No. 20-1004

IN THE

Supreme Court of the United States

IN RE EARL THOMAS PETTY,
Debtor,

WILDFLOWERS COMMUNITY BANK,
Petitioner,

v.

EARL THOMAS PETTY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONERS

TEAM NUMBER 3
Counsel of Record for Petitioners

QUESTIONS PRESENTED

1. Whether the Federal Arbitration Act's requirement that courts of the United States enforce arbitration agreements, *see* 9 U.S.C. § 3, ever applies to prepetition arbitration agreements in disputes about the scope and duration of automatic stays under 11 U.S.C. § 362.
2. Whether 11 U.S.C. § 362(c)(3)(A) discourages repeat bankruptcy filings by terminating the automatic stay with respect to the debtor, the debtor's property, and the debtor's estate, or only with respect to the debtor and the debtor's non-estate property.

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OPINIONS BELOW

The Bankruptcy Court for the District of Moot answered both questions presented in favor of Respondent. R. at 3. It found that arbitration conflicts with the Bankruptcy Code, particularly § 362, and that § 362(c)(3)(A) terminates the automatic stay with respect to the debtor and his non-exempt property, but not with respect to the debtor's bankruptcy estate. R. at 7.

The Thirteenth Circuit affirmed on both issues. R. at 3. Its opinion has yet to be published but is reproduced as the record in this appeal.

STATEMENT OF JURISDICTION

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

RULES AND STATUTORY PROVISIONS

Section 2 of the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*., provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 362(c)(3)(A) of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq*., provides, in pertinent part:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> > (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case . . . .

These provisions and other relevant rules and statutes are set forth in the appendix to this brief.

STATEMENT OF FACTS

In 2002, Earl Thomas Petty quit practicing law to found Great Wide Open Brewing Company, a craft brewery. To fund aggressive expansion, Great Wide Open entered into a $35 million revolving credit agreement with Wildflowers Community Bank (the "Credit Agreement"). As security for the Credit Agreement, Great Wide Open granted Wildflowers a first priority lien on substantially all of the brewery's assets. Petty also personally guaranteed Great Wide Open's debts (the "Guaranty"), securing the Guaranty with small-batch brewing equipment ("Equipment") that he owned.

The Credit Agreement and the Guaranty contain identical remedy and arbitration provisions. The remedy provision grants Wildflowers the right, upon default, to repossess collateral without prior judicial action. The arbitration provision reads as follows: "[A]ny and all disputes, claims, or controversies of any kind between us arising out of or relating to the relationship between us will be resolved through mandatory, binding arbitration and each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial."

In April 2018, Great Wide Open and Petty defaulted on the Credit Agreement and the Guaranty, respectively. Two months later, after sending a letter notifying Great Wide Open and Petty that they were in default, Wildflowers filed a breach of contract complaint against Petty with the American Arbitration Association. Wildflowers sought $33.2 million in damages to cover the balance remaining on the Credit Agreement. The American Arbitration Association scheduled an initial conference for July 12, 2018.

On July 12, 2018, Petty filed a Chapter 11 case in the Bankruptcy Court for the District of Moot and stayed the arbitration proceeding. That same day, Great Wide Open filed for bankruptcy under Chapter 7. Petty's case was dismissed for failure to timely file certain documents. Great Wide Open's assets were liquidated and most of the proceeds were applied to its balance under the

Credit Agreement.

On January 11, 2019—less than one year after his initial petition and just before the arbitration proceeding was to recommence—Petty filed a second Chapter 11 petition. Along with the petition, Petty filed a reorganization plan which incorporated settlements that Petty had negotiated with several creditors. Petty did not attempt to negotiate with Wildflowers. The reorganization plan depended on income from Petty's new business venture, Full Moon Fever Brewing, which in turn depended on Petty's continued use of the Equipment. Wildflowers filed a proof of claim for $2.1 million, the balance remaining on the Guaranty.

Thirty-two days after the commencement of Petty's second petition, Wildflowers peaceably repossessed the Equipment—which remained subject to its security interest—as Petty had neither filed a motion to extend the automatic stay nor cured his obligations. One week later, Petty filed a motion under 11 U.S.C. 362(k) arguing that Wildflowers had violated the automatic stay and caused $500,000 in damages. In response, Wildflowers argued that the Equipment, as property of the estate, was not covered by the automatic stay due to 362(c)(3)(A), and that any claims arising out of the Guaranty must be sent to arbitration. Out of an abundance of caution, Wildflowers returned the Equipment to Petty.

The Bankruptcy Court for the District of Moot found that the automatic stay had not expired with respect to the estate property, declined to enforce the Guaranty's arbitration provision, and awarded Petty $200,000 in damages. The Thirteenth Circuit was not asked to review the damages award. It affirmed the bankruptcy court's findings on the other two issues.

SUMMARY OF THE ARGUMENT

Congress enacted the Federal Arbitration Act ("FAA") to counteract perceived hostility of courts toward arbitration. To carry out Congress' intent to place arbitration agreements on par with other private contracts, this Court has developed a strong presumption in favor of enforcing

arbitration agreements. A party seeking to avoid arbitration by demonstrating implied repeal of the FAA by another federal statute bears the heavy burden of demonstrating that Congress clearly intended the repeal. If there is no explicit textual statement to that effect, then the party must prove implied repeal by demonstrating an irreconcilable conflict between the FAA and the federal statute.

This Court has rejected every "irreconcilable conflict" challenge to the FAA that it has heard, and it should also reject this challenge. Petty has not met his burden of demonstrating that Congress clearly intended the Bankruptcy Code to preclude arbitration of all § 362 disputes. His primary argument is that bankruptcy and arbitration inherently conflict because arbitral forums lack expertise, create inefficiencies, and deprive third parties of the opportunity to oversee disputes affecting them. Those bases for refusing arbitration are not cognizable under this Court's precedent, as at their core they represent a return to the suspicion of arbitration that Congress endeavored to stamp out.

An inquiry into the facts of this case proves that arbitration would not undermine the purposes of the automatic stay, which are to ensure equitable distribution of assets among creditors and a debtor's chance at a fresh start. Whether the § 362(c)(3)(A) dispute were decided by an arbitration panel or the bankruptcy court, the forums would have access to the same information, and the decision would be enforced by the bankruptcy court after being reviewed for serious flaws. Since the bankruptcy court would retain control over approving a settlement or distributing any damages, and since Petty will be able to use his Equipment throughout the duration of this dispute, arbitration would not impair Petty's right to a fresh start or his creditors' right to equitable distributions.

