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 PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 7
Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether 11 U.S.C. § 362 and related judicial code provisions impliedly repealed the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*

II. Whether 11 U.S.C. § 362(c)(3)(A) applies to property of a debtor's bankruptcy estate.

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The opinion of the United States Court of Appeals for the Thirteenth Circuit summarizes the opinion of the Bankruptcy Court for the District of Moot. The Thirteenth Circuit's case number is 19-0805 and is contained in the record submitted with the petition for writ of certiorari.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

1. 11 U.S.C. § 362.

2. 11 U.S.C. § 541.

3. 11 U.S.C. § 552(a).

4. 9 U.S.C. § 2.

5. 28 U.S.C. § 157.

6. 28 U.S.C. § 1334.

The full text of each statutory provision is set out in the Appendix attached hereto.

STATEMENT OF THE CASE

I. Factual Background

This case arises from a personal guaranty (the "Guaranty") that Respondent Thomas Petty entered with Petitioner Wildflowers Community Bank ("Wildflowers"). The Guaranty was part of the security for a revolving credit agreement ("Credit Agreement") Wildflowers entered with Petty and his company, Great Wide Open Brewing Company, Inc. ("Great Wide Open"). Record, 3–4. Both the Credit Agreement and the Guaranty included arbitration clauses providing, "[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. . . ." *Id.* at 4 (quotations omitted). Further, the arbitration clause specified that "each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial." *Id.* (quotations omitted).

Soon after its initial successes, Great Wide Open expanded its operations rapidly, precipitating the need for the Credit Agreement. *Id.* at 5. But after financial problems led to Great Wide Open struggling to keep up its payments and closing most of its locations, Wildflowers filed an arbitration demand and breach of contract complaint against Petty (but not against Great Wide Open). *Id.* One day before the arbitration initial conference, Great Wide Open "terminated its employees and ceased all operations," then filed a Chapter 7 petition in the Bankruptcy Court for the District of Moot. *Id.* Simultaneously, Petty filed a Chapter 11 petition in the same court. *Id.* Due to "Petty's failure to timely file certain documents, the bankruptcy court dismissed his petition." *Id.* at 6. But "just as the arbitration proceeding was about to recommence," he filed a second Chapter 11 petition, including a proposed reorganization plan. *Id.*

Petty did not, however, file a motion to extend the automatic stay beyond the statutorily-prescribed thirty-day stay for a second bankruptcy filing commenced within one year of a prior bankruptcy petition, under 11 U.S.C. § 362(c)(3)(A)–(B). Rec. at 6. Two days after the automatic

stay expired, Wildflowers repossessed certain brewing equipment used by Great Wide Open that Petty had personally purchased and was part of Petty's bankruptcy estate, against which Wildflowers held a first priority lien to secure the Guaranty. *Id.* at 6; *see id.* at 4. At the time of repossession, Petty had resumed business under another name. *Id.* at 6.

One week after the repossession, Petty moved the bankruptcy court for an award of $500,000 in damages, asserting that Wildflowers violated the automatic stay. *Id.* at 7. Wildflowers argued that the thirty-day automatic stay had expired two days prior to its repossession, under 11 U.S.C. § 362(c)(3)(A), and therefore it could not have violated the stay. *Id.* Moreover, Wildflowers pointed to the arbitration clause of Petty's personal guaranty and argued that "Petty should be compelled to bring any claims against Wildflowers" in the arbitration proceeding it had already brought against him. *Id.*

II. Proceedings in the Bankruptcy Court

The bankruptcy court held (1) "that enforcing the arbitration agreement would conflict with the Bankruptcy Code, and section 362 in particular" and (2) that no matter the fact Petty had not filed a motion to extend the automatic stay pursuant to § 362(c)(3)(B), Wildflowers could not "take action with respect to property of a debtor's estate." *Id.* Concluding that the brewing equipment "was indisputably property of Petty's bankruptcy estate" and that "Wildflowers willfully violated the automatic stay," the bankruptcy court granted Petty $200,000 in compensatory damages. On Wildflowers's request, the bankruptcy court certified the two questions at issue in this case for direct appeal to the United States Court of Appeals for the Thirteenth Circuit.

III. Proceedings in the Thirteenth Circuit

The Thirteenth Circuit affirmed the bankruptcy court on both issues. Acknowledging the "liberal policy in favor of arbitration," the Thirteenth Circuit observed that neither the text nor the legislative history of the Bankruptcy Code expressly repeals the Federal Arbitration Act (FAA)

and also concluded that the Bankruptcy Code and the FAA inherently conflict. Rec. at 9–10. Because the automatic stay is "a substantive right of extraordinary magnitude derived directly from, and available only under, the Bankruptcy Code," the Thirteenth Circuit concluded that Petty's and Wildflowers' dispute over the repossession action is a "core" proceeding under 28 U.S.C. § 157(b). *Id.* at 11. The court further concluded that "Congress intended to override the FAA when it enacted section 362" for several reasons. *Id.*

First, the Thirteenth Circuit reasoned, the parties entered the Guaranty "in anticipation of a two-party dispute," but bankruptcy "constitutes a collective, multi-party proceeding" intended to help a debtor to a "fresh start," while also protecting his creditors. *Id.* at 11. Second, "an agreement to arbitrate generally does not bind non-parties, including creditors and other parties in interest in bankruptcy cases," which means that "the collective nature of bankruptcy inherently conflicts with arbitration." *Id.* at 12. Third, the automatic stay "protects debtors and creditors alike" and therefore "transcends traditional two-party disputes that are typically subject to arbitration." *Id.* at 12–13. The Thirteenth Circuit observed that Petty "intends to use any proceeds from his damages claim . . . to fund his chapter 11 plan of reorganization," and therefore "resolution of []his dispute" by arbitration or otherwise "will have a direct, pecuniary impact on [him], his estate, and its creditors." *Id.* at 13. Finally, "if we were to compel arbitration for automatic stay disputes, we would make debtor-creditor rights contingent upon an arbitrator's ruling rather than the ruling of the bankruptcy judge assigned to hear the debtor's case" and therefore would "deprive creditors of an opportunity to monitor and oversee litigation that serves as a key component of Petty's reorganization and their potential recoveries." *Id.* at 13 (quotations omitted).

One judge dissented, on the ground that this Court's decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), requires a court to identify an "irreconcilable conflict between two

statutes that is clear and manifest" before concluding that a statute impliedly repeals the FAA. *Id.* at 20 (Tench, J., dissenting) (quotations omitted). The dissent critiqued the majority for "fail[ing] to identify any true 'irreconcilable conflict.'" *Id.* The dissent further argued that the "core/non-core" proceeding distinction invoked by prior cases was "displaced" by *Epic Systems*, because "the absence of any specific statutory discussion of arbitration" in the statute at issue is "an important and telling clue that Congress has not displaced the FAA." *Id.* at 22 (quotations and brackets omitted). The dissent concluded that "the FAA and section 362" are not "irreconcilable" because "Congress did not give exclusive jurisdiction to federal courts to adjudicate disputes regarding the scope of the automatic stay," unlike their authority over the "property of the estate," *id.* at 24 & n.14. The dissent believed "an arbitrator is equally capable of addressing the scope of the automatic stay" and "arbitration may be particularly useful in cases" like this, due to its greater efficiency. *Id.* at 24.

