth Circuit, which also affirmed on both issues. R. at 9. The Supreme Court granted certiorari.

SUMMARY OF THE ARGUMENT

Regarding the first issue on appeal in this case, retention of property of the estate after the filing of the bankruptcy petition is a violation of the automatic stay under § 362(a)(3). This is clear from the plain language of the statute, which prohibits any act "to exercise control over property of the estate." 11 U.S.C. § 362(a)(3) (2018). Based on the dictionary definitions of the words "act," "exercise," and "control," knowing retention of property of the estate after the bankruptcy petition is filed qualifies as an act to exercise control over that property, and is thus a violation of the automatic stay. The legislative history of the statute further supports this view, as the

automatic-stay provision was amended in 1984 to expand its already broad scope. Weinberg's retention of Backstreets's plow trucks falls within the plain meaning of § 362(a)(3) and the broad scope of the automatic stay and is thus a violation.

Weinberg has also violated the turnover duty imposed by § 542(a). This turnover duty, which requires entities in possession of property of the estate to deliver that property to the trustee, is a self-effectuating, affirmative duty that arises immediately upon the filing of the bankruptcy petition. This duty is not dependent on any predicate violation of the automatic stay, an order of the bankruptcy court, or a demand by the creditor, nor is the creditor's desire for adequate protection an exemption from the turnover duty. This interpretation of the statute is consistent with the Supreme Court's interpretation of § 542(a) as discussed in *United States v. Whiting Pools*, 462 U.S. 198 (1983). Weinberg's refusal to return the plow trucks to Backstreets constitutes a violation of the turnover duty, which in turn is an act to exercise control over the trucks. Thus, Weinberg's violation of the turnover duty is also a violation of the automatic stay.

Public policy also compels a finding that Weinberg's retention of the trucks is a violation of the stay. The automatic stay exists to provide protection to both debtors and creditors. It permits debtors to attempt repayment or reorganization, and it guarantees an orderly liquidation or repayment procedure in which all creditors are treated equally. Weinberg's retention of the plow trucks is an attempt to put his own interests above those of the debtor and other creditors, hindered Backstreets's reorganization efforts, and diminished the liquidation value of the estate.

As for the second issue on appeal, § 503(b) does not allow administrative expenses for substantial contributions in cases under chapter 7 of the Bankruptcy Code. This is clear from the plan meaning of § 503(b)(3)(D), which clearly states that such administrative expenses are only available in cases under chapters 9 and 11. The canon of statutory construction *expressio unius est exclusio alterius* compels such a reading, and this interpretation is not at odds with any

expressed intent of the drafters. Furthermore, the use of the term "including" in the prefatory text of § 503(b) does not expand the scope of § 503(b)(3)(D), as such a broad reading would be at odds with another canon of statutory construction—that the specific governs the general. Because § 503(b)(3)(D) provides a specific limitation within the broader statutory scheme, its specificity governs its interpretation. Lastly, if administrative expenses for substantial contributions were to be allowed under chapter 7, the limiting language "under chapters 9 and 11 of this title" would be rendered meaningless. This would violate yet another canon of statutory construction that no word, clause, or phrase of a statute should be read to be superfluous.

Public policy favors this interpretation as well. The Bankruptcy Code contains an overriding concern with keeping fees and costs at a minimum so as to maximize the value of the estate for the creditors. Thus, the administrative expenses contained in § 503(b) should be construed narrowly to maximize the value of the estate and to ensure an equitable distribution to all creditors. Any equitable concerns that may weigh in favor of a different conclusion are not sufficient to overcome the limitations placed by § 503(b)(3)(D). Any equitable power the bankruptcy courts may have must be exercised within the confines of the Bankruptcy Code, and here the Bankruptcy Code is clear that administrative expenses for substantial contributions are not allowed in chapter 7 cases. Weinberg should thus not be allowed to recover on his claim for an administrative expense.

In light of the above, the Court should reverse the Thirteenth Circuit on both issues.

ARGUMENT

The bankruptcy court's decision, not the appellate panel's review of the bankruptcy court's decision, is reviewed directly. *Charbono v. Sumski (In re Charbono)*, 790 F.3d 80, 84–85 (1st Cir. 2015). The parties do not dispute the facts of the case. R. at 9. The issues are thus issues of law, and review is de novo. *Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007).

I. Weinberg's retention of property of the estate is a violation of the automatic stay provision of 11 U.S.C. § 362(a)(3).

When a debtor files for bankruptcy, 11 U.S.C. § 362 imposes an automatic stay to prevent creditors from taking action to satisfy their claims against the debtor. *Knaus v. Concordia Lumber Co., Inc. (In re Knaus)*, 889 F.2d 773, 774 (8th Cir. 1989). The petition operates as a stay, applicable to all entities, of, among other things, "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." 11 U.S.C. § 362(a)(3) (2018). The automatic stay plays a fundamental role in bankruptcy proceedings. *Id.*

> [The automatic stay] gives the debtor a breathing spell from his creditors . . . . It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies . . . to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally.

H.R. Rep. No. 05-595, at 340 (1978).

Weinberg, by refusing to return Backstreets's plow trucks after the petition date, has violated the automatic stay. This is evident from the plain meaning and legislative history of § 362(a)(3). Furthermore, Weinberg's retention of the trucks was a breach of the turnover duty established by § 542(a), which, when read in tandem with § 362(a)(3), also amounts to a violation of the automatic stay. This turnover duty is a self-effectuating, affirmative duty that arises immediately upon the filing of the bankruptcy petition. *In re Knaus*, 889 F.2d at 774. This interpretation is consistent with the Supreme Court's reading of § 542(a) in *United States v. Whiting Pools*, 462 U.S. 198 (1983). When one creditor attempts to improve his own position at the expense of other creditors through means outside of bankruptcy procedure, he undermines the orderly and equitable liquidation procedure that serves as the primary purpose of the automatic stay—and thus of bankruptcy law as a whole. Weinberg has done just that. His ongoing retention

of the trucks is a violation of the automatic stay and a derogation of one of the foundations of the Bankruptcy Code.