Wildflowers returned Petty's Equipment out of an abundance of caution, but it did not violate the automatic stay. Since Petty is a repeat filer who failed to file for an extension of the automatic stay, § 362(c)(3)(A) terminated the automatic stay with respect to the Equipment—which is property of Petty's bankruptcy estate—before Wildflowers repossessed it. The Thirteenth Circuit's argument to the contrary requires the phrase "with respect to the debtor" to be just broad enough to include "property of the debtor" but to be so narrow as to exclude "property of the estate," which makes up the bulk of a debtor's assets. This internally inconsistent plain-meaning argument is refuted § 362(c)(3)(A)'s text, statutory context, and intended purpose.

Congress enacted § 362(c)(3)(A) to discourage debtors from filing for bankruptcy whenever they wanted the protections of the automatic stay. Therefore, it is absurd to exclude the bulk of a debtor's assets from the operation of § 362(c)(3)(A). If § 362(c)(3)(A) excludes property of the estate, then second-time filers must prove that they filed in good faith to prevent actions against themselves and their non-estate property, but not to prevent collection actions against the property of their estate. As creditors are likely to be uninterested in non-estate property, either because it is of little value or is exempt from collection, excluding property of the estate from § 362(c)(3)(A)'s termination of the automatic stay does not deter abusive filings and is contrary to congressional intent.

For these reasons, this Court should reverse the Thirteenth Circuit's decision and find that (I) § 362 does not impliedly repeal the FAA, and (II) § 362(c)(3)(A) terminates the automatic stay with respect to the debtor, the debtor's estate, and the debtor's non-estate property.

ARGUMENT

I. Section 362 and related judicial code provisions do not impliedly repeal the Federal Arbitration Act.

Congress adopted the Federal Arbitration Act in 1925 to temper the hostility of courts toward arbitration agreements and to place arbitration agreements on the same footing as other private contracts. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018). The FAA represents a liberal federal policy that favors arbitration agreements, *see Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983), and directs courts to treat arbitration agreements as "valid, irrevocable, and enforceable," 9 U.S.C. § 2. Absent proof of invalidity or a countervailing policy manifested in another statute, courts must "rigorously enforce agreements to arbitrate." *See Dean Witter Reynolds, Inc., v. Byrd*, 470 U.S. 213, 221 (1985). A court may decline to enforce an arbitration agreement on the grounds that it conflicts with a federal statute only if the statute evidences a "congressional command" to override the FAA. *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). Such congressional intent may be discerned from the statutory text, legislative history, or "an inherent conflict between arbitration and the statute's underlying purposes." *Id.* at 227.

Neither the text of the Bankruptcy Code nor the FAA provides dispositive evidence of congressional intent, but the evidence that does exist militates in favor of arbitration. First, the fact that the Bankruptcy Code lacks an explicit statement precluding arbitration is "an important and telling clue that Congress has not displaced the FAA." *Epic*, 138 S. Ct. at 1627. Statutes like the Commodity Exchange Act indicate that Congress expressly precludes the FAA when it intends preclusion. *See* R. at 23 (Tench, C.J., dissenting); 7 U.S.C. § 26(n)(2) ("No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section."). Second, bankruptcy courts do not have exclusive jurisdiction over disputes involving the automatic stay, *see Dominic's Restaurant of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760 (2012); 28 U.S.C. § 1334(b), which implies that Congress contemplated that forums other than bankruptcy courts would decide disputes like the one at bar.

Because these textual clues are not dispositive, and the legislative history silent with respect to the arbitrability of disputes arising under the Bankruptcy Code, *see* R. at 23; *Hays and Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1152 (3d Cir. 1989), this brief focuses on whether there is an inherent conflict between arbitration and the purposes of the automatic stay.

A. This Court's precedent creates a strong presumption against the automatic stay's preclusion of the FAA.

Any party seeking to establish that the Bankruptcy Code or any of its provisions impliedly repealed the Federal Arbitration Act must overcome two strong presumptions in favor of arbitration. First, there is this Court's guidance that choice-of-forum provisions are presumptively enforceable. Second, there is a large and growing body of cases extending from the 1980s to the present that has consistently denied challenges to the FAA based on implied conflicts in other federal statutes. Absent a clear textual statement from Congress, these presumptions are extraordinarily difficult to overcome.

1. The FAA reinforces the already strong presumption in favor of freely negotiated choice-of-forum provisions.

There is a strong presumption in favor of the enforcement of freely negotiated contractual choice-of-forum provisions. *See Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972); *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 518-19 (1974). An agreement to arbitrate is a type of contractual forum-selection clause that "posits not only the situs of suit but also the procedure to be used in resolving the dispute." *Scherk*, 417 U.S. at 519.

In cases involving the FAA, the strong presumption in favor of contractual choice-of-forum provisions is further reinforced by the federal policy in favor of arbitral dispute resolution. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 615 (1985); *Moses Cone*,

460 U.S. at 24.[1] Thus, only an "irreconcilable conflict" between the Bankruptcy Code and the FAA that is "clear and manifest" will justify not giving effect to the FAA's command of arbitration. *Epic*, 138 S. Ct. at 1624.

2. Only an "irreconcilable conflict" between the Bankruptcy Code and the FAA that is "clear and manifest" would justify not giving effect to the FAA's command of arbitration.

When confronted with two allegedly conflicting statutes, courts must strive to give effect to both. *Morton v. Mancari*, 417 U.S. 535, 551 (1974). There is a strong presumption against repeals by implication because "Congress will specifically address" preexisting law if it wishes to preclude it in a later statute. *United States v. Fausto*, 484 U.S. 439, 452 (1988); *see also POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 113 (2014) (finding the absence of a textual conflict especially significant where statutes have coexisted for many decades). More recently, *Epic* counseled against finding irreconcilable conflicts in order to maintain the separation of powers. 138 S. Ct. at 1624. Thus, the party seeking to displace one statute with the another bears the heavy burden of showing "a clearly expressed congressional intention" that such a result should obtain. *Id.*

The threshold for finding an irreconcilable conflict between the FAA and another federal statute is so high that this Court has "rejected every such effort." *Epic*, 138 S. Ct. at 1627. For example, in *American Express Co. v. Italian Colors Restaurant*, the Court refused to find a conflict between the FAA and the Sherman and Clayton Acts because these two federal statutes made "no mention of class actions," even though the complexity of the antitrust claims made individual arbitration prohibitively expensive and Congress' authorization of treble damages seemed to evince a Congressional desire to facilitate antitrust litigation. 570 U.S. 228, 231, 233–34 (2013). Similarly, in *Mitsubishi*, the Court ruled that the FAA requires arbitration of antitrust claims, despite the arguments that antitrust issues require complicated legal and economic analysis, and

[1] See also the Supreme Court's recent opinion in *Henry Schein, Inc. v. Archer and White Sales, Inc.*, 139 S. Ct. 524 (2019), which enforced an agreement to send to arbitration the threshold question of whether a dispute is arbitrable, and is further evidence of the Court's strong presumption and trend in favor of arbitration.

that antitrust regulation is too important to American democratic capitalism to be left to arbitrators from the business community. *see* 473 U.S. at 632–35.