SUMMARY OF THE ARGUMENT

I. Arbitration of the parties' automatic stay dispute does not inherently conflict with the Bankruptcy Code, and therefore Congress did not impliedly repeal the Federal Arbitration Act (FAA) in 11 U.S.C. § 362. The party challenging arbitration bears the burden of proving that Congress intended to displace arbitration, a burden that Petty has not carried here. Neither the FAA nor the Bankruptcy Code grants a court discretion to deny enforcement of a valid arbitration agreement. The only discretion in this area flows from the courts' interpretation of their original, non-exclusive jurisdiction over certain civil proceedings, divided between "core" and "non-core" proceedings. The Court should resolve a circuit split over the standard for that discretion by adopting a two-pronged test: (1) a bankruptcy court has discretion to refuse to enforce arbitration only of core proceedings; and (2) a bankruptcy court may exercise that discretion only if arbitration

would cause a severe, irreconcilable conflict with the Bankruptcy Code. Additionally, none of the policy concerns over arbitration of important statutory disputes defeats arbitration of the parties' dispute, nor do the generalized policy objectives of the Bankruptcy Code on which the Thirteenth Circuit erroneously relied. Accordingly, the Court should reverse the judgment of the Thirteenth Circuit and remand the case with instructions to enter an order compelling arbitration.

II. Wildflowers did not violate the automatic stay by repossessing the Equipment after the initial thirty-day stay. Section 362(c)(3)(A), when read through the lens of the correct minority view, prescribes that the automatic stay enacted upon filing a bankruptcy case only last for thirty days for those who file a second chapter 7, 11, or 13 case within the same year. Upon a second filing, the automatic stay terminates after thirty days as to the debtor, his property, and his bankruptcy estate. This interpretation comports with the text of 362(c)(3)(A) itself, the broader context of section 362, and the intent of Congress when drafting this code section. Section 362(c) was created in 2005 by Congress under the Bankruptcy Abuse Prevention and Consumer Protection Act in order to prevent those who would file successive bankruptcy cases in bad faith to evade creditors. Section 362 governs the automatic stay, the progressive consequences comingled with multiple cases, and the procedure for an exception for cases filed in good faith. The text of the statute itself delineates between repeat and non-repeat filers through the phrase "with respect to the debtor." The ambiguity evident by the competing interpretations is resolved in favor of the minority approach when viewed in concert with the legislative reasoning for creating such creditor protection, the broader context of section 362(c), and the word choice of the text itself. Therefore, Wildflowers violated no such automatic stay because the stay terminated upon the thirty-day lapse.

ARGUMENT

I. The Thirteenth Circuit erroneously concluded that section 362 impliedly repealed the Federal Arbitration Act because the two statutes do not conflict.

The narrow question presented here is whether Section 362 of the Bankruptcy Code impliedly repealed the Federal Arbitration Act (FAA). The Thirteenth Circuit concluded erroneously that the statutes inherently conflict and Congress therefore impliedly repealed the FAA.

A. No precedent supports a conclusion that the FAA and section 362 conflict, and therefore this Court should reinforce the federal policy in favor of arbitration.

i. Petty attempts to assert a conflict between the FAA and section 362 that this Court should reject just has it has rejected all similar previous challenges.

As others before him have attempted—and failed—Petty attempts to demonstrate a conflict between the FAA and yet another statute, section 362. This Court's precedents, however, have affirmed repeatedly that the FAA does not step aside easily. That is true because "the purpose behind" the FAA "was to ensure judicial enforcement of privately[-]made agreements to arbitrate." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 220 (1982). Accordingly, this policy demands "enforce[ment] [of] agreements to arbitrate, even if the result is 'piecemeal' litigation, at least absent a countervailing policy manifested in another federal statute." *Id.* at 221. Indeed, at times "federal law *requires* piecemeal resolution when necessary to give effect to an arbitration agreement." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983). "Countervailing policy" aside for the moment, the critical preliminary analytical point is that federal policy heartily favors enforcing arbitration agreements, even at the cost of overall less efficient conflict resolution.

Moreover, this Court has held that the "duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights," given

the "'federal policy favoring arbitration.'" *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (quoting *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24). *See Epic Syss. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (rejecting a challenge to enforcement of an individual arbitration clause under the FAA that purportedly violated the National Labor Relations Act's (NLRA) provisions in favor of collective action); *McMahon*, 482 U.S. at 220 (1987) (same with regard to the Securities Exchange Act's mandate against waiver of the Act's substantive provisions); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) (same with regard to the Sherman Antitrust Act).

In every contest between arbitration and another federal statute before this Court, arbitration has won:

> In many cases over many years, this Court has heard and rejected efforts to conjure conflicts between the Arbitration Act and other federal statutes. In fact, this Court has rejected *every* such effort to date (save one temporary exception since overruled), with statutes ranging from the Sherman and Clayton Acts to the Age Discrimination in Employment Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeer Influenced and Corrupt Organizations Act.

Epic Syss., 138 S. Ct. at 1627 (citations omitted). This Court further observed that "the absence of any specific statutory discussion of arbitration or class actions is an important and telling clue that Congress has not displaced the Arbitration Act," because "repeals by implication are disfavored" and the Court presumes that "Congress will specifically address preexisting law" in a subsequent statute. *Id.* (quotations omitted).

Accordingly, Petty's asserted conflict between the FAA and section 362 must scale a sheer, slippery wall. No doubt, the automatic stay is an important provision of bankruptcy law. But the Thirteenth Circuit erred, when it concluded that Petty had demonstrated a conflict merely because the automatic stay is important and an arbitrator is not a bankruptcy judge. *See* Rec. at 11–13. This

Court's precedents hold in no uncertain terms that arbitration as a manner of adjudicating statutory disputes is not overridden merely because the statute is an important one, especially where it does not expressly repeal the FAA. Thus, the Thirteenth Circuit erred by concluding that arbitration must yield simply because section 362 is an important feature of bankruptcy law.

ii. Petty has not carried his burden to prove that section 362 impliedly repealed the FAA, as this Court's precedents require.