A. Section 362(a)(3) prohibits retention of property of the estate after the filing of the bankruptcy petition.

1. The plain meaning of § 362(a)(3) prohibits post-petition retention of property of the estate.

When Weinberg refused to return Backstreets's plow trucks upon the filing of the bankruptcy petition, he violated the automatic stay. Without a doubt, a creditor's knowing retention of property of the estate constitutes a violation of § 362(a)(3). *Chugach Timber Corp. v. N. Stevedoring & Handling Corp. (In re Chugach Forest Prods., Inc.)*, 23 F.3d 241, 246 (9th Cir. 1994). One need only look to the plain language of § 362(a)(3) to see that retention of property of the estate once the bankruptcy petition is filed—even if that property was lawfully seized prior to the filing—violates the automatic stay.

At its heart, this issue is one of statutory interpretation. When resolving issues of statutory interpretation, a court must begin with the language of the statute itself. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). The automatic-stay provision states that "a petition filed under § 301 . . . operates as a stay, applicable to all entities, of . . . any act . . . to exercise control over property of the estate . . . ."[2] 11 U.S.C. § 362(a)(3). In the case at hand, the operative terms are "act," "exercise," and "control."

The Bankruptcy Code does not define the terms "act," "exercise," or control." However, when terms used in a statute are undefined, courts should give them their ordinary meaning. *Asgrow Seed Co. v. Winterboer*, 513 U.S. 179, 187 (1995). Each of these terms can be found in both standard and legal dictionaries. "Act" is defined as "[t]he process of doing or performing; an

[2] Property of the estate includes all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a)(1) (2018).

occurrence that results from a person's will being exerted on the external world." *Act*, BLACK'S LAW DICTIONARY (10th ed. 2014). To "exercise" is "[t]o make use of; to put into action." *Exercise*, BLACK'S LAW DICTIONARY (10th ed. 2014). "Control," when used as a noun, is defined as "the power or authority to manage, direct, or oversee." *Control*, BLACK'S LAW DICTIONARY (10th ed. 2014).

In light of these definitions, it is clear that Weinberg's retention of Backstreets's plow trucks was an "act" to "exercise control over the trucks."[3] Shortly after filing the bankruptcy petition, Backstreets demanded in writing the return of its seized trucks. R. at 6. Weinberg subsequently refused to return the trucks to Backstreets. R. at 6. Weinberg testified that he refused to return the trucks because, as Weinberg understood the law, Backstreets had the burden of bringing a turnover action, in which case Weinberg could demand adequate protection of his interest in the trucks. R. at 6.

This refusal to return the trucks after learning of the bankruptcy petition is, in fact, an "act." Weinberg was informed, in writing, of the bankruptcy petition and of Backstreets's demand for the trucks' return. R. at 6. Nevertheless, due to Weinberg's desire to pursue his own remedy, he refused to return the trucks, thus denying Backstreets the ability to recover the trucks into the estate. Thus, Weinberg's ongoing retention of the trucks is an "occurrence that results from his will being exerted on the external world." *Act*, BLACK'S LAW DICTIONARY (10th ed. 2014).

Furthermore, by this act Weinberg exercised his power and influence over the trucks. At the time Backstreets filed the bankruptcy petition, the trucks were in Weinberg's possession in a warehouse that he owns. R. at 6. The trucks remain there to this day. R. at 6. There can be no doubt that Weinberg had and continues to have "the power or authority to manage, direct, or

[3] It is undisputed that the trucks remain titled to Backstreets. R. at 6 n.4. Thus, the trucks are undoubtedly property of the estate. *See* 11 U.S.C. § 541(a)(1) (2018).

oversee," and thus has control over, the trucks. *Control*, BLACK'S LAW DICTIONARY (10th ed. 2014). Therefore, Weinberg's act of refusal to return the trucks was an act to exercise control over the trucks.

In light of the above, there is no way to avoid the conclusion that Weinberg's ongoing custody over the plow trucks and refusal to allow Backstreets or the Trustee to access or use them was and is "exercising control" over property of the estate in violation of the automatic stay. *See Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 79 (2d Cir. 2012). Holding onto an asset, refusing to return it, and otherwise prohibiting a debtor's beneficial use of an asset all fit within the above definitions as well as within the commonsense meaning of the words "act," "exercise," and "control." *Thompson v. Gen. Motors Acceptance Corp., LLC*, 566 F.3d 699, 702 (7th Cir. 2009).

2. The 1984 amendments to § 362 expanded the already broad scope of the automatic stay.

Beyond the plain language of § 362(a)(3), the legislative history of § 362(a) further reveals that Congress intended for post-petition retention of property of the estate to be a violation of the automatic stay. Congress amended the language of § 362 of the Bankruptcy Code in 1984. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 441, 98 Stat. 333, 371 (1984). Prior to the 1984 amendments, § 362(a)(3) only prohibited acts to obtain possession of property of the estate. *Thompson*, 566 F.3d at 702; *see also* 11 U.S.C. § 362(a)(3) (prohibiting "any act to obtain possession of property of the estate or of property from the estate"). However, the 1984 amendment expanded the language of § 362(a)(3) to further prohibit acts "to exercise control over property of the estate." Pub. L. No. 98-353, § 441(a)(2), 98 Stat. at 371.

Congress did not provide a specific explanation of its reason for amending § 362(a)(3) as it did. *Thompson*, 566 F.3d at 702. Nevertheless, at a very minimum this change to the statutory language signals Congress's intent to expand the automatic stay's prohibitions beyond mere acts to obtain possession. *See Thompson*, 566 F.3d at 702. The mere fact of Congress's expansion of

§ 362(a)(3) beyond acts to obtain possession suggests an intent to prohibit certain conduct by creditors who seize assets prior to the filing of a bankruptcy petition. *Id.*

This enlargement of the scope of § 362(a)(3)'s prohibitions is consistent with the interpretation that Congress intended to prevent creditors from retaining property of the estate in derogation of bankruptcy procedure and the broad goals of both debtor and creditor protection discussed above. *In re Weber*, 719 F.3d at 80. Withholding possession of property from the bankruptcy estate is the essence of "exercising control" over property of the estate. *Thompson*, 566 F.3d at 703. Thus, the 1984 amendments to § 362(a)(3) should be interpreted as broadening the scope of the automatic stay to proscribe the knowing retention of property of the estate after the petition date. *See, e.g., Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1151 (9th Cir. 1996).