Outside of the antitrust context, the Supreme Court has declined to find irreconcilable conflicts between the FAA, on the one hand, and the Age Discrimination in Employment Act ("ADEA"), the Securities Act of 1933, the Securities Exchange Act of 1934, the Credit Repair Organizations Act ("CROA"), the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and the National Labor Relations Act ("NLRA") on the other hand. *See Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 27 (1991) (ADEA); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989) (Securities Act of 1933); *McMahon*, 482 U.S. at 222, 242 (Securities Exchange Act of 1934; RICO); *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 99-100 (2012) (CROA); *Epic*, 138 S. Ct. at 1624 (NLRA). *CompuCredit* is indicative of the high bar that litigants must meet to prove conflicts between federal statutes. The *CompuCredit* Court found no conflict between the FAA and the CROA even though the CROA expressly provided a "right to sue," which the Ninth Circuit had interpreted as the right to bring an action in a court of law. *CompuCredit*, 565 U.S. at 99–100.

Any perceived conflict between the FAA and the Bankruptcy Code must be held to the same standard as the aforementioned conflicts, as the Bankruptcy Code is simply another federal statute. Thus, the threshold for finding an irreconcilable conflict that is clear and manifest between the FAA and the Bankruptcy Code is extremely high.

B. The strong presumption in favor of arbitration applies even though the automatic stay is a core bankruptcy issue.

The law on inherent conflicts and the strong presumption against the automatic stay's preclusion of the FAA apply regardless of whether the bankruptcy dispute involves a "core" or "non-core" proceeding. The core versus non-core distinction outlined in 28 U.S.C. § 157 is jurisdictional. It merely determines "whether the bankruptcy court has the jurisdiction to make a full adjudication." *Mintze v. American Gen. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 229 (3d

Cir. 2006). In core proceedings, bankruptcy judges have the power to enter final orders. *Id.;* § 157(b)(1). In non-core proceedings, bankruptcy judges can only offer recommendations for district court judges. *In re Mintze,* 434 F.3d at 229; § 157(c)(1).

The core versus non-core distinction is only relevant to whether a bankruptcy court has the discretion to deny enforcement of an arbitration agreement insofar as it serves as a proxy for when proceedings are more or less likely to present a conflict of sufficient magnitude to override the strong presumption in favor of arbitration. *See Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation)*, 671 F.3d 1011, 1021 (9th Cir. 2012). If a proceeding is non-core, "the presumption in favor of arbitration usually trumps the lesser interest of bankruptcy courts." *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006). Thus, bankruptcy courts generally stay non-core proceedings in favor of arbitration. *See Anderson v. Credit One Bank, N.A.* (*In re Anderson*), 884 F.3d 382, 387 (2d Cir. 2018).

Conversely, if the matter involves a core proceeding, a bankruptcy court retains jurisdiction and must engage in "a particularized inquiry into the nature of the claim and the facts of the specific bankruptcy." *Hill*, 436 F.3d at 108. A bankruptcy court cannot automatically preclude enforcement of the arbitration clause in a core proceeding without a fact-specific inquiry into each case. Since the law on inherent conflicts must be applied even in core proceedings, a bankruptcy court lacks the discretion to preclude enforcement of the arbitration clause unless it finds an inherent conflict between the FAA and the Bankruptcy Code. *Id.; see also Ins. Co. of N. Am. v. NGC Settlement Tr. & Asbestos Claims Mgmt. Corp.*, 118 F.3d 1056, 1068–69 (5th Cir. 1997).

Motions to terminate, annul, or modify the automatic stay are core issues pursuant to 28 U.S.C. § 157(b)(2).[2] Though core issues are much more likely than non-core issues to be non-arbitrable, it is still the case that the high threshold for finding an irreconcilable conflict between the FAA and another federal statute makes it extremely unlikely that such a conflict exists. Any

[2] Courts are divided on whether debtors may enter into prepetition agreements to waive the automatic stay. *See* Steven L. Schwarcz, *Rethinking Freedom of Contract: A Bankruptcy Paradigm*, 77 Tex. L. Rev. 515, 524 (1999). Since agreements to arbitrate disputes involving the automatic stay are not waivers of the automatic stay, whether these prepetition waivers are permitted affects the issue at bar only insofar as the agreements are allowed, in which case it would make little sense to forbid arbitration of automatic stay disputes.

doubt as to whether a matter is arbitrable should be resolved in favor of arbitration. *See Moses Cone*, 460 U.S. at 24–25.

C. Petty has not overcome the strong presumption against finding an irreconcilable conflict between arbitration and the automatic stay.

The Thirteenth Circuit found that Petty had met his heavy burden of proving that Congress clearly intended § 362 of the Bankruptcy Code to overrule the FAA. *See* R. at 13 ("Accordingly, the bankruptcy court did not err when it exercised its discretion to decline to enforce the agreement to arbitrate."). Notably, it did not limit its holding to a conflict between arbitration and the automatic stay, but rather found that arbitration inherently conflicts with bankruptcy as a whole. *See* R. at 12 ("Because creditors and other parties in interest cannot be compelled to arbitrate, the collective nature of bankruptcy inherently conflicts with the FAA."); *see also* R. at 13 ("In sum, we hold that arbitration is clearly at odds with Congress's intent to centralize disputes, promote participation from all stakeholders, and ensure that a debtor's reorganization efforts continue unabated in bankruptcy."). The implication of the Thirteenth Circuit's holding that bankruptcy courts are *never* required to compel arbitration in disputes involving the automatic stay, and perhaps never required to compel arbitration in any bankruptcy disputes, is not only unsound in theory but is disproven by the facts of this case.

1. There is no inherent conflict between arbitration and bankruptcy.

The Thirteenth Circuit based its opinion that bankruptcy and arbitration inherently conflict on two ideas: that the collective nature of bankruptcy inherently conflicts with the two-party nature of arbitration, R. at 11–12, and that bankruptcy courts are best positioned to adjudicate disputes like the one in this appeal because they possess greater expertise and are more efficient than arbitration panels, *see* R. at 13. The first claim is overly broad. The second is foreclosed by this Court's precedent.