Petty has not carried his burden to prove that section 362 impliedly repealed the FAA, and the Thirteenth Circuit erred, when it concluded he has. The "party opposing arbitration" on the ground that another statute displaces the FAA must "show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *McMahon*, 482 U.S. at 227. This burden presents the challenging party with a "stout uphill climb" because, "[w]hen confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at liberty to pick and choose" between the statutes but must "strive to give effect to both." *Epic Syss.*, 138 S. Ct. at 1624 (quotations omitted). A party to an arbitration agreement "does not forgo the substantive rights afforded by the statute" but "only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi Motors Corp.*, 473 U.S. at 628. Therefore, a court must determine whether one of the "substantive protection[s] afforded by a given statute" bars the "simplicity, informality, and expedition of arbitration. . . ." *Id.*

This Court noted in *Mitsubishi* that Congress's intent to override one statute through another "will be deducible from text or legislative history." *Id.* The Court added, in *McMahon*, that one statute may override another if there is "an inherent conflict between arbitration and the statute's underlying purposes" (the challenge levied in this case). 482 U.S. at 227. And because of the presumption of harmony between Congress's enactments, a conflicting statute must clearly manifest Congress's intention to impliedly repeal the other statute, before a court can override one

due solely to conflict with the other. *See Epic Systems*, 138 S. Ct. at 1624. Read together, these precedents require that a statute repealing another must clearly manifest as much in the later statute's text, legislative history, or an inherent, irreconcilable conflict between the two.

These precedents effectively create a strong presumption against implied repeal and in favor of arbitration. As discussed next, Petty cannot show that the provisions of section 362 and the FAA clearly manifest an inherent conflict between the two.

B. Neither the FAA nor the Bankruptcy Code provides discretion to refuse to enforce a valid arbitration clause.

Neither statute provides a court discretion to decline to enforce an otherwise valid, applicable arbitration agreement. Any notion of discretion in this area arises solely from judicial fiat, which should yield to the statutory text—including the text's omission of discretion—and the Thirteenth Circuit erred, when it concluded otherwise.

i. The FAA does not vest a court with discretion to refuse to enforce an otherwise valid, applicable arbitration agreement.

By its terms, the FAA does not grant a court discretion to refuse to enforce an arbitration clause. An agreement in a commercial contract "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. § 2 (emphasis added). This full-stop "thou shalt enforce" provision grants no authority to a court to decline to follow the statute's mandate. *See Dean Witter Reynolds*, 470 U.S. at 218 ("By its terms, the Act *leaves no place for the exercise of discretion* by a district court. . . . (emphasis added)); *see also Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 480–81 (1989); *Munich Am. Reins. Co. v. Crawford*, 141 F.3d 585, 589–90 (5th Cir. 1989) (citing *Dean Witter Reynolds*, 470 U.S. at 218), *cert. denied sub nom. Am. Re-Ins. Co. v. Crawford*, 525 U.S.

1016 (1998); *Bhatia v. Johnston*, 818 F.2d 418, 421 (5th Cir. 1987). Accordingly, under the terms of the FAA and this Court's precedents interpreting it, the Thirteenth Circuit erred by affirming the bankruptcy court's exercise of discretion to deny arbitration here.

ii. The Bankruptcy Code does not vest discretion in a bankruptcy court to refuse to enforce an arbitration agreement, either.

Nothing in the Bankruptcy Code explicitly or expressly provides that courts may refuse to enforce an arbitration agreement. *See generally* 11 U.S.C. §§ 101–1532 (addressing substantive rules of bankruptcy law, without any mention of arbitration); *see also In re Jorge*, 568 B.R. 25, 32 (Bankr. N.D. Ohio 2017) ("The Bankruptcy Code does not mention arbitration and there is nothing in the legislative history of the Bankruptcy Code that indicates a Congressional intent concerning arbitration in the bankruptcy context."); *In re Wade*, 523 B.R. 594, 603 (Bankr. W.D. Tenn. 2014) (same (collecting cases)). Similarly, the district and bankruptcy courts' jurisdiction over certain civil proceedings in bankruptcy is not exclusive. 28 U.S.C. § 1334(b) (providing that district courts have "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11"); *see* 28 U.S.C. § 157 (providing that the district courts "may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district").

Because that jurisdictional mandate is not exclusive to bankruptcy courts, other courts can decide whether the stay applies to their proceedings (even though only the bankruptcy court can actually modify or terminate the stay, *see* § 362(d)). As the Sixth Circuit observed, "[W]hen a party seeks to *commence or continue proceedings in one court* against a debtor or property that is protected by the stay . . . , the non-bankruptcy court properly responds to the filing by determining whether the automatic stay applies to (i.e., stays) the proceedings. . . ." *Chao v. Hosp. Staffing*

Servs., 270 F.3d 374, 384 (6th Cir. 2001) (emphasis added). The court also remarked in passing that an administrative tribunal can perform the same evaluation. *Id.*

Likewise, the Ninth Circuit reinforced the jurisdiction of a district court to determine, as an initial matter, whether the automatic stay applied to its proceedings and observed that a state court has the same authority. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1105–06 (9th Cir. 2005) (citing *Celotex Corp. v. Edwards*, 514 U.S. 300 (1995) (for the district court's jurisdiction) and *In re Gruntz*, 202 F.3d 1074 (9th Cir. 2000) (en banc) (for the state court's jurisdiction)). If another court (both federal and state) or an administrative tribunal can determine itself whether the automatic stay covers its proceedings, then surely an arbitrator can also make such an evaluation.

Indeed, in *In re Hermoyian* the Bankruptcy Court for the Eastern District of Michigan concluded that permitting arbitration of a dispute over whether the debtor owed a debt to a loan creditor would not defeat the purposes of the Bankruptcy Code's discharge provisions because the bankruptcy court would retain the exclusive right to determine whether any debt was dischargeable. 435 B.R. 456, 464–65 (Bankr. E.D. Mich. 2010) ("There is nothing uncommon about having the existence of a debt and the amount of that debt determined by some forum other than the Bankruptcy Court, leaving the Bankruptcy Court to determine whether any such debt is dischargeable or not under § 523 of the Bankruptcy Code."). Having concluded that arbitration would actually serve interests of efficiency because the arbitrator could resolve the issue more quickly, the court noted that if the arbitrator "d[id] not render an award in favor" of the creditor, then there would be "nothing for th[e] [c]ourt to adjudicate," and in the case of an award in favor of the creditor, the court would determine the discharge issue. *Id.* at 465–66. Thus, the court concluded that arbitration would not conflict with the purposes of 11 U.S.C. §§ 523 and 727. *Id.*

And so likewise here—the sole issue that Wildflowers desires to have submitted to arbitration is whether the automatic stay did not bar Wildflowers' repossession of Petty's brewing equipment, and if it did, whether Petty is entitled to damages and the amount. Although this would put the arbitrator in the position of adjudicating the parties' rights under the Bankruptcy Code, the arbitrator would perform essentially the same duty deemed permissible in *In re Hermoyian*—determining whether Petty actually has a right under the Bankruptcy Code and its extent. Thus, this Court should reverse the Thirteenth Circuit's judgment that arbitration of whether the automatic stay covered Petty's equipment would conflict with the Bankruptcy Code.

C. This Court should require that a proceeding be core and present a severe conflict with the Bankruptcy Code before the bankruptcy court has discretion to deny arbitration, in keeping with the Second and Third Circuits' tests.