Weinberg's refusal to return Backstreets's plow trucks after the petition date and his continuing retention of the trucks to this day are "acts" to "exercise control" over the trucks. This is clear from a plain reading of § 362(a)(3). This reading is consistent with the 1984 amendments to § 362, which expanded the already broad scope of the automatic stay. Thus, Weinberg's retention of Backstreets's trucks has been and continues to be in violation of the automatic stay.

B. By violating the turnover duty imposed by § 542(a), Weinberg has violated the automatic stay.

1. Section 542(a) imposes an affirmative duty to turn over property of the estate.

The automatic-stay provision of § 362 does not exist or function in a vacuum. Statutory provisions should not be read in isolation; rather, statutes should be read as a whole. *Samantar v. Yousuf*, 560 U.S. 305, 319 (2010). Section 362 works in tandem with §§ 363 and 542 to shelter the debtor's estate from creditors' actions and to enable the debtor to get the relief that serves as one of the primary goals of bankruptcy. *In re Weber*, 719 F.3d at 76. Section 542, the Bankruptcy

Code's turnover provision, lays out the trustee's power to recover the debtor's property to assemble the bankruptcy estate as well as the duty of those in possession of the debtor's property to deliver such property to the trustee. 11 U.S.C. § 542 (2018).

The turnover duty imposed by § 542(a) is self-effectuating—that is, the duty to deliver property of the estate to the trustee is mandatory and arises automatically upon the filing of the bankruptcy petition. *In re Del Mission Ltd.*, 98 F.3d at 1151. This is clear from a plain reading of § 542(a) itself. According to § 542, "an entity . . . in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under § 363 . . . *shall deliver* to the trustee . . . such property . . . unless such property is of inconsequential value or benefit to the estate." 11 U.S.C. § 542(a) (emphasis added).[4] The phrase "shall deliver" is controlling here. Without qualification, § 542(a) provides that any entity in possession of property of the estate *shall deliver* it to the trustee. *In re Weber*, 719 F.3d at 81. This duty is not contingent upon a predicate violation of the automatic stay, an order of the bankruptcy court, or a demand by the creditor. *In re Knaus*, 889 F.2d at 775.

2. A desire for adequate protection does not exempt a creditor from the turnover duty.

Weinberg testified that he refused to return Backstreets's plow trucks because he believed that Backstreets had the burden to bring a turnover action, at which point Weinberg could demand adequate protection for his interest in the trucks. R. at 6. The Thirteenth Circuit agreed with Weinberg and looked to Bankruptcy Rule 7001(1) for support. R. at 13 n.7. Rule 7001(1) states that a proceeding to recover money or property—such as a turnover proceeding—is an adversary proceeding. Fed. R. Bankr. P. 7001(1). The Thirteenth Circuit seems to read Rule 7001(1) to

[4] The term "entity" as defined in the Bankruptcy Code includes persons. 11 U.S.C. § 101(15) (2018). Section 363 allows the trustee to use, sell, or lease property of the estate. 11 U.S.C. § 363(b)(1) (2018). Weinberg falls within the Bankruptcy Code's definition of "entity," and the plow trucks titled to Backstreets are property of the estate that the trustee may use, sell, or lease under § 363. As Weinberg was and is in possession of the trucks, R. at 6, the duty imposed by § 542(a) applies to Weinberg.

mean that the turnover duty in § 542(a) does not attach until an adversary turnover proceeding is commenced. *See* R. at 13 n.7. The Thirteenth Circuit also points out that because § 542(a) expressly references § 363, the turnover power in § 542 is necessarily subject to § 363(e). R. at 13. Section 363(e) provides that, "at any time, on request of an entity that has an interest" in property of the estate, the bankruptcy court shall prohibit or condition the trustee's use, sale, or lease of that property of the estate "as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e) (2018). The Thirteenth Circuit argues that § 542 is subject to this requirement of adequate protection and is thus not self-effectuating. R. at 13. However, Weinberg and the Thirteenth Circuit have misinterpreted Rule 7001(1) and § 363(e), and they have this process precisely backwards. The turnover duty is not conditioned on the guarantee of adequate protection. Rather, the turnover duty arises automatically at the time the bankruptcy petition is filed, and the creditor's right to adequate protection is subordinate to this duty.

First of all, Rule 7001(1) only establishes that a turnover action is an adversary proceeding, and as such, a turnover action must be commenced by properly filing and serving a complaint as opposed to simply filing a motion. *In re Perkins*, 902 F.2d 1254, 1258 (7th Cir. 1990). Rule 7001(1) says nothing as to the *duty* to turn over property of the estate or when that duty attaches. *See* Fed. R. Bankr. P. 7001(1). Section 542, not Rule 7001(1), governs the turnover duty. An entity in possession of estate property *shall deliver* such property to the trustee. 11 U.S.C. § 542(a). This language indicates that turnover is compulsory. *Thompson*, 566 F.3d at 704. This duty is not dependent on the commencement of an adversary proceeding—rather, it is an affirmative duty that arises upon the filing of the bankruptcy petition. *See In re Knaus*, 889 F.2d at 774; *see also Rosen v. Dahan (In re Minh Vu Hoang)*, 469 B.R. 606, 617 (D. Md. 2012); *Morris v. Wright (In re Wright)*, 371 B.R. 472, 479 (Bankr. D. Kan. 2007).

Furthermore, the creditor's right to adequate protection is subsequent to the turnover duty, not the other way around. Section 542 requires the creditor to first surrender the property, and the creditor may only proceed to request adequate protection from the bankruptcy court after or in conjunction with the turnover. *In re Weber*, 719 F.3d at 81. The majority of appellate courts to address this issue have found that § 542(a) works in tandem with § 362(a) to give the estate the right of possession claimed by a creditor who has seized property of the estate pre-petition. *Thompson*, 566 F.3d at 704. The Bankruptcy Code then provides the creditor with adequate protection as a substitute for its previous right to possession of the property of the estate. *Id.* In contrast to the turnover duty in § 542(a), the Bankruptcy Code provisions that authorize the imposition of adequate protection are not self-effectuating. *In re Weber*, 719 F.3d at 81.