The argument that the collective nature of bankruptcy conflicts with arbitration is grounded in the concern that arbitration deprives some parties of the ability to oversee important aspects of bankruptcy proceedings.[3] R. at 13. However, this Court has implied that arbitration agreements must be enforced even if some creditors may not be able to oversee or to intervene in a dispute. In *Moses Cone*, this Court stated that "an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." 460 U.S. at 20. It follows that arbitration agreements must be enforced even though parties to the underlying litigation cannot monitor or oversee the arbitration. The Third Circuit endorsed this conclusion in *In re Mintze*, where it rejected the argument that "the potential effect on the order of priority and the amount of distribution to Mintze's other creditors was sufficient to create an inherent conflict between the Bankruptcy Code's underlying purposes and arbitration." 434 F.3d at 231. If there is a conflict between the collective nature of bankruptcy and the two-party nature of arbitration, it does not stem from the mere exclusion of creditors from the arbitration proceeding.

The Thirteenth Circuit's second idea—that bankruptcy courts are better positioned to decide bankruptcy disputes—is out of step with this Court's precedent, which affirms that neither expertise nor efficiency concerns provide sufficient basis to refuse to enforce arbitration agreements. This Court requires lower courts to assume that arbitration panels have the expertise necessary to handle complex matters in specialized areas of law. *Mitsubishi*, for example, recognized that arbitral forums are "readily capable of" handling complex disputes despite the absence of judicial instruction and supervision, reasoning that "potential complexity should not

[3] This is the only concern the Thirteenth Circuit mentions that applies to every bankruptcy proceeding and can be discussed without reference to specific facts and circumstances. The majority below also raised the concern that arbitration could impair a debtor's fresh start or the equitable distribution to creditors. *See* R. at 11. As is demonstrated in the next section, the effect of arbitration on a debtor's fresh start or creditor dividends varies case-to-case.

suffice to ward off arbitration." 473 U.S. at 633. It rejected the assertion that parties will be "unable or unwilling to retain competent, conscientious, and impartial arbitrators." *Id.* at 633–34.

The Court reinforced *Mitsubishi* in two securities disputes, *McMahon* and *Rodriguez de Quijas*. *McMahon*, 490 U.S. at 232; *Rodriguez de Quijas*, 490 U.S. at 481. *Rodriguez de Quijas* overruled *Wilko v. Swan*, 346 U.S. 427 (1953), finding that *Wilko* was inconsistent with precedent "[t]o the extent that [it] rested on suspicion of arbitration as a method of weakening the protections afforded in the substantive law to would-be complaints." *Rodriguez de Quijas*, 490 U.S. at 481. To date, *Wilko* is the only decision in which this Court has found a conflict between the FAA and another federal statute. *See Epic*, 138 S. Ct. at 1625.

The Court's assumption that arbitrators are equally equipped to decide complex disputes is well founded: parties in an arbitration may choose expert adjudicators to resolve specialized disputes. *See Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). Thus, the subject matter of the dispute, such as the scope of automatic stay, is taken into account when the parties appoint arbitrators. In this case, the parties could appoint arbitrators who are experts in bankruptcy law.[4]

This Court has also consistently rejected efforts to avoid arbitration that are rooted in efficiency concerns. For example, courts must enforce arbitration agreements even where enforcement would result in piecemeal litigation. *See Moses Cone*, 460 U.S. at 20 (finding that resolving related disputes in different forums may be necessary to give effect to an arbitration agreement); *Dean Witter*, 470 U.S. at 217 (1985) (finding that district courts may not decline to compel arbitration to avoid the inefficiency of bifurcated proceedings).

This Court's rejection of efficiency concerns is rooted in arbitration's flexibility.

[4] Under Federal Rule of Bankruptcy Procedure 9019(c), selection of arbitrators is subject to court approval. 10 Collier on Bankruptcy ¶ 9019.04 (Richard Levin & Henry J. Sommer eds., 16th ed. 2020).

Mitsubishi noted that "adaptability" is a "hallmark[] of adjudication" and that "it is often a judgment that streamlined proceedings and expeditious results will best serve their needs that causes parties to agree to arbitrate their disputes." 473 U.S. at 633. This Court recognizes that parties forgo the procedural rigor of the courts in order to realize the benefits of private dispute resolution, including greater efficiency and lower costs. *AnimalFeeds*, 559 U.S. at 685.

If this Court were to find an inherent conflict between arbitration and bankruptcy, then it would be required to overrule the sound judgment of many circuits that *McMahon*'s inherent conflicts test applies to core proceedings. *See, e.g.*, *In re Thorpe Insulation*, 671 F.3d 1011, 1021 (9th Cir. 2012); *In re Mintze*, 434 F.3d 222, 231 (3d Cir. 2006); *In re White Mountain Mining Co., L.L.C.*, 403 F.3d 164, 169 (4th Cir. 2005); *Hill*, 436 F.3d at 108 (2d Cir. 2006); *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1057 (5th Cir. 1997) ("Certainly not all core bankruptcy proceedings are premised on provisions of the code that 'inherently conflict' with the Federal Arbitration Act; nor would arbitration of such proceedings necessarily jeopardize the objectives of the Bankruptcy Code."). If arbitration and bankruptcy—which is largely defined by core matters—could not coexist, then there would be no need for courts to use *McMahon*'s test to uncover conflicts in core disputes.

McMahon's test should continue apply to core proceedings because lifting the automatic stay does not necessarily jeopardize the Bankruptcy Code's objectives. In *Hill*, for example, the Second Circuit required enforcement of an arbitration provision in an automatic stay dispute because the debtor's debts had already been discharged. *See Hill*, 436 F.3d at 109. Therefore, sending that dispute to arbitration could not have affected the debtor's fresh start or the assets of the estate. Cases like *Hill*, in which it is sensible to send a core dispute to arbitration, disprove the theory that arbitration and bankruptcy inherently conflict.

2. Irreconcilable conflicts are determined based on concrete and particularized facts, not abstract theory.

The majority below did not—but should have—conduct a rigorous inquiry into whether the facts of this case render arbitration incompatible with the purposes of the automatic stay. The automatic stay prevents creditors from beginning or continuing efforts to recover outstanding debts from a specific debtor. *See* 11 U.S.C. § 362(a). It also forbids efforts to make recovery of those debts more likely. *Id.* In theory, by freezing debt-collection measures, the automatic stay increases the likelihood that a debtor will be productive post-bankruptcy and protects the assets of the estate for equitable distribution among creditors. *See Hill*, 436 F.3d at 109 (2d Cir. 2006).

In practice, some factual circumstances make the automatic stay less likely to serve its intended purposes. Two stark examples illustrate the point. In a no-asset liquidation case, the automatic stay does not protect assets for equitable distribution among creditors because there are no estate assets to distribute. *Cf. In re Hermoyian*, 435 B.R. 456, 459 (Bankr. E.D. Mich. 2010) (allowing arbitration in a no-asset liquidation case in part because the non-party creditors would not be prejudiced by the arbitration). Similarly, in a single-creditor case, the automatic stay does not function to ensure equitable distribution because there are no creditors vying for unsecured claims.