The courts of appeals have fashioned variations on the same test to determine when a bankruptcy court may deny arbitration, notwithstanding the FAA's command to enforce valid arbitration agreements and the Bankruptcy Code's entire omission of arbitration matters. Adopting portions of the Second and Third Circuits' approaches to the question, this Court should permit discretion to deny arbitration only of a core proceeding in which arbitration would severely conflict with the Bankruptcy Code, pursuant to *McMahon*'s "inherent conflict" prong.

"Core" proceedings are enumerated non-exhaustively in 28 U.S.C. § 157(b)(2), all concerning matters that arise entirely from the provisions of the Bankruptcy Code. The bankruptcy court has authority to determine "whether a proceeding is a core proceeding" or is a non-core proceeding, that is, "a proceeding that is otherwise related to a case under title 11." § 157(b)(3).

Core proceedings "implicate 'more pressing bankruptcy concerns,'" whereas non-core proceedings are "generally only tangentially related to a bankruptcy case." *Ackerman v. Eber (In re Eber)*, 687 F.3d 1123, 1130 n.6 (9th Cir. 2012) (citing *MBNA Am. Bank v. Hill*, 436 F.3d 104,

108 (2d Cir. 2006)). Where the matter is non-core, "'the presumption in favor of arbitration generally will trump the lesser interest of bankruptcy courts in adjudicating non-core proceedings.'" Lawrence R. Ahern, III and Nancy Fraas MacLean, *Bankruptcy Procedure Manual: Federal Rules of Bankruptcy Procedure Annotated* § 9019:5 (Feb. 2020 ed.) (quoting *Crysen/Montenay Energy Co. v. Shell Oil Co. (In re Crysen/Montenay Energy Co.)*, 226 F.3d 160, 166 (2d Cir. 2000)). But in a core proceeding, a court may exercise discretion to deny arbitration, based on two factors: (1) "whether the proceedings are based on provisions of the Code that inherently conflict with the FAA," and, the first condition being satisfied, (2) "whether arbitration will necessarily jeopardize the objectives of the Code." *Id.*

The Second, Third, Fourth, Fifth, Ninth, and Eleventh Circuits have controlling opinions on the subject and vary mildly in the standards they prescribe. As discussed below, the Second, Third, and Fifth Circuits' tests restrict the bankruptcy court's discretion with regard to arbitration of core proceedings, whereas the Fourth and Ninth Circuits provide more latitude to the bankruptcy courts. (The Eleventh has not analyzed what constitutes an "inherent conflict"; but because its opinion appears to give latitude to the bankruptcy court to make its own policy evaluation, its precedent is discussed with the Fourth and Ninth Circuits' cases.)

i. The majority of the Circuits rightly apply restrictive tests for bankruptcy court discretion with regard to arbitration.

The Second Circuit's test is the most restrictive and most in keeping with this Court's arbitration precedents. Under its precedent, a bankruptcy court faced with a motion to compel arbitration of a core proceeding "will not have discretion to override an arbitration agreement unless it finds that the proceedings are [1] based on provisions of the Bankruptcy Code that inherently conflict with the Arbitration Act or that [2] arbitration of the claim would necessarily jeopardize the objectives of the Bankruptcy Code." *Hill*, 436 F.3d at 108 (quotations omitted). Not

just any conflict will do—a bankruptcy court in this circuit can properly override an arbitration agreement only "[i]f a severe conflict is found. . . ." *Id. See Anderson v. Credit One Bank (In re Anderson)*, 884 F.3d 382, 387 (2d Cir. 2018); *see also Belton v. GE Capital Retail Bank (In re Belton)*, 961 F.3d 612, 616–17 (2d Cir. 2020) (following *In re Anderson*). (*Hill*'s unadorned requirement of a "severe conflict," placed alongside the apparently dual options for conflict—"inherent conflict" or "necessarily jeopardize the objectives of the Bankruptcy Code"—suggests that the Circuit treats the options as synonymous.)

The *Hill* court explained that, contrary to the bankruptcy and district court's decisions, arbitration of the debtor's claim for violation of the automatic stay would not severely conflict with the Bankruptcy Code's objectives because (1) the debtor's estate was discharged and the case closed; (2) the debtor's stay violation was framed as a putative class action and therefore not closely tied to the disposition of her estate; and (3) "a stay is not so closely related to an injunction that the bankruptcy court is uniquely able to interpret and enforce its provisions." 436 F.3d at 109. Accordingly, the Second Circuit reversed the lower courts' decisions to deny arbitration in order to effectuate the parties' arbitration agreement that "would not necessarily jeopardize or inherently conflict with the Bankruptcy Code." *Id.* at 110–11.

The Third and Fifth Circuits' tests are quite similar to the Second Circuit's. Neither Circuit treats the core/non-core distinction as an element of the discretion test but both hold instead that "[t]he core/non-core distinction . . . merely determines whether the bankruptcy court has *jurisdiction* to make a full adjudication" of all the issues raised by the parties. *Mintze v. Am. Gen. Fin. Servs. (In re Mintze)*, 434 F.3d 222, 229 (3d Cir. 2006) (citation omitted and emphasis added); *see Ins. Co. of N. Am. v. NGC Settlement Tr. & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056, 1067 (5th Cir. 1997) (rejecting a discretion test predicated solely on the

core/non-core distinction as "too broad."). This approach hews more faithfully to 28 U.S.C. § 1334(b) because it recognizes the jurisdictional nature of the distinction, rather than conflating the core/non-core nature of the matter with one of the elements of the "inherent conflict" analysis.

In both core and non-core proceedings, the Third Circuit holds that "a bankruptcy court lacks the authority and discretion to deny [] enforcement" of an arbitration agreement, "*unless* the party opposing arbitration can establish congressional intent, under the *McMahon* standard, to preclude waiver of judicial remedies for the statutory rights at issue." *In re Nat'l Gypsum Co.*, 118 F.3d at 231–32. Further, a bankruptcy court faced with a motion to compel arbitration must (1) "carefully determine whether any underlying purpose of the Bankruptcy Code would be adversely affected by enforcing an arbitration clause" and (2) "enforce [the arbitration clause] unless that effect would seriously jeopardize the objectives of the Code." *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1161 (3d Cir. 1989). Likewise, the Fifth Circuit holds that whether "an otherwise applicable arbitration provision" should be enforced depends on (1) "whether the [bankruptcy] proceeding derives exclusively from the provisions of the Bankruptcy Code" and (2) "if so, whether arbitration of the proceeding would conflict with the purposes of the Code." *In re Nat'l Gypsum Co.*, 118 F.3d at 1067.

ii. The Fourth and Ninth Circuits' tests permit the bankruptcy court to engage in an excessive degree of situational policy evaluation.