Section 363(e) provides that the bankruptcy court may require adequate protection of an interest in property of the estate "on request" of an entity that has such an interest. 11 U.S.C. § 363(e). As evident from the phrase "on request," the bankruptcy court can only impose adequate protection upon application from the creditor. *In re Weber*, 719 F.3d at 81. The creditor has the burden of requesting adequate protection directly under § 363 or, in the alternative, by moving for relief from the automatic stay under § 362(d)(1).[5] *Thompson*, 566 F.3d at 703–04. A creditor will have no incentive to seek adequate protection of an interest in property the creditor already has in its possession, and thus if a creditor is allowed to retain possession of property of the estate, the burden imposed by § 363 will be rendered meaningless. *Thompson*, 566 F.3d at 704. Courts must give effect to every clause and word of a statute and should be reluctant to treat any statutory term as surplusage. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Thus, if § 363(e) is to have meaning,

[5] "On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . for cause, including the lack of adequate protection . . . ." 11 U.S.C. § 362(d)(1) (2018).

it must be read in tandem with § 542(a) to require the return of property of the estate to the trustee before the creditor may seek adequate protection for its interest. *Thompson*, 566 F.3d at 704.

There is no provision of the Bankruptcy Code that permits creditors to withhold property of the estate until the debtor has offered adequate protection in the creditor's view. *In re Weber*, 719 F.3d at 81. The Bankruptcy Code, in § 363(e), only provides for protection that the bankruptcy court deems adequate on request of an entity in possession of property of the estate. *Id.* at 81–82. The creditor must first return the estate's asset, and only then, if the debtor fails to show that he can adequately protect the creditor's interest, may the creditor request that the court condition the estate's right to keep possession upon provision of adequate protections. *Thompson*, 566 F.3d at 704. A subjectively perceived lack of adequate protection is not, as Weinberg believed, an exception to the stay provision of § 362(a)(3) or the turnover duty contained in § 542(a). *See id.*

3. The Supreme Court's interpretation of § 542 supports the position that the turnover duty is self-effectuating.

This interpretation of the turnover duty is consistent with the Supreme Court's interpretation of § 542(a) as discussed in *United States v. Whiting Pools, Inc*. In *Whiting Pools*, the Court held that § 542(a) modifies the procedural rights available to creditors within the bankruptcy system to protect their interest. *Whiting Pools*, 462 U.S. at 206. Section 542(a) grants the estate a possessory interest in property of the estate not held by the debtor at the time of filing the bankruptcy petition. *Id.* at 207. In exchange, the Bankruptcy Code gives creditors various rights, including the right to adequate protection, to replace the right to possession. *Id.* Congress could have safeguarded the interests of creditors by excluding from the estate any property subject to a security interest, but this is not the route Congress chose. *Id.* at 203–04. Rather, Congress elected to provide creditors with a means to seek adequate protection of their interests, but the onus is on the creditor to seek such protection from the bankruptcy court. *Id.* at 204. The creditor must look to § 363(e) for protection rather than to the nonbankruptcy remedy of possession. *Id.*

As the Court noted in *Whiting Pools*, there are limitations and exceptions to the reach of § 542(a). *Id.* at 206. The only three exceptions to § 542(a)'s turnover duty are: (1) when the property is of inconsequential value or benefit to the estate, (2) when the holder of the property has transferred it in good faith without knowledge of the petition, and (3) when the transfer of the property is automatic to pay a life-insurance premium. 11 U.S.C. § 542(a), (c)–(d); *Whiting Pools*, 462 U.S. at 206 n.12. Notably, none of these limitations or exceptions requires the debtor to hold a possessory interest in the property of the estate in question at the time of filing the bankruptcy petition, nor is adequate protection listed among them. *Id.* at 206.

4. Sections 362 and 542 function together to prevent post-petition retention of property of the estate.

Sections 362 and 542 are linked temporally—both the automatic stay and the turnover duty arise automatically at the time the bankruptcy petition is filed. *See* 11 U.S.C. § 362(a); *In re Del Mission Ltd.*, 98 F.3d at 1151. They are also linked functionally. The automatic stay in § 362(a) prohibits any act "to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The turnover duty in § 542(a) contemporaneously directs that any entity in possession of property of the estate "shall deliver to the trustee . . . such property." 11 U.S.C. § 542(a). When the two provisions are read together, the logical conclusion is that a violation of § 542 is concurrently a violation of § 362.

Section 542 establishes an affirmative duty to turn over property of the estate to the estate upon the filing of the bankruptcy petition. *In re Knaus*, 889 F.2d at 774. Section 542 grants the estate a possessory interest in the property held by a creditor at the time of the filing of the petition. *Whiting Pools*, 198 U.S. at 207. A creditor who breaches the turnover duty thus denies the debtor access to property to which the debtor has a legal right of possession. In order to recover that property, the debtor would have to initiate an adversary turnover proceeding. *See* Fed. R. Bankr. P. 7001(1). The breach is thus an "occurrence that results from a person's will being exerted on

the external world." *Act*, BLACK'S LAW DICTIONARY (10th ed. 2014). A breach of this duty would be an "act" to "exercise control" over property of the estate, and thus a violation of the automatic stay.

Sections 362(a) and 542(a) function together to give the estate a right of possession in property of the estate that is held by a creditor after the filing of the bankruptcy petition. *Thompson*, 566 F.3d at 704. The turnover duty in § 542(a) is a self-effectuating, affirmative duty that arises at the time the petition is filed. *In re Knaus*, 889 F.2d at 774. This duty is not conditioned upon the provision of adequate protection to the creditor—rather, the creditor must return the property and either concurrently or subsequently request adequate protection. *In re Weber*, 719 F.3d at 81. A creditor who retains property in breach of the turnover duty thus acts to exercise control over property of the estate—a violation of the automatic stay. Therefore, Weinberg's ongoing retention of Backstreets's plow trucks is both a violation of the turnover duty under § 542(a) and a violation of the automatic stay under § 362(a)(3).