The Bankruptcy Code and many courts acknowledge the non-uniform effects of the automatic stay. The Code provides statutory exceptions to the stay and allows courts to lift the stay for cause. *See* 11 U.S.C. §§ 362(b), (c), (d). To properly exercise these exceptions, courts engage in facts and circumstances inquiries. For example, when deciding whether to lift a stay to allow arbitration, the Second Circuit requires a "particularized inquiry into the nature of the claim and the facts of the specific bankruptcy." *In re Anderson*, 884 F.3d at 387 (quoting *Hill*, 436 F.3d at 108). Other circuits do the same. *See, e.g.*, *In re Thorpe Insulation*, 671 F.3d at 1022 (upholding a

bankruptcy court's decision not to compel arbitration because of the unique nature of reorganizations involving asbestos trusts); *In re Nat'l Gypsum Co.*, 118 F.3d at 1067 (stating that bankruptcy courts may refuse to compel arbitration only where "a particular bankruptcy proceeding" meets the standard for nonenforcement).

3. The facts of this case do not present an irreconcilable conflict between arbitration and the purposes of the automatic stay.

The Thirteenth Circuit's brief foray into the facts of this case consisted of its attempt to distinguish *Hill* by arguing that "resolution of this this dispute will have a direct, pecuniary impact on Petty, his estate, and its creditors." R. at 13. That statement does distinguish this case from *Hill*, in which the adversary proceeding began after the court had issued a discharge injunction, but it does not distinguish this case from almost any other in which a party raises a core or non-core dispute. Moreover, that statement sidesteps the most important question, which is not whether arbitration would impact the estate, but whether—given the facts of this case—arbitration would irreconcilably conflict with the purposes of the automatic stay.

Almost all disputes related to a bankruptcy proceeding—core and non-core—will have some pecuniary impact on the estate. With few exceptions, causes of action that a debtor could bring at the commencement of the case are property of the estate. 11 U.S.C. § 541(a)(1). Bringing these actions will affect the property of the estate, whether because of the administrative expenses incurred in bringing them, *see* 11 U.S.C. § 503, or liability judgments. Therefore, whether or not a dispute impacts the value of the estate is an unhelpful rule when deciding whether a bankruptcy court has discretion to compel arbitration.

Given the facts of this case, arbitration will not irreconcilably conflict with the purposes of the automatic stay, as neither the decision-making processes nor the decision-making outcomes of the two forums will differ enough that the rights granted to the parties under the automatic stay

would be impaired. Challenges to the decision-making processes of arbitration panels are grounded in expertise, efficiency, and the participation of all parties. However, as explained above, these challenges are not cognizable under this Court's precedent. Arguing that one forum is more likely than the other to reach the correct answer ignores cases like *Mitsubishi*, which assume that arbitration panels are as prepared as courts to adjudicate complex and specialized disputes, and are therefore as likely to reach the right answer. This assumption is especially true where both forums will have access to the same information, as is the case here.[5] Arguments that that arbitration will be more costly or less efficient[6] are difficult to square with *Italian Colors* and *Dean Witter*, respectively. And, finally, arguing that arbitration will deprive creditors of their ability to monitor the dispute does not fit with *Moses Cone* or with the Third Circuit's decision in *In re Mintze*.

Since parties wishing to avoid arbitration cannot bring challenges that assume the arbitration panel will reach the wrong answer, their challenges to decision-making outcomes must focus on differences in how possible outcomes would be implemented. Here, each possible outcome would be implemented the same way whether or not the dispute were decided by an arbitration panel or a bankruptcy judge. There are three possible outcomes. Outcome one is that Wildflowers did not violate the automatic stay, in which case Wildflowers would be entitled to repossess the Equipment from Petty, who failed to file for an extension of the automatic stay. Outcome two is that Wildflowers did violate the automatic stay and owes damages. Whether reached in arbitration or in court, this outcome would require damages to be distributed to creditors by the bankruptcy court. Outcome three is that Wildflowers and Petty settle. Whether reached in

[5] The question of whether Wildflowers violated the automatic stay is a question of law. The question of the damages amount is an empirical question. Creditors who are not parties to the arbitration are unlikely to be able to present information to the arbitration panel that Petty and Wildflowers do not have.

[6] By returning Petty's Equipment, R. at 7 n.6, Wildflowers has indicated that it will operate as if the automatic stay is in effect until an arbitration panel or a court decides whether Wildflowers violated it. During that time, Petty will be able to conduct business as usual. This dampens the effect on Petty's business of any time difference between resolution of the dispute in bankruptcy versus arbitration.

arbitration or in court, Federal Rule of Bankruptcy Procedure 9019(a) would require the court to approve the settlement, which would allow creditors that were not parties to the arbitration proceeding an opportunity to dispute the settlement. In all three cases, the bankruptcy court would have the opportunity to review the award and vacate it if, *inter alia*, the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter was not made." *See In re WorldCom, Inc.*, 340 B.R. 719, 723 (Bankr. S.D.N.Y. 2006); 9 U.S.C. § 10.

II. Section 362(c)(3)(A) terminates the automatic stay with respect to the debtor, the debtor's non-estate property, and the debtor's estate.

Section 362(c)(3)(A) reads, in pertinent part:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> > (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate *with respect to the debtor* on the 30th day after the filing of the later case . . . .

11 U.S.C. § 362(c)(3)(A) (emphasis added). The majority below argues that "[s]ection 362(c)(3)(A), by its own terms, terminates the automatic stay only 'with respect to the debtor.'" R. at 16. However, this interpretation can only be supported by a reading of the statute that totally isolates § 362(c)(3)(A), thereby ignoring its immediate context, all other Code provisions, and the purpose of Congress' 2005 Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"). The better interpretation of the language "with respect to the debtor" is that it includes all actions related to the debtor, whether *in personam* or *in rem*, and whether concerning

property that remains the debtor's or property that has been included in the estate by operation of section 362(a).[7]

A. The plain language and statutory context of § 362(c)(3)(A) require reading § 362(c)(3)(A) as terminating the automatic stay for all actions related to the debtor, the debtor's non-estate property, and the debtor's estate.

Analyzing the plain language of a statutory provision requires considering the provision's context. "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Reference to the language and statutory context of § 362(c)(3)(A) demonstrates that § 362(c)(3)(A) terminates the automatic stay with respect to the debtor, the debtor's non-estate property, and the debtor's estate.