Under the Ninth Circuit's precedent, the bankruptcy court "generally does not have discretion to deny enforcement of a valid prepetition arbitration agreement," but in a core proceeding, the bankruptcy court, "at least when it sees a conflict with bankruptcy law, *has discretion to deny enforcement* of an arbitration agreement." *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1021 (9th Cir. 2012) (emphasis added). Even in a core proceeding, the bankruptcy court still has discretion because "not all core bankruptcy proceedings" conflict with arbitration, "nor would

arbitration of such proceedings necessarily jeopardize the objectives of the Bankruptcy Code." *Id.* (quotations omitted). *See In re Eber*, 687 F.3d at 1130 (following *In re Thorpe*). In short, the Ninth Circuit leaves the bankruptcy court to make its own policy evaluation, without guidance.

Like the Ninth Circuit, the Fourth Circuit weighs the policy purposes of the Bankruptcy Code against the policy interests in arbitration. The Fourth Circuit also holds that "a determination that a proceeding is core will not automatically give the bankruptcy court discretion to stay arbitration," but an inherent conflict between arbitration and bankruptcy law will. *Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co., L.L.C.)*, 403 F.3d 164, 169 (4th Cir. 2005) (quotations omitted). The Fourth Circuit emphasizes, in weighing the policies, that (1) the "purpose of bankruptcy is to modify the rights of debtors and creditors" and (2) Congress intended to "centralize disputes about a debtor's assets and legal obligations in the bankruptcy courts." *Id.* at 169 (quotations and citations omitted); *see Moses v. CashCall, Inc.*, 781 F.3d 63, 72 (4th Cir. 2015) (same). In short, it places significant weight on the policies of bankruptcy law, over against the policies in favor of arbitration.

The Eleventh Circuit requires a bankruptcy court evaluating whether to enforce an arbitration clause to determine, *first*, whether the proceeding is core or non-core (noting that "[i]n general, bankruptcy courts do not have [] discretion to decline to enforce" an applicable arbitration agreement), and if the proceeding is core, *second*, whether enforcing arbitration would "inherently conflict with the underlying purposes of the Bankruptcy Code." *Whiting–Turner Contracting Co. v. Elec. Mach. Enters., Inc. (In re Elec. Mach. Enters., Inc.)*, 479 F.3d 791, 796 (11th Cir. 2007). The *In re Electric Machinery* court did not analyze what constitutes an "inherent conflict." *See id.* But its open-ended mandate to evaluate the purposes of the FAA and the "underlying purposes of

the Bankruptcy Code" suggests that the Eleventh Circuit leans toward the Ninth and Fourth Circuits' permissive policy analysis approaches. *Id.*

iii. To minimize subjective decision-making and protect the strong policy favoring arbitration, this Court should blend the Second and Third Circuits' narrower rules.

Allowing the bankruptcy court to execute an "eye of the beholder" policy analysis, as the Fourth and Ninth Circuits do and Eleventh may, permits too much subjectivity to enter the arena. Certainly, some degree of policy analysis (comparing the dual, sometimes dueling, objectives of arbitration and the Bankruptcy Code in a particular case) is both unavoidable and necessary. But to reduce the risk that a bankruptcy judge will, wittingly or not, allow his or her opinion on whether a given proceeding should remain under the bankruptcy court's jurisdiction to bleed into the analysis, this Court should combine the Second and Third and Fifth Circuits' tests.

First, this Court should adopt the Third and Fifth Circuits' stance that the core/non-core distinction describes only the extent of the bankruptcy court's jurisdiction, and a bankruptcy court has no discretion to deny arbitration of noncore proceedings. This first prong would assist courts in determining whether, as a threshold matter, the court has any discretion to exercise. The court would move on to the second prong only in a core proceeding. This position correctly apprehends that the bankruptcy court has exclusive jurisdiction over the bankruptcy estate but not over related civil proceedings. *See* 28 U.S.C. §§ 157 and 1334.

Second, this Court should adopt the Second Circuit's "severe conflict" prong. Thus, in cases where a proceeding is core, a bankruptcy court may refuse to enforce an otherwise valid, applicable arbitration clause only if enforcement would result in a severe conflict between the goals of arbitration and the objectives of the Bankruptcy Code. This prong would give full effect to the liberal policy toward arbitration, preserving *McMahon* and *Epic Systems*'s requirements that

arbitration under the FAA yield to another federal statute only where the two inherently, irreconcilably conflict, in a manner demonstrated clearly and manifestly in Congress's pronouncements in the statute.

Applied to the present case, this test would place the parties' dispute over the automatic stay within the bankruptcy court's jurisdiction. As the Thirteenth Circuit correctly concluded, Rec. at 11, issues involving the automatic stay are undoubtedly core proceedings that arise "exclusively from the Bankruptcy Code," *In re Nat'l Gypsum Co.*, 118 F.3d at 1067. But the Thirteenth Circuit inappropriately affirmed the bankruptcy court's denial of arbitration because arbitration of this dispute would not cause an inherent, irreconcilable, severe conflict. As discussed further below, the objectives of the Bankruptcy Code do not meet with defeat before an arbitrator deciding a narrow question: did Wildflowers have the right under the expired automatic stay to repossess Petty's brewing equipment?

D. None of the policy concerns over enforcing arbitration rejected in previous cases receives any new life here, nor do the policy objectives accomplished by the Bankruptcy Code as elucidated by the Thirteenth Circuit conflict with the equally significant policy in favor of arbitration.

Across the board, this Court has rejected policy concerns over the propriety of arbitration in various contexts and should not allow them here. The Thirteenth Circuit misplaced its primary justification for affirming the district court on equally unavailing policy grounds.

i. This Court has roundly rejected policy objections concerning the competence of arbitrators and should not allow them here.

The *McMahon* Court identified three critical policy concerns with enforcing arbitration that the Court had rejected before, it rejected then, and it should reject once more: (1) Arbitral tribunals cannot handle the factual and legal complexities of certain kinds of law; (2) The "streamlined procedures of arbitration" would result in restrictions of substantive rights that a

judicial proceeding would protect; and (3) Arbitrators will not follow the law (a concern because of the limited appellate review permitted over arbitration awards). 482 U.S. at 232 (rejecting each of these concerns in the context of a Securities Exchange Act § 10(b) claim); *see Mitsubishi*, 473 U.S. at 628, 633–34, 636–37 & n.19 (rejecting these concerns in the antitrust realm).

Similarly, here, an arbitrator could easily comprehend the legal and factual issues concerned in determining whether the automatic stay provision was still in force to protect Petty's property; the more efficient procedure of arbitration does not result necessarily in undue encroachment on the parties' statutory rights under the Bankruptcy Code; and the assumption is that arbitrators will follow the law, not the reverse, *see McMahon*, 482 U.S. at 232. Thus, any objection on these grounds should meet with summary rejection.

ii. The Thirteenth Circuit raised bankruptcy-specific policy objections that this Court should reject as equally unpersuasive.