C. Public policy considerations compel prohibition of post-petition retention of property of the estate.

As stated above, the automatic stay performs a fundamental role in the Bankruptcy Code as a protection for both debtors and creditors. H.R. Rep. No. 05-595, at 340. In the context of reorganization, the Supreme Court noted that Congress presumed that the debtor's assets would be more valuable if used in a rehabilitated business than if sold for scrap. *Whiting Pools*, 462 U.S. at 203. A reorganization would have small chance of success if property essential to running the bankrupt business were excluded from the bankruptcy estate. *Id.* In order for a reorganization to function properly, all of the debtor's property must be included in the estate. *Id.* Similar considerations apply in the chapter 7 liquidation context as well. *See, e.g., In re Del Mission Ltd.*, 98 F.3d at 1151 (stating, in a chapter 7 cases, that the underlying purpose of the automatic stay is

to alleviate the financial strains on the debtor). Thus, the scope of the automatic stay is intended to be broad. *In re Knaus*, 889 F.2d at 774.

This case is a perfect illustration of these principles. Backstreets's attempted reorganization failed, in large part, because it did not have access to its most important assets—the plow trucks. *See* R. at 6–7. Furthermore, once Backstreets converted its case to a chapter 7 liquidation, Weinberg's ongoing possession of the trucks thwarted a potential sale of Backstreets's assets. R. at 8. Tenth Avenue Freeze, Inc., a competitor plow company, offered to purchase substantially all of Backstreets's assets, but the deal fell through when the Trustee was unable to obtain possession of Backstreets's trucks from Weinberg. R. at 8. Though the Trustee was eventually able to secure a sale to Stone Pony Plowing, LLC, another competitor, the ultimate purchase price was $100,000 less than what Backstreets would have received in the proposed deal with Tenth Avenue. R. at 8. On top of that, the sale to Stone Pony did not include Backstreets's trucks. R. at 8.

Weinberg testified that he refused to return the vehicles so that he could seek adequate protection of his interests. R. at 6. As part of its reasoning for holding that the turnover provision is not self-effectuating, the Thirteenth Circuit conjures a hypothetical possessory lienholder who, if the requirement to turn over property of the estate arose automatically, would be forced to choose between turning over the property and risk losing their possessory lien or willfully violating the automatic stay by retaining the property. R. at 13–14. It would be inequitable, the Thirteenth Circuit argued, to require secured creditors to immediately turn repossessed collateral over to a debtor before a determination of adequate protection is made. R. at 14 n.8. However, these concerns are largely unfounded and should not govern the Court's decision.

First, possessory liens provide an exception to the general prohibition against retention of property of the estate established by § 362(a)(3) and the turnover duty imposed by § 542(a). *See*

Hayden v. Wells (In re Hayden), 308 B.R. 428, 435 (B.A.P. 9th Cir. 2004); *In re Avila*, 566 B.R. 558, 562 (Bankr. N.D. Ill. 2017). Possessory lienholders fall into the exception to the automatic stay set forth in § 362(b)(3).[6] This exception does not apply in this case, where Weinberg has a perfected purchase-money security interest—not a possessory lien—in Backstreets's trucks that will not be lost upon return of the trucks. *See* R. at 4 n.3.

Second, if Weinberg is concerned about adequate protection and the potential depreciation of the value of the plow trucks after their return to Backstreets, there is authority supporting the proposition that adequate protection applies to all decline in value of the collateral beginning on the petition date. *Travelers Life & Annuity Co. v. Ritz–Carlton of D.C., Inc. (In re Ritz–Carlton of D.C., Inc.)*, 98 B.R. 170, 173 (S.D.N.Y. 1989); *Lincoln Nat'l Life Ins. Co. v. Craddock–Terry Shoe Corp. (In re Craddock—Terry Shoe Corp.)*, 98 B.R. 250, 255–56 (Bankr. W.D. Va. 1988). Furthermore, it is well within Weinberg's rights to seek relief from the stay for lack of adequate protection under § 362(d)(1). *See* 11 U.S.C. § 362(d)(1) (2018). However, the onus to request such relief is on Weinberg, and Weinberg has not done so. Weinberg's ongoing retention of Backstreets's trucks is, therefore, a violation of the automatic stay.

The Eighth Circuit succinctly states why behavior such as Weinberg's should not be permitted:

> [A] person holding property of a debtor who files bankruptcy proceedings becomes obligated, upon discovering the existence of the bankruptcy proceedings, to return that property to the debtor . . . or his trustee. Otherwise, if persons who could make no substantial adverse claim to a debtor's property could, without cost to themselves, compel the debtor or his trustee to bring suit as a prerequisite to returning the property, the powers of a bankruptcy court and its officers to collect the estate for the benefit of the

[6] Section 362(b)(3) provides that the stay does not apply to "any act . . . to maintain or continue the perfection of . . . an interest in property to the extent that the trustee's rights and powers are subject to such perfection under subsection 546(b)." 11 U.S.C. § 362(b)(3) (2018). Section 546(b) provides that the rights and powers of the trustee are subject to any generally applicable law that "provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation." 11 U.S.C. § 546(b)(1)(B) (2018).

> creditors would be vastly reduced. The general creditors, for whose benefit the return of property is sought, would have needlessly to bear the cost of its return. And those who unjustly retain possession of such property might do so with impunity.

In re Knaus, 889 F.2d at 775.

Weinberg had no substantial adverse claim to the plow trucks. It was undisputed that title to the trucks remained with Backstreets. R. at 6. Once Backstreets filed the bankruptcy petition and the automatic stay took effect, the legal right to possession of the trucks belonged to Backstreets. Nevertheless, without cost to himself and in full knowledge of the existence of the bankruptcy proceedings, Weinberg withheld Backstreets's property in order to compel Backstreets, and later the Trustee, to bring suit as a prerequisite to returning the property. As a result, Backstreets's reorganization failed, and the liquidation value of the estate was significantly diminished, as the ultimate sale price of Backstreets's assets was discounted due to the exclusion of the trucks from the estate. R. at 8. The automatic stay exists to avoid just such occurrences. The Thirteenth Circuit's holding undermines the very purpose of the automatic stay, and thus the foundation of the entire Bankruptcy Code. The Thirteenth Circuit's holding should be reversed.

II. Weinberg should not be allowed to recover administrative expenses for substantial contributions in a case under chapter 7 of the Bankruptcy Code.