Sections 362(a) and 362(c) interact as follows: When a debtor files for bankruptcy, § 362(a)—which is "applicable to all entities"—operates as a stay of various actions, including those against the debtor personally, the property of the debtor, and property of the newly formed estate. 11 U.S.C. § 362(a). Sections 362(c)(1) and (2) establish the general termination rules for the § 362(a) stay. Section 362(c)(3) establishes somewhat stricter termination rules for bankruptcy filers who have had a single or joint case pending and dismissed within the preceding one-year period by specifying that the stay terminates on the thirtieth day after the filing of the debtor's second case. This termination is subject to certain court-approved extensions under §§ 362(c)(3)(B) and (C). Section 362(c)(4) provides that the automatic stay will not go into effect

[7] Though a plain reading of § 362(c)(3)(A) provides for a termination of the stay as to all property with respect to the debtor, including the debtor's estate, a slight majority of bankruptcy courts have interpreted this section to exclude property of the estate. *See, e.g.*, *In re Goodrich*, 587 B.R. 829, 835 n.4–5 (Bankr. D. Vt. 2018) (collecting cases). The former approach is often referred to as the "minority" approach, and the latter approach is often referred to as the "majority" approach.

upon the commencement of a case if "[two] or more single or joint cases of the debtor were pending within the previous year but were dismissed."

This Court's guidance on interpreting the phrase "with respect to" confirms that "with respect to the debtor" should be read as terminating the stay with respect to all actions related to the debtor, the debtor's non-estate property, and the debtor's estate. In *Lamar, Archer & Cofrin, LLP v. Appling*, this Court stated that terms such as "with respect to" "generally ha[ve] a broadening effect, ensuring that the scope of a provision covers not only its subject but also matters relating to that subject." 138 S. Ct. 1752, 1755 (2018). Therefore, since "the bankruptcy estate is as much a matter relating to the subject of the debtor as is the debtor's property," *In re Smith*, 910 F.3d 576, 583 (1st Cir. 2018) (internal quotation omitted), it is natural to interpret the phrase "with respect to the debtor" as encompassing the debtor's estate.

The sections immediately surrounding § 362(c)(3)(A) support a broad reading of the phrase "with respect to the debtor." Subsection (A) warns repeat filers of an impending termination of the automatic stay. Subsection (B) allows a court, "on the motion of a party in interest," to extend the stay "as to any and all creditors" upon that party's showing of good faith. 11 U.S.C. § 362(c)(3)(B). Subsection (C) details procedures for determining whether the filing was accomplished in good faith. 11 U.S.C. § 362(c)(3)(C).

The procedures in subsection (C), which are directed at any "party in interest" and applicable to "any or all creditors," are only meaningful if the termination of the stay in subsection (A) applies to property of the estate. If subsection (A) does not apply to property of the estate, as the majority below contends, then subsections (B) and (C) are overbroad. If (A) only terminates actions with respect to the debtor and the debtor's non-estate property, then only the debtor would have an interest in extending the stay, as most non-governmental creditors are primarily interested

in property of the estate. *See In re Smith*, 910 F.3d at 587. In that case, subsection (C)'s application to "any or all creditors" would be nonsensical. *See id.* at 588. Therefore, the better understanding of the phrase "with respect to the debtor" is that it includes property of the estate, as this reading accords with subsections (B) and (C)'s application to "any and all creditors." *Id.* (reasoning from these subsections that "[m]ost likely, Congress anticipated that a creditor might move to extend the stay to prevent another creditor from reaching, and draining, estate property in a separate action during the bankruptcy process.").

Comparing § 362(c)(3)(A) with § 362(c)(4)(A)(i) demonstrates that "with respect to the debtor" in § 362(c)(3)(A) was likely meant to clarify *which* debtor the termination affects and not to exclude the property of that debtor's estate from the termination of the automatic stay. Section 362(c)(3) applies to a debtor in either a "single or joint case," which means there is reason to clarify whether § 362(c)(3)(A)—which appears as a separate subsection—applies to the repeat debtor or to the debtor's spouse. The phrase "with respect to the debtor" clarifies that the repeat debtor, and not the spouse, faces termination of the automatic stay after thirty days after the second filing. *See, e.g.*, *In re Daniel*, 404 B.R. 318, 326 (Bankr. N.D. Ill. 2009) (noting that in joint cases, the phrase "with respect to the debtor" can be read as "referring to the serially-filing spouse, making that debtor subject to collection actions, both *in personam* and *in rem* (against estate and non-estate property) while leaving the stay completely in effect as to the newly-filing spouse's person and property"). Section 362(c)(4)(A)(i) also applies to single or joint cases. However, unlike in § 362(c)(3) and § 362(c)(3)(A), where the discussion of "the debtor" appears in a different subsection than the discussion of the automatic stay, § 362(c)(4)(A)(i) groups both the discussion of "the debtor" and the discussion of the automatic stay, which means that there is no need to clarify that § 362(c)(4)(A)(i) applies to the serially-filing debtor and not to the debtor's spouse.

This focus on the different effects on spouses, appearing in both section 362(c)(3) and subsection (A), "is common in the Bankruptcy Code," and "several provisions regarding joint cases added to the Code by BAPCPA distinguish between 'the debtor' and 'the debtor's spouse,'" including 11 U.S.C. §§ 101(10A), 707(b)(7), and 1325(b). *In re Daniel*, 404 B.R. at 326. While including this phrase in § 362(c)(3)(A) is not strictly necessary to limit its consequences to repeat filers who are abusing the system, its inclusion serves to "focus on, and apply to, the acts of a specific debtor rather than joint debtors in the aggregate." *In re Parker*, 336 B.R. 678, 681 (Bankr. S.D.N.Y. 2006).

A reading that rejects the purpose of the phrase "with respect to the debtor" as clarifying or focusing § 362(c)(3)(A)'s application on the debtor does not automatically lead to the majority interpretation. An alternative understanding of the phrase "with respect to the debtor"—that it is extraneous—also supports reading § 362(c)(3)(A) as applying to a debtor's estate. Though statutory interpretations should strive to give effect to every word, *see City of Chicago v. Fulton*, No. 19-357, 2021 WL 125106, at *3 (U.S. Jan. 14, 2021), reading "with respect to the debtor" as superfluous may best accord with the other uses of the phrase in the BAPCPA amendments. *See In re Smith*, 910 F.3d at 581 (finding redundancies in section 362(c)(3)(A) that make the rule against superfluities "unhelpful" and "evidence that the phrase may be superfluous in other provisions of BAPCPA"); *see also* Peter E. Meltzer, *Won't You Stay A Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code § 362(c)(3)(a)*, 86 Am. Bankr. L.J. 407, 445 (2012) ("[I]n every one of the other instances where BAPCPA uses ['with respect to the debtor'] or 'with respect to a debtor' as a stand-alone phrase, it is extraneous."). For example, 11 U.S.C. § 308(a), which is titled "Debtor reporting requirements," states, "For purposes of this section, the

term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods."