The Thirteenth Circuit cited additional bankruptcy-specific policy objections to arbitration of the parties' automatic stay dispute: (1) The Guaranty anticipated a "two-party dispute," whereas bankruptcy is a "multi-party proceeding"; (2) "[T]he collective nature of bankruptcy inherently conflicts with arbitration" because arbitration agreements "generally do[] not bind non-parties"; (3) The automatic stay "transcends traditional two-party disputes that are typically subject to arbitration"; and (4) Compelling arbitration for automatic stay disputes "would make debtor-creditor rights" subject to an arbitrator's judgment, instead of a court's and thus "deprive creditors of an opportunity to monitor and oversee litigation. . . ." Rec. at 11–13.

These additional concerns do not justify denying arbitration here, however. First, the Guaranty is between Wildflowers and Petty only and provides that "any and all disputes, claims, or controversies of any kind *between us* arising out of or relating to the relationship *between us*" would go to arbitration. Rec. at 4 (emphasis added and quotations omitted). Thus, they are the only

two parties with standing to raise a claim relating to the agreement—and they are the only two parties involved in the case to begin with. *See id.* at 3–7. This means that bankruptcy's collective concerns have no bearing here. Second, the sole creditor involved here, Wildflowers, is the one seeking arbitration and therefore necessarily is not deprived of the opportunity to oversee the litigation. Even though the specific dispute at issue arose due to a provision of the Bankruptcy Code, it is nonetheless a dispute relating to the agreement and thus subject to the mandatory arbitration clause. In other words, even though one of the substantive issues here concerns a statutory right created by the Bankruptcy Code, the real factual issue for the arbitrator—whether Wildflowers had the right to repossess Petty's equipment pursuant to the Guaranty—remains the same.

True, bankruptcy courts in other cases have denied arbitration based in part on the presence of other creditors whose interests would be adversely affected by arbitration of a dispute between the debtor and less than all the creditors. *See, e.g.*, *In re Rushing*, 443 B.R. 85, 97–98 (Bankr. E.D. Tex. 2010); *In re Edwin A. Epstein, Jr. Operating Co., Inc.*, 314 B.R. 591, 603 (Bankr. S.D. Tex. 2004); *In re Grant*, 281 B.R. 721, 725 (Bankr. S.D. Ala. 2000) (observing that "[a] violation of the stay . . . affects only the debtor and one creditor directly[] but impacts the effect and weight of court orders in general which affects all creditors"). But because this dispute involves only Petty and Wildflowers and no other creditors, objecting generally that the Bankruptcy Code protects all creditors tilts at windmills. Moreover, assuming for the sake of argument that other creditors did exist, changing the decision-maker (court or arbitrator) makes no difference whatsoever with regard to a decision's effect on other creditors.

More specifically, the purpose of the automatic stay provision, as identified by the lower courts, is "twofold": (1) "to protect the debtor, by . . . giving the debtor a respite from creditors

and a chance" to, among other things, "attempt a . . . reorganization plan"; and (2) "to protect creditors [generally] by preventing particular creditors from acting unilaterally in self-interest to obtain payment from a debtor to the detriment of other creditors." *In re Denby-Peterson*, 941 F.3d 115, 122 (3d Cir. 2019); *see In re Rushing*, 443 B.R. at 97. Or, as more colorfully described by the Second Circuit, the automatic stay is "designed to prevent a chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts" and "insures that the debtor's affairs will be centralized, initially, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another." *Fidelity Mortg. Inv'rs v. Camelia Builders, Inc. (In re Fidelity Morg. Inv'rs)*, 550 F.2d 47, 57 (2d Cir. 1976); *see Bronson v. United States*, 46 F.3d 1573, 1579 (Fed. Cir. 1995) ("One of the fundamental purposes of the automatic stay is to ensure that all claims against the debtor will be brought in a single forum, the bankruptcy court.").

Wildflowers does not deny that these interests of both debtors and creditors are significant. Here, however, submitting the automatic stay dispute to arbitration would not defeat these important policy goals. First, Petty raised the claim, meaning the dispute does not involve a claim against the debtor, and Wildflowers seeks only the benefit of its bargain with him. Second, arbitrating the parties' dispute impacts Petty's reorganization efforts, *see* Rec. at 13, neither more nor less than litigating the dispute in court. Third, Wildflowers is the only creditor who even appears in the record, and therefore arbitrating this dispute would not lead to one creditor "steal[ing] a march" on another. *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F2d 575, 577 (7th Cir. 1989). And finally, Petty's affairs are already centralized in the bankruptcy court; this fact in addition to the fact that this dispute involves only one creditor renders the feared "chaotic and uncontrolled scramble" for Petty's assets a non-issue. *In re Fidelity Mortg. Inv'rs*,

550 F.2d at 57. Consequently, compelling arbitration of the parties' dispute would not "disrupt the entire bankruptcy policy of centralization and lead to possible bifurcated and disfigured litigation costs and delays, and conflicting results." *In re Wade*, 523 B.R. at 612.

iii. Arbitration of the parties' automatic stay dispute would not adversely impact Petty's reorganization plan, and therefore the Thirteenth Circuit's theoretical fear on his behalf was misplaced.

Arbitrating the parties' automatic stay dispute would not cause the Thirteenth Circuit's theoretical concern that arbitration would have a negative "direct, pecuniary impact on Petty, his estate, and its creditors," in addition to his ability to finance his reorganization plan. Rec. at 13. To be sure, the ability of a debtor to reorganize his business is a fundamentally important right granted by Chapter 11 of the Bankruptcy Code. *See In re S B Bldg. Assocs. Ltd. P'ship*, 621 B.R. 330, 361 (Bankr. D.N.J. 2020). Yet permitting an arbitrator to determine whether the automatic stay barred Wildflowers from exercising its repossession right under the personal guaranty (and damages, if any) does not jeopardize Petty's reorganization plan. This follows from the unremarkable fact that either the bankruptcy court or the arbitrator could conclude that the automatic stay did not cover Petty's personal equipment and deny him a damages award (or the reverse). Thus, the Thirteenth Circuit erroneously relied on a misplaced concern for Petty's reorganization ability and should therefore be reversed.

E. This Court should rule that arbitration of two-party automatic stay disputes does not conflict with the Bankruptcy Code, as a matter of law.

This Court should rule that arbitration of two-party automatic stay disputes does not conflict with the Bankruptcy Code, as a matter of law, and therefore the Thirteenth Circuit erred in judging that section 362 impliedly repealed the FAA.

Because this issue presents a narrow question with unique facts, this Court should limit its ruling to this case's facts. Accordingly, this Court should hold that where (1) a debtor challenges

a creditor's action to vindicate its contractual rights but the automatic stay arguably barred the creditor's move, and (2) the parties agreed to submit all disputes arising under or related to the contract to arbitration, submitting that narrow dispute to arbitration does not inherently conflict with the Bankruptcy Code, as a matter of law.

II. Section 362(c)(3) terminates the automatic stay as to property of the estate.

Wildflowers did not violate the automatic stay by repossessing the Equipment because section 362(a) no longer protected property of the estate. The stay had terminated with respect to the Equipment pursuant to section 362(c)(3)(A). The significant portion of this section states,

> (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 a 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).