After Backstreets converted its bankruptcy case from a reorganization under chapter 11 to a liquidation under chapter 7, Weinberg hired a collection law firm to take a creditors' examination of Clemons. R. at 7. This examination revealed that Backstreets had made fraudulent transfers totaling $100,000 to Clemons's daughter, Patti Clemons. R. at 7. Weinberg provided this information to the Trustee, and this enabled the Trustee to ultimately recover $75,000 for the estate through a settlement with Patti. R. at 7.

Weinberg, who incurred $25,000 in legal fees and expenses investigating the fraudulent transfers, filed a motion seeking payment of an administrative expense for a substantial

contribution pursuant to § 503(b).[7] R. at 7. However, administrative expenses for substantial contributions are available to creditors only in cases under chapters 9 and 11 of the Bankruptcy Code. 11 U.S.C. § 503(b)(3)(D) (2018). Because Weinberg began his investigation after Backstreets converted its bankruptcy case to chapter 7—and thus Weinberg's substantial contribution[8] was made entirely during a case under chapter 7—the Bankruptcy Code will not allow Weinberg to receive an administrative expense for making a substantial contribution.

A. Section 503(b)(3)(D) prohibits administrative expenses for substantial contributions under chapter 7.

1. The plain meaning of § 503(b)(3)(D) limits administrative expenses for substantial contributions to cases under chapters 9 and 11.

As with the automatic-stay issue discussed above, this issue is at its core an issue of statutory interpretation. In cases involving statutory interpretation, the inquiry begins with the language of the statute itself. *Ron Pair Enters.*, 489 U.S. at 241. As long as the statutory scheme is coherent and consistent, there is no need for a court to inquire beyond the plain language of the statute, for where the statute's language is plain, the sole function of the courts is to enforce it according to its terms. *Id.* at 240–41.

Section 503(b) provides a list of allowable administrative expenses. 11 U.S.C. § 503(b) (2018). Relevant to this case, § 503(b) provides that an administrative expense will be allowed for actual, necessary expenses incurred by a creditor "in making a substantial contribution in a case under chapter 9 or 11" of the Bankruptcy Code. *Id.* § 503(b)(3)(D). Thus, it is clear that, by its plain language, § 503(b)(3)(D) applies only to bankruptcy cases under chapter 9 and 11. *In re*

[7] Section 503(b)(4) allows an administrative expense for "reasonable compensation for professional services rendered by an attorney . . . of an entity whose expense is allowable" under § 503(b)(3)(D). 11 U.S.C. § 503(b)(4). The dispute in this case hinges on the scope of §§ 503(b)(3)(D). *See* R. at 16–17.

[8] The parties do not dispute that Weinberg made a substantial contribution to the estate. R. at 7–8.

Lloyd Sec., 75 F.3d 853, 857 (3d Cir. 1996); *In re Fesco Plastics Corp., Inc.*, 996 F.2d 152, 157 n.5 (7th Cir. 1993).

2. Multiple canons of statutory construction preclude an expansion of § 503(b)(3)(D)'s language.

Congress has unambiguously provided an administrative expense for substantial contributions for cases under chapters 9 and 11, but it has elected not to do so with respect to cases under chapter 7. This omission gives rise to the statutory canon *expressio unius est exclusio alterius*—that is, the expression of one item of a group or series excludes another left unexpressed. *See N.L.R.B. v. SW Gen., Inc.*, 137 S. Ct. 929, 933 (2017). To apply the canon here, because § 503(b)(3)(D) explicitly mentions chapters 9 and 11, by implication it excludes chapter 7. Thus, administrative expenses for substantial contributions are allowed only in cases under chapters 9 and 11, and they are not allowed in cases under chapter 7.

Expressio unius applies when circumstances support a sensible inference that the term left out must have been meant to be excluded. *Id.* Such circumstances exist in this case. In its opinion below, the Thirteenth Circuit attempts to refute the application of *expressio unius* by pointing to the use of the word "including"[9] in the prefatory text of § 503(b). R. at 16. The use of the word "including" in the prefatory text of § 503(b) may signal that this list is not exhaustive or comprehensive. *See Mediofactoring v. McDermott (In re Connolly N. Am., LLC)*, 802 F.3d 810, 818 (6th Cir. 2015). However, the word "including," given its location in the prefatory language of § 503(b), applies generally to § 503(b)'s list of allowable administrative expenses. It does not apply specifically to each individual subsection where, as here, a subsection directly addresses the type of administrative expense sought. *In re Engler*, 500 B.R. 163, 174 (Bankr. M.D. Fla. 2013); *In re Elder*, 321 B.R. 820, 829 (Bankr. E.D. Va. 2005).

[9] The Code specifies that the word "including" is not limiting. 11 U.S.C. § 102(3) (2018).

The scope of § 503(b)(3)(D) is, by nature, narrower and more specific than the scope of 503(b) as a whole, and its text does not use the term "including" or any other term that would imply a broader or more expansive interpretation. *See* 11 U.S.C. § 503(b)(3)(D). When a statute sets forth a series of items included under a general rule and does not use the term "including," *expressio unius* applies. *Mosier v. Kupetz (In re United Educ. & Software)*, No. CC–05–1067–MaMeP, 2005 WL 6960237, at *7 (B.A.P. 9th Cir. July 29, 2005). Section 503(b)(3)(D) only specifically allows for an administrative expense for a substantial contribution in cases under chapters 9 and 11. 11 U.S.C. § 503(b)(3)(D). When interpreting statutes, the specific governs the general. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). The language of specifically enumerated provisions establishes that certain possible avenues for reimbursement are precluded by those that are included. *In re Blount*, 276 B.R. 753, 764 (Bankr. M.D. La. 2002). To expand § 503(b)(3)(D) to cover substantial contributions made in cases under chapter 7 would effectively contradict the conditions of expense recovery that § 503(b)(3)(D) expressly states—i.e., that administrative expenses for substantial contributions are allowed in cases under chapters 9 and 11. *See id.* Though the prefatory language of § 503(b) does imply that § 503(b)'s list of allowable administrative expenses is not exhaustive, the specificity of § 503(b)(3)(D) governs its interpretation.