B. The lack of express reference to "property of the estate" in § 362(c)(3)(A) indicates that Congress intended § 362(c)(3)(A) to terminate the automatic stay with respect to property of the estate.

The Thirteenth Circuit argues that the absence of the phrase "property of the estate" in § 362(c)(3)(A) reinforces its "plain meaning interpretation" of that section. R. at 16. In the court's view, the absence of the phrase "property of the estate" terminates the stay of *in personam* actions against the debtor and *in rem* actions against the debtor's non-estate property but allows the stay of *in rem* actions against the property of the estate to continue. The court compares § 362(c)(3)(A) to other subsections of § 362 to support its claim, namely §§ 362(b)(2)(B), (c)(1), and (c)(2). However, these subsections do not support the court's argument.

Rather than demonstrating that the absence of the phrase "property of the estate" means that the automatic stay does not terminate with respect to the estate, §§ 362(b)(2)(B), (c)(1), and (c)(2) demonstrate that the Code expressly identifies and excludes property of the estate only when it is to be treated differently from property of the debtor. Section 362(b)(2)(B) prevents the automatic stay from halting domestic support collection actions against "property *that is not* property of the estate." 11 U.S.C. § 362(b)(2)(B) (emphasis added). This section expressly excludes property of the estate rather than leaving readers to wonder which type of property is included. The Code again distinguishes between property of the estate and property of the debtor in § 362(c)(1) and § 362(c)(2). Sections 362(c)(1) and (c)(2) are analogues, where § 362(c)(1) applies to termination of the stay with respect to actions against property of the estate and § 362(c)(2) applies to termination of the stay with respect to all other actions stayed under § 362(a).

It follows from the pattern of usage of the phrase "property of the estate" in §§ 362(b)(2)(B), (c)(1), and (c)(2) that there is no express reference to "property of the estate" in

§ 362(c)(3)(A) because property of the debtor and property of the estate are both included in actions "with respect to the debtor." Though the Thirteenth Circuit is correct in noting that the lack of any "mention of property of the estate" in § 362(c)(3)(A) leads to the conclusion that "Congress intentionally omitted any reference to it from that subsection," R. at 16; *see Russello v. United States*, 464 U.S. 16, 23 (1983), the conclusion it draws from the absence of an express reference requires us to assume that Congress, in a provision that is "applicable to all creditors" and designed to penalize debtors for frivolous filings, intentionally allowed the stay to continue with respect to the most important type of property in bankruptcy proceedings. This would be the equivalent of Congress "hide[ing] elephants in mouseholes," which it does not do. *See Whitman v. Am. Trucking Ass'ns, Inc.*, 532 U.S. 457, 468 (2001). Therefore, the better interpretation of the lack of any mention of "property of the estate" in § 362(c)(3)(A) is that Congress did not intend any fine, technical distinctions between legal categories of property unless the statute explicitly says so.

Not only does Section 362(c)(3)(A) not mention "property of the estate," it does not mention *any* type of property. If, as the Thirteenth Circuit argues, § 362(c)(3)(A) does not apply to property of the estate because § 362(c)(3)(A) does not contain the language "property of the estate," then it follows that § 362(c)(3)(A) does not include a debtor's exempt property, abandoned property, or property excluded under 11 U.S.C. § 541 because it makes no mention of those categories of property. *See In re Bender*, 562 B.R. 578, 583 (Bankr. E.D.N.Y. 2016). Instead of consistently following its own logic, however, the majority below finds that the automatic stay terminates with respect to *in personam* actions against the debtor and *in rem* actions against the debtor's personal property.

Some courts have upheld this textual distortion on the theory that "property of the debtor" may be read into the statute under the Code's rule of construction in 11 U.S.C. § 102(2), which

states that "'claim against the debtor' includes claim against property of the debtor." *See, e.g.*, *In re Jones*, 339 B.R. 360, 365 (Bankr. E.D.N.C. 2006). This theory breaks down when applied to the actual text of § 362(c)(3)(A), which limits actions not "against the debtor" but "with respect to the debtor." 11 U.S.C. § 362(c)(3)(A). Since the language construed by 11 U.S.C. § 102(2) does not match the language of § 362(c)(3)(A), the rule of construction in § 102(2) does not apply.

C. Reading § 362(c)(3)(A) as terminating the stay with respect to property of the estate follows the clearly established intentions of the 2005 BAPCPA amendments and better fits the system Congress created to protect creditors from abusive filings.

Even in cases where a statute's plain language is unambiguous and it is "unnecessary to rely on the legislative history," history and policy considerations may be used to lend support to a plain language interpretation of a statute. *See Lamie v. U.S. Tr.*, 540 U.S. 526, 539 (2004). These interpretive aids consistently support reading § 362(c)(3)(A) as including property of the estate.

1. Congress enacted BAPCPA to deter debtors from repeatedly filing for bankruptcy to avoid debt collection and foreclosure efforts.

Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 "to correct perceived abuses of the bankruptcy system." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231–32 (2010). Prior to BAPCPA, there was no limit on the number of times that debtors could file for bankruptcy to prevent foreclosure or eviction proceedings. *See* Meltzer, *supra*, at 410–11. This led to what the House Judiciary Committee Report identified as a "proliferation of serial filings." H.R. Rep. No. 109-31, pt. 1, at 2 (2005). BAPCPA's consumer bankruptcy reforms responded to this problem by including "provisions intended to deter serial and abusive bankruptcy filings," *id.*, which § 362(c)(3) included as the "key section of BAPCPA [focusing] on second time repeat filers," Sara Sternberg Greene, *The Failed Reform: Congressional Crackdown on Repeat Chapter 13 Bankruptcy Filers*, 89 Am. Bankr. L.J. 241, 243 (2015).

2. To vindicate Congress' purpose in enacting BAPCPA, § 362(c)(3)(A) must be interpreted to include property of the estate.

Only by interpreting § 362(c)(3)(A) as including property of the estate would it accomplish its purpose of deterring bad faith, repeat filings. If property of the estate were not covered by § 362(c)(3)(A), then second-time filers would receive "the principal benefit of the automatic stay—protection of property of the estate" regardless of their reason for filing. *See In re Jupiter*, 344 B.R. 754, 762 (Bankr. D.S.C. 2006). This would do little to deter frivolous actions, as property outside of the estate is generally exempt from collection or limited in value, which makes it uninteresting to creditors.

With few exceptions, property of the estate includes "all legal or equitable interests of the debtor in property at the commencement of the case." 11 U.S.C. § 541. The only property excluded from the estate is property which has been excluded pursuant to § 541(b), abandoned property, exempt property, and interests of the debtor in spendthrift trusts. *See In re Jupiter*, 344 B.R. at 75. The exceptions under § 541(b) are designed to be "quite narrow," and "anything not specifically excluded under subsection (b) should be included as property of the estate." 5 Collier on Bankruptcy ¶ 541.01 (Richard Levin & Henry J. Sommer eds., 16th ed. 2020).