There are courts that contend this provision of the Bankruptcy Code intends to terminate the automatic stay "with respect to the debtor" only. However, to conclude as such would be to ignore the text of the statute, canons of construction, legislative history, and the policy and purpose behind the statute itself. When these considerations are given effect, it is obvious that the statute terminates the stay in its entirety.

A. The plain language of the text of Section 362(c)(3)(A) is ambiguous because it is susceptible to more than one reasonable meaning.

When a court is called upon to determine the meaning of a statute, the place to begin is "with the language of the statute itself." *U.S. v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989).

Further, "[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Here, the Court must determine the meaning of 362(c)(3)(A) and decide whether the stay terminates merely as to a debtor, or whether the stay terminates as to the debtor's estate as well.

Section 362(c)(3)(A) is susceptible to more than one interpretation. *See In re Smith*, 910 F.3d 576, 581 (1st Cir. 2018) ("the text of § 362(c)(3)(A) does not lend itself to one clear reading"). Even the majority approach, which purports to be supported by the plain language of this code section, reads into the statute words that are not present. *See In re Goodrich*, 587 B.R. 829, 843 (Bankr. D. Vt. 2018). To hold that "with respect to the debtor" includes the debtor's property not included in the bankruptcy estate, "requires one to read into the statute words that are not there . . . [by] expand[ing] the phrase 'with respect to the debtor' to say 'with respect to the debtor and the debtor's property.'" *Id.* (quoting *In re Bender*, 562 B.R. 578, 583-84 (Bankr. E.D.N.Y. 2016)). Therefore, even the majority approach is not evinced by the "language of the statute itself." *Ron Pair Enters.*, 489 U.S. at 241. A literal reading of section 362(c)(3)(A) "would most naturally be read to terminate the stay only for actions against the debtor, and not . . . for actions against both the debtor and the debtor's property. . . . Yet no court has read the provision that way." *In re Smith* 910 F.3d at 582. As such, this provision is ambiguous when viewed in isolation. However, "[a] provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988).

B. The statutory context of section 362(c)(3)(A) dictates that the stay terminates as to the debtor and the debtor's estate.

Section 362 governs the automatic stay, and subsection (a) lists the eight circumstances under which actions and proceedings are automatically stayed. *See* 11 U.S.C. § 362(a). Section 362 also "establish[es] a system of progressive protection, so protections for second-time filers should fall . . . 'in the middle.'" *In re Smith*, 910 F.3d at 586 (quoting *In re Smith*, 573 B.R. 298, 306 (Bankr. D. Me. 2017)). Filers that have one preceding case dismissed within the last year fall within section 362(c)(3). Under this subsection, the automatic stay terminates on the thirtieth day after the filing of the second case. 11 U.S.C. § 362(c)(3)(A). The following subsection (B) details how a filer can extend the automatic stay beyond the automatically-allowed thirty days upon a showing of a good faith basis for filing the second case. 11 U.S.C. § 362(c)(3)(B). Those filers that have two or more filed cases within the last year are subject to section 362(c)(4), under which no automatic stay is granted. 11 U.S.C. § 362(c)(4). These debtors are given the opportunity to request a stay be implemented within thirty days of their petition date based on a showing of "good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(4)(B).

When determining the correct interpretation of section 362(c)(3)(A), it is imperative to remember that "[t]he meaning . . . does not hinge upon one phrase alone; it is instead illuminated by the text of the statute in its entirety, by the text of the surrounding statutes, and by the practical implications of any given interpretation." *In re Smith*, 573 B.R. 298, 303 (Bankr. D. Me. 2017). To this point,

> [t]he automatic stay is one of the most fundamental protections afforded to a debtor under the Bankruptcy Code, and the statute is logically organized. The stay is created and defined by section 362(a). Exceptions to the stay are contained in section 362(b). Section 362(c) addresses the continuation of the stay, and section 362(d) governs relief from the stay.

Id. Therefore, the logical foundation of this code section belies a logical conclusion to the interpretation of section 362©(3)(A). This section was created as a middle ground between two extremes. On one side is the automatic stay that remains in effect throughout the life of the bankruptcy case, without any petition necessary, and at the other end of the spectrum resides the fate of third time filers, which is no automatic stay for any period of time without a petition to show good faith. *See* 11 U.S.C. § 362(a), (c)(4)(A). The majority approach would "read[] 'with respect to the debtor' to exclude estate property[, which] renders largely meaningless the provision in §362(c)(3)(B) that allows parties in interest to seek an order extending the stay." *In re Daniel*, 404 B.R. 318, 323 (Bankr. N.D. Ill. 2009). However, the minority approach

> is consistent with the opening provisions of section 326(c)(3). In relevant part, subsection (c)(3) states that subparagraph (A) applies "if a single or joint case is filed by or against a debtor 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[.]" 11 U.S.C. § 362(c)(3). When subparagraph (A) applies, "the stay under subsection (a) . . . terminate[s] with respect to the debtor on the 30th day after the filing of the later case[.] The "debtor" with respect to whom the stay terminates under subparagraph (A) must be the same "debtor" who had a "single or joint case" dismissed and then reappeared in another "single or joint case . . . under chapter 7, 11, or 13" within one year of the dismissal of the prior case. The statute does not say that the stay terminates as to the spouse of such a debtor if the spouse was not also a repeat filer. The Court therefore "construes . . . 'with respect to the debtor' to define which debtor is [a]ffected by this provision, with reference to [the prefatory language of] section § 362(c)(3)."

In re Smith, 573 B.R. at 302. The distinction drawn between a previously-filing spouse and a previously-non-filing spouse is what the phrase "with respect to the debtor" is at the center of the minority view. The minority correctly interprets this phrase to be Congress's way to distinguish between the two so that the repeat filer is placed in the correct provision within Section 362(c) without detrimentally impacting the joint filer not affiliated with the previously dismissed case. Section 362(c)(3)(A) was implemented as a protection for spouses that are filing for the first time

from their own spouse who previously filed. To hold in accordance with the majority view would not only go against the broader context of section 362(c), but it would render useless the precision of the spectrum created by this code section to enforce the objectives of Congress.

Additionally, restricting the termination of the automatic stay to the debtor personally, and not to the estate property ignores the context of the bankruptcy court's jurisdiction. The bankruptcy court's jurisdiction is in rem jurisdiction and concerns an adjudication of interests claimed in a *res*. *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 362 (2006) ("Bankruptcy jurisdiction, at its core, is *in rem*."). Under the majority interpretation of section 362(c)(3)(A), the stay does not terminate as to the very thing that is subject to the bankruptcy court's jurisdiction and control: the *res*—the creditor's collateral. *See generally Christensen v. Madsen (In re Madsen)*, No. UT-13-094, 2014 Bankr. LEXIS 3590, at *8-9 (B.A.P. 10th Cir. Aug. 25, 2014) ("An action, in personam, that seeks to establish personal liability of the debtor on a claim, but which is not specifically targeted to ownership of, or rights in and to, property of the estate does not fall within 28 U.S.C. § 1334(e).") (citations omitted). Thus, considering the bankruptcy court's *in rem* jurisdiction over the *res*, a termination of the stay that has no effect on the *res* is a *non sequitur*.