Furthermore, if § 503(b) is read to allow administrative expenses for substantial contributions in cases under chapter 7, that reading would violate yet another canon of statutory interpretation, as the words "under chapter 9 and 11" would be rendered a nullity. *U.S. Trustee v. Farm Credit Bank of Omaha (In re Peterson)*, 152 B.R. 612, 614 (D.S.D. 1993). It is a cardinal principle of statutory construction that statutes ought to be construed, if possible, so that no clause, sentence, or word shall be superfluous, void, or insignificant. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). If an administrative expense is to be allowed under chapter 7, or any other chapter of

the Bankruptcy Code outside of chapters 9 and 11, Congress will have had no reason to specify in § 503(b)(3)(D) that such administrative expenses are available "under chapter 9 or 11 of this title." Those words will be read entirely out of the statute.

3. Congress elected to exclude chapter 7 from the text of § 503(b)(3)(D).

Lastly, Congress has shown no intent to include substantial contributions made in a case under chapter 7 among § 503(b)'s allowed administrative expenses. Congress had the opportunity to include chapter 7 among the chapters under which an administrative expense for substantial contributions are allowed, yet it elected not to include chapter 7 in § 503(b)(3)(D). *In re Hackney*, 351 B.R. 179, 201 (Bankr. N.D. Ala. 2006). Chapter 7 was a part of the Bankruptcy Code when the original version of § 503(b)(3)(D) was promulgated, and Congress chose not to include it in § 503(b)(3)(D). *In re Peterson*, 152 B.R. at 614. Had Congress intended to allow administrative expenses for substantial contributions in cases under chapter 7, it presumably would have done so as it did for chapters 9 and 11. *Id.* (citing *Rusello v. United States*, 464 U.S. 16, 23 (1983)). Congress gave no explanation for its decision to exclude chapter 7 from § 503(b)(3)(D), but it is not a court's role to engage in speculation and attempt to divine congressional wisdom. *Id.* Ultimately it is not important why Congress left chapter 7 out. All that matters is that, for whatever reason, Congress chose not to include reference to chapter 7 in § 503(b)(3)(D). *Id.*

The plain meaning of legislation should be conclusive unless the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters. *Ron Pair Enters.*, 489 U.S. at 242. Because the literal application of § 503(b)(3)(D)—which states only that administrative expenses for substantial contributions are allowed in cases under chapters 9 and 11—is not demonstrably at odds with Congress's intent, its plain meaning should be conclusive. *In re Peterson*, 152 B.R. at 614. Where, as here, a chapter 11 proceeding is converted into a chapter 7 proceeding, expenses incurred after the conversion are not recoverable pursuant to

§ 503(b)(3)(D). *Lebron v. Mechem Fin. Inc.*, 27 F.3d 937, 945 (3d Cir. 1994). Because all of Weinberg's expenses were incurred after Backstreets converted its case to one under chapter 7, R. at 7, he should not be allowed to recover an administrative expense for a substantial contribution.

B. Public policy favors a narrow construction of § 503(b), and equitable considerations do not overcome § 503(b)(3)(D)'s limitations.

1. Section 503(b) should be narrowly construed to maximize the estate's value.

It is well established that there is an overriding concern in the Bankruptcy Code with keeping fees and administrative expenses at a minimum so as to preserve as much of the estate as possible for the creditors. *See Otte v. United States*, 419 U.S. 43, 53 (1974). Furthermore, the theme of the Bankruptcy Code is equality of distribution, and if one claimant is to be preferred over others, the purpose should be clear from the statute. *Nathanson v. N.L.R.B.*, 344 U.S. 25, 29 (1952). Because the presumption in bankruptcy is that the debtor's limited resources will be equally distributed among its creditors, statutory priorities such as administrative expenses are narrowly construed. *Supplee v. Bethlehem Steel Corp. (In re Bethlehem Steel Corp.)*, 479 F.3d 167, 172 (2d Cir. 2007). Thus, despite the expansiveness with which the administrative expense category may be treated—via § 503(b)'s use of the word "including" as discussed above and the bankruptcy court's equitable powers—such judicial construction is limited by the countervailing doctrine that § 503 should be narrowly construed in order to maximize the value of the estate preserved for the benefit of all creditors. *Varsity Carpet Servs., Inc. v. Richardson (In re Colortex Indus., Inc.)*, 19 F.3d 1371, 1377 (11th Cir. 1994).

Section 503(b)(3)(D) thus represents an accommodation between two objectives: encouraging meaningful creditor participation in the reorganization process and keeping fees and administrative expenses at a minimum so as to preserve as much of the estate as possible for the creditor. *Lebron*, 27 F.3d at 944. The need to balance these two objectives and the established

doctrine that the administrative-expense provisions in § 503(b) should be narrowly construed caution heavily against the expansion of § 503(b)(3)(D) to allow administrative expenses in cases outside of chapter 9 or 11. It would be an abuse of the code to allow an administrative expense to a creditor who does not meet the requirements of § 503(b)(3)(D). *See In re United Educ. & Software*, 2005 WL 6960237, at *8.

2. The bankruptcy court's equitable powers can only be exercised within the confines of the Bankruptcy Code.

In the absence of a statutory basis for an administrative expense for a substantial contribution in this case, Weinberg's claim—and the Thirteenth Circuit's opinion—relies heavily on the bankruptcy court's equitable powers. R. at 20. The Thirteenth Circuit looks to the Sixth Circuit's opinion in *In re Connolly* for the proposition that equitable principles govern the exercise of bankruptcy jurisdiction and that bankruptcy courts' decisions are unimpeachable so long as their equitable powers are exercised within the confines of the Bankruptcy Code. *In re Connolly*, 802 F.3d at 814; R. at 20. The Sixth and Thirteenth Circuits reason that failing to grant administrative expenses for substantial contributions under chapter 7 cases will disincentivize creditors from participating in chapter 7 cases and impugn the fundamental notion of bankruptcy as equitable relief. *In re Connolly*, 802 F.3d at 819; R. at 20.