Abandoned property is property that a trustee or debtor in possession has abandoned or has been ordered by the court to abandon because it is "burdensome to the estate or [] is of inconsequential value and benefit to the estate." *See* 11 U.S.C. § 554(a). Since, by definition, abandoned property is of little value, it is unlikely to incentivize creditors to pursue collection actions after the termination of the stay and would thus not deter second-time filers from abusing the stay's protections.

The termination of the stay as to exempt property is also unlikely to have any effect on abusive filings. Section 522 allows debtors to claim certain types of property as exempt from the

property of the estate. 11 U.S.C. § 522. With few exceptions, exempt property is "not liable during or after the case for any debt of the debtor that arose . . . before the commencement of the case." 11 U.S.C. § 522(c). Moreover, state law prevents creditors from enforcing judgments against exempt property. *See In re Jupiter*, 344 B.R. at 762 n.11. Between the protections of § 522(c) and applicable state law, exempt property is generally protected from collection "regardless of the automatic stay or of its termination." *Cf. In re Smith*, 910 F.3d at 587 (explaining that § 522(c) on its own prevents creditors from using exempt property to satisfy prepetition debts).

The sum total of the interests that are not included in the estate is generally so small that a debtor and his amici in *In re Smith* summarized the consequences of lifting the automatic stay as follows: "(1) certain governmental creditors can collect tax refunds for non-tax debts, (2) certain governmental creditors can pursue exempt property to satisfy non-dischargeable tax debts, (3) certain governmental creditors can suspend a debtor's driver's license, and (4) creditors can make collection calls." 910 F.3d at 587. None of these consequences are serious enough to meaningfully address abuses of the automatic stay. Thus, the Thirteenth Circuit's holding that § 362(c)(3)(A) terminates the stay only with respect to the debtor and the debtor's property "eliminates its practical impact," *In re Reswick*, 446 B.R. 362, 367 (B.A.P. 9th Cir. 2011), and is so absurd that it obviously conflicts with the statutory scheme, *In re Curry*, 362 B.R. 394, 402 (Bankr. N.D. Ill. 2007).

Section 362(c)(3)(C) serves as the final nail in the coffin of the Thirteenth Circuit's theory. Section 362(c)(3)(C) is "by far the longest component of § 362(c)(3)" and "one of only three places in the entire Bankruptcy Code that include six levels of subsections." Meltzer, *supra*, at 428. If section 362(c)(3)(A) applies only to *in personam* actions against the debtor and *in rem* actions against property of the debtor that is not part of the bankruptcy estate, it is unclear why Congress

would have crafted such lengthy and detailed rules for motions to extend the stay. As one court concluded:

> It seems illogical that Congress would enact a provision which both requires moving parties to meet a high burden of proof and which requires the courts to hear these matters on an expedited basis, only to have both the process and the end result meaningless and of no utility if property of the estate remains protected by the automatic stay, notwithstanding a termination of the automatic stay under § 362(c)(3)(A).

In re Jupiter, 344 B.R. at 760. The effect of the majority reading is thus not merely to render § 362(c)(3)(A) impotent; it also makes § 362(c)(3)(C) bizarre. *See* Meltzer, *supra*, at 428–29 (describing the result of applying section 362(c)(3)(A) only "to a minute number of situations" as "strain[ing] credulity."). Such absurd results must be avoided if there is an alternative interpretation consistent with legislative purpose. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982).

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the Thirteenth Circuit Court of Appeals on both questions presented.

Respectfully submitted,

TEAM NUMBER 3
Counsel of Record for Petitioners

January 19, 2021

APPENDIX

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7 U.S.C. § 26. Commodity whistleblower incentives and protection

(a) – (m) [Omitted.]

(n) Nonenforceability of certain provisions waiving rights and remedies or requiring arbitration of disputes

(1) [Omitted]

(2) Predispute arbitration agreements
No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.

9 U.S.C. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 3. Stay of proceedings where issue therein referrable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. § 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

11 U.S.C. § 101. Definitions

(1) – (10) [Omitted.]

(10A)The term "current monthly income"—

(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) [Omitted.]

(11) – (55) [Omitted.]

11 U.S.C. § 102. Rules of construction

(1) [Omitted.]

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

(3) – (9) [Omitted.]

11 U.S.C. § 308. Debtor reporting requirements

(a) For purposes of this section, the term "profitability" means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

(b) [Omitted.]

11 U.S.C. § 362. 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.

(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) [Omitted.]
>
> (2) under subsection (a)—

(A) [Omitted.]

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) – (G) [Omitted.]

(3) – (29) [Omitted.]

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) [Omitted.]

(ii) [Omitted.]

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) [Omitted.]

(B) – (D) [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) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) – (B) [Omitted.]

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) – (B) [Omitted.]

(e) – (o) [Omitted.]

11 U.S.C. § 503. 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; 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) [Omitted.]

(c) [Omitted.]

11 U.S.C. § 522. Exemptions

(a) [Omitted.]

(b)

(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) – (4) [Omitted.]

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is—

(A)

(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) – (q) [Omitted.]

11 U.S.C. § 541. 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.),[1] 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) – (B) [Omitted.]

(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) – (C) [Omitted.]

(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) – (C) [Omitted.]

(7) any amount—

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

(i) – (ii) [Omitted.]

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

(i) – (ii) [Omitted.]

(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) – (C) [Omitted.]

(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) – (B) [Omitted.]

(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) – (C) [Omitted.]

(c)

(1)Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

(A)– (B) [Omitted.]

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a

corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

11 U.S.C. § 554. 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.

11 U.S.C. § 707. Dismissal of a case or conversion to a case under chapter 11 or 13

(a) [Omitted.]

(b)

(7)

(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(c) [Omitted.]

11 U.S.C. § 1325. Confirmation of plan

(a) [Omitted.]

(b)

(1) – (3) [Omitted.]

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) – (III) [Omitted.]

(B) [Omitted.]

(c) [Omitted.]

28 U.S.C. § 157. Procedures

(a) [Omitted.]

(b)

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

(2) Core proceedings include, but are not limited to—

(A) – (F) [Omitted.]

(G) motions to terminate, annul, or modify the automatic stay;

(H) – (P) [Omitted.]

(3) – (5) [Omitted.]

(c)

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

(2) [Omitted.]

(d) – (e) [Omitted.]

28 U.S.C. § 1334. Bankruptcy cases and proceedings

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

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c) – (e) [Omitted.]

Fed. R. Bankr. P. 9019. Compromise and Arbitration

(a) COMPROMISE. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

(b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.