C. The policy behind the termination of the automatic stay is to protect creditors from serial bankruptcy filers.

The automatic stay is a broad protection for debtors and bankruptcy estates and serves a number of purposes: "providing debtors with a fresh start, protecting the assets of the estate, and allowing the bankruptcy court to centralize disputes concerning the estate." *Hill*, 436 F.3d at 109. However, those protections are not absolute. Congress has determined that in some cases, debtors are not entitled to the protections or are only entitled to the protections—as in this case—for a limited period of time. *Cf. Cazenovia College v. Renshaw (In re Renshaw)*, 222 F.3d 82, 86 (2d Cir. 2000) (finding with regard to dischargeability, exceptions are a congressional determination

that other protections are more important). In section 362(c)(3)(A), Congress determined that a creditor's right to proceed against its collateral is more important than a debtor's or an estate's continued protection.

Furthermore, interpreting section 362(c)(3)(A) to apply to estate property makes practical sense. Consider the timeline of a typical chapter 7 bankruptcy case. The debtor files a petition, which has three effects: (1) the estate is created (11 U.S.C. § 541), the automatic stay comes into effect (11 U.S.C. § 362), and security interests no longer attach to assets that come into the estate (11 U.S.C. § 552(a)). The chapter 7 trustee must conduct the section 341 meeting of creditors within 40 days of the petition date. Fed. R. Bankr. P. 2003(a). Sixty days after the 341 meeting of creditors, parties in interest must file their objections to discharge (Fed. R. Bank. P. 4004(a)) or file to except debts from discharge. Fed. R. Bankr. P. 4007(c). If there are no actions to object to discharge or except debts from discharge, then the bankruptcy court enters a discharge order "forthwith"; that is approximately 100 days after the petition date.

Under the majority interpretation of section 362(c)(3)(A), the stay terminates as to the debtor only at the 30th day post-petition, freeing the creditor to proceed against the debtor. However, that freedom only lasts until the bankruptcy court enters the discharge order (about 70 days after the creditor is freed pursuant to section 362(c)(3)(B)). Not only is 70 days a short amount of time to proceed with action against the debtor personally, but the creditor cannot obtain any meaningful relief. Once the bankruptcy court enters the discharge order, then the creditor's actions against the debtor—whether in process or complete—are a nullity: the debtor is discharged and the creditor enjoined from taking any further action. *See generally Banco Cooperativo de P.R. v. Herrera (In re Herrera)*, 589 B.R. 444, 455 (B.A.P. 1st Cir. 2018) (discussing the relationship between section 362(c)(3)(A) and the discharge injunction). By failing to recognize that the stay

is lifted as to estate property, courts have taken a substantive protection for creditors and rendered it a protection of very little practical use.

D. Legislative intent supports the position that the stay terminates as to estate property.

The legislative history behind the enactment of section 362(c)(3)(A) casts full support to the interpretation that this section terminates the automatic stay after thirty days as to the debtor and all of the debtor's property, including the debtor's bankruptcy estate. Congress commissioned a National Bankruptcy Review Commission in 1994 to find and legislatively correct loopholes within bankruptcy proceedings in order to better effectuate the intent of the bankruptcy process. *See In re Daniel*, 404 B.R. at 327. One of the chief concerns uncovered was the ability debtors had to avoid collection from creditors by repetitive filings under Chapters 7, 11, and 13. More than a decade later, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was enacted by Congress in response to the Commission's findings. "[S]erial . . . bankruptcy filings" were considered the most prominent wrongs to be righted at "[t]he heart of [BAPCPA's] consumer bankruptcy reforms." H.R. Rep. No. 109-31(I), at 2 (2005), *reprinted in* 2005 U.S.C.C.A.N. 88, 89. "The House Judiciary Committee recommended amending section 362(c) to add a paragraph (3) with language nearly identical to that now set forth in section 362(c)(3)(A)." *In re Smith*, 573 B.R. at 303. The committee report expounding upon this proposition stated,

> The filing of a bankruptcy case causes the immediate imposition of an automatic stay, which prevents creditors from pursuing actions against debtors and their property. In light of this, some debtors file successive bankruptcy cases to prevent secured creditors from foreclosing on their collateral.
>
> [This amendment to section 362(c)] remedies this problem by terminating the automatic stay in cases filed by an individual debtor under chapters 7, 11, and 13 if his or her prior case was dismissed within the preceding year. In the subsequently filed bankruptcy case, the automatic stay terminates 30 days following the filing date of the case unless the court, upon request of a party in interest, grants an extension.

H.R. Rep. 105-540, at 80 (1998). This report is steeped in the understanding that creditors need their own protection when a debtor files multiple cases in order to avoid repayment on debts. From this understanding can be derived the conclusion that the system of progressive protections in section 362(c) resolves in the interpretation that the automatic stay referred to in section 362(c)(3)(A) terminates as to the debtor, his property, and the entirety of the bankruptcy estate. Therefore, the minority approach is the interpretation most in concert with the objective of Congress, since this view is the only one to have any meaningful consequence to second-time-filers who strike open a second bankruptcy filing within a single year without good faith.

Accordingly, the Thirteenth Circuit erred when it concluded that the automatic stay still covered Petty's brewing equipment and therefore Wildflowers could not exercise its right of repossession under the Guaranty. *See* Rec. at 15–19.

CONCLUSION

The Thirteenth Circuit's judgment should be reversed and the case remanded with instructions to enter a judgment (1) reversing the bankruptcy court and (2) compelling arbitration of the parties' automatic stay dispute.

Team 7

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APPENDIX

All statutory provisions referenced in this brief are reproduced below, pursuant to Supreme Court Rule 24(f).

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11 U.S.C. § 362(c)

(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) as to all creditors, if--

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(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) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, 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;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) 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) as to all creditors if--

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

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

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

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

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

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

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

(A) by bequest, devise, or inheritance;

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

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

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

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

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

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

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

nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

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

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

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

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

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

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

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

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

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

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

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

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,825 [originally "$5,000", adjusted effective April 1, 2019]1;

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

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

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

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,825 [originally "$5,000", adjusted effective April 1, 2019]1;

(7) any amount--

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

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

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

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

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

(i) to--

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

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

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

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of

indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where--

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b);

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

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

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

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

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

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

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

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

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,825 [originally "$6,225", adjusted effective April 1, 2019]1.

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

(c)(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) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(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. § 552(a)

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits

acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

9 U.S.C. § 2

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.

28 U.S.C. § 157

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

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

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

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

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

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

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

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

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

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

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

28 U.S.C. § 1334

(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)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

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

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

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

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