But this concern for creditors' participation is overblown. It is manifestly the duty and purview of the trustee to investigate the financial affairs of the debtor and to collect the debtor's assets. 11 U.S.C. § 704(a)(4); *In re Perkins*, 902 F.2d 1254, 1257 (7th Cir. 1990). The Sixth Circuit in *In re Connolly* even states that in all but the most atypical chapter 7 cases, the trustee fulfills the role of investigating potential fraudulent transfers and otherwise pursuing the debtor's assets for the benefit of the estate. *In re Connolly*, 802 F.3d at 817. Along that same line, *In re Connolly* is a prime example of the adage that bad facts make bad law. The U.S. trustee in *In re Connolly* was found to have been grossly negligent and was relieved of the position after three

unsecured creditors filed a motion to remove him for misfeasance. *Id.* at 813. *In re Connolly* is, thus, an incredibly atypical chapter 7 case. In a properly administered case, creditors will not be in a position to substantially contribute to the estate by investigating fraudulent transfers. *See id.* at 817. The incredibly abnormal facts of *In re Connolly* should not justify a departure from the clear statutory text of § 503(b)(3)(D).

But whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). Indeed, the Sixth Circuit acknowledges this point in *In re Connolly*. 802 F.3d at 814. And yet, to award an administrative expense for a substantial contribution in a chapter 7 case would be to exercise the bankruptcy court's equitable powers outside the confines of the Bankruptcy Code. The Sixth Circuit in *In re Connolly* attempts to square its equitable ruling with the Bankruptcy Code by arguing that the use of the word "including" in the prefatory language of § 503(b) suggests a broad construction of the statute. *In re Connolly*, 802 F.3d at 816. However, the Sixth Circuit inadequately handles the canon of statutory construction that the specific governs the general. *See id.* at 818. As discussed above, the plain meaning of § 503(b), as well as several canons of statutory construction, lead to the conclusion that § 503(b)(3)(D) applies only to cases under chapters 9 and 11 and does not allow an administrative expense for a substantial contribution in a case under chapter 7. *In re Lloyd Sec.*, 75 F.3d at 857; *Lebron v. Mechem*, 27 F.3d at 945. Wherever the equities may lie in this case, the authority to address inequities which may be present in the application of the plain-meaning rule to § 503(b) is vested in Congress, not the courts. *In re Peterson*, 152 B.R. at 614.

Though bankruptcy courts do have equitable powers, those equitable powers must be exercised within the confines of the Bankruptcy Code. *Norwest Bank Worthington*, 485 U.S. at 206. The plain meaning and several canons of statutory construction lead to the conclusion that

allowing an administrative expense for a substantial contribution in a case under chapter 7 would be an exercise of equitable power well outside the confines of the Bankruptcy Code. Furthermore, the need to narrowly construe the administrative-expense provisions in § 503(b) in order to maximize the value of the estate for the benefit of all creditors weighs against such an expansion of § 503(b). Thus, Weinberg's claim for an administrative expense for a substantial contribution in this case should fail, and the Thirteenth Circuit's holding should be reversed.

CONCLUSION

Retention of property of the estate after the filing of the bankruptcy petition is a violation of the automatic stay under § 362(a)(3). This is clear from the plain meaning of the text of the statute, which prohibits any act "to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Indeed, holding onto an asset, refusing to return it, and otherwise prohibiting a debtor's beneficial use of an asset all fit within the above definitions as well as within the commonsense meaning of the words "act," "exercise," and "control." *Thompson*, 566 F.3d at 702. Furthermore, § 542 imposes an affirmative duty to deliver property of the estate to the trustee upon the filing of a petition. *In re Knaus*, 889 F.2d at 774. Violation of this turnover duty is itself an act to exercise control over property of the estate, and thus is also a violation of the automatic stay. The automatic stay is in place to protect debtors and creditors to maximize the value of the estate and ensure an orderly liquidation and repayment procedure, and Weinberg's violation prevented the automatic stay form performing those functions.

Furthermore, administrative expenses for substantial contributions are not allowable in cases under chapter 7 of the Bankruptcy Code. The plain meaning of § 503(b)(3)(D) and multiple canons of statutory construction clearly limit such administrative expenses to chapters 9 and 11. Public-policy concerns related to limiting fees and costs to maximize value of the estate for the creditors necessitate a narrow construction of administrative expenses in § 503(b), and any

equitable powers of the bankruptcy court that might allow a broader interpretation must be exercised within the confines of the Bankruptcy Court. Because the Bankruptcy Court clearly does not allow such a broad construction of administrative expenses, Weinberg's claim should not be allowed.

Thus, the Court should reverse the Thirteenth Circuit on both issues.

Respectfully submitted,

Team P7
Counsel for Petitioner

APPENDIX A

11 U.S.C. § 101

In this title the following definition shall apply:

(1)–(14) [omitted]

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

(16)–(55) [omitted]

APPENDIX B

11 U.S.C. § 102

In this title —

(1)–(2) [omitted]

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

(4)–(9) [omitted]

APPENDIX C

11 U.S.C. § 362

(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)–(2) [omitted]

(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)–(8) [omitted]

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay —

(1)–(2) [omitted]

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4)–(28) [omitted]

(c) [omitted]

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2)-(4) [omitted]

(e)–(o) [omitted]

APPENDIX D

11 U.S.C. § 363

(a) [omitted]

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

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

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

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

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

(2) [omitted]

(c)–(d) [omitted]

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

property that is subject to any unexpired lease of personal property (to the exclusion of such property being subject to an order to grant relief from the stay under section 362).

(f)–(p) [omitted]

APPENDIX E

11 U.S.C. § 503

(a) [omitted]

(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)–(2) [omitted]

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

(A)–(C) [omitted]

(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)–(F) [omitted]

(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)–(9) [omitted]

(c) [omitted]

APPENDIX F

11 U.S.C. § 541

(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)–(7) [omitted]

(b)–(f) [omitted]

APPENDIX G

11 U.S.C. 542

(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)–(e) [omitted]

APPENDIX H

11 U.S.C. § 546

(a) [omitted]

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that —

(A) [omitted]

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

(2) [omitted]

(c)–(j) [omitted]

APPENDIX I

11 U.S.C. § 704

(a) The trustee shall —

(1)–(3) [omitted]

(4) investigate the financial affairs of the debtor;

(5)–(12) [omitted]

(b)–(c) [omitted]