No. 19-0805

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE EARL THOMAS PETTY,

Debtor

WILDFLOWERS COMMUNITY BANK,

Petitioner,

v.

EARL THOMAS PETTY,

Respondent.

_____

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

_____

BRIEF FOR PETITIONER

_____

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Counsel for Petitioner

QUESTIONS PRESENTED

I. Whether Congress intended 11 U.S.C. § 362 of the United States Bankruptcy Code related to the automatic stay to impliedly repeal the Federal Arbitration Act, 9 U.S.C. § 1 et seq.

II. Whether 11 U.S.C. § 362(c)(3)(A) terminates the automatic stay in its entirety.

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OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot denied Wildflowers's motion to compel arbitration and ruled against Wildflowers on Petty's motion alleging a violation of the automatic stay. R. at 3. The United States Court of Appeals for the Thirteenth Circuit affirmed both decisions of the bankruptcy court, refusing to enforce the arbitration agreement between the parties and finding that the automatic stay applied to property of the estate. *Id.*

STATEMENT OF JURISDICTION

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

STATUTES INVOLVED

The relevant federal laws controlling this case are the Federal Arbitration Act and 11 U.S.C. § 362 (2018) of the United States Bankruptcy Code. These provisions are attached in Appendix A.

STATEMENT OF THE CASE

I. Facts

The history leading up to litigation between the parties can be broken into three acts. First, the slow but steady rise of a business from basement brewery to premiere brand. Second, spurred by success, a business's overestimation of its own ability and subsequent receipt of extraordinary debts. Finally, a business's decline into bankruptcy and refusal to honor agreements made when business was good.

Over a decade before the current litigation, Mr. Petty was a practicing attorney. R. at 3. Quitting the practice of law, Petty embarked on a venture to produce craft beer. *Id.* Over the course of eight years, Petty went from basement brewing to running one of the most successful breweries in the state: Great Wide Open Brewing Company (hereinafter Great Wide Open). *Id.* The brewery received multiple accolades for its excellence in the industry and specific brews. *Id.* After early success, Petty, ambitious for more, was operating four additional Great Wide Open taprooms by 2010. *Id.* at 4.

Petty needed further financing to continue this pattern of rapid expansion. *Id.* He returned to his longstanding creditor—Wildflowers Community Bank. *Id.* After witnessing the brewery's rise to statewide acclaim, Wildflowers believed in and was willing to support the business's growth. *Id.*

In 2011, Wildflowers agreed to extend $35 million in revolving credit. *Id.* In return for such a substantial loan, Wildflowers received two assurances that it would be repaid. *Id.* First, Great Wide Open granted a security interest in nearly all of the business's assets. *Id.* Second, Petty personally and unconditionally guaranteed repayment, backed by a security interest in the equipment used to operate the brewery. *Id.* The parties agreed that Wildflowers could, without

restriction, enter any premise to repossess collateral upon default. *Id.* The parties also agreed to arbitration. *Id.* The arbitration clauses were simple: Every single dispute, disagreement, or claim between Petty and/or Great Wide Open and Wildflowers would be submitted to mandatory and binding arbitration. *Id.* As a former practicing attorney, Petty was fully capable of understanding the agreement. *Id.* at 3. Each party, readily and completely, forewent the right to litigation before a judge or jury. *Id.* at 4.

Wildflowers's credit enabled Petty to open Great Wide Open's brewhouse—an enormous operation with the ability to produce a quarter of a million barrels of beer each year—in 2012. *Id.* In addition to the brewhouse's huge production, the other five taprooms continued to operate. *Id.* Great Wide Open continued to benefit from the "craft beer craze" over the next five years. *Id.* at 5. However, in 2017, Petty and Great Wide Open faced financial difficulty as the competition increased and the excitement over craft beer decreased. *Id.* Petty's decision to take out substantial loans and to lease space at above-market value forced three taprooms to close in 2018. *Id.* A fourth taproom was forced to close when its landlord terminated the lease with Great Wide Open. *Id.* Despite the significance of these closures, Petty never informed his largest investor, Wildflowers, of the turmoil. *Id.* Instead, Wildflowers had to learn of these troubling signs from a loan operator who discovered the truth by happenstance. *Id.* Shortly thereafter, Great Wide Open and Petty could no longer keep up with payments and defaulted on their agreements with Wildflowers. *Id.*

Wildflowers alerted Petty of the default. *Id.* In response to Petty's breach of contract, Wildflowers filed a demand for arbitration pursuant to the parties' agreement two months later. *Id.* Wildflowers only sought the amount that remained unpaid: 33.2 million dollars. *Id.* The American Arbitration Association scheduled the arbitration proceeding for the following month. *Id.*

In the final hours before arbitration was set to begin, Great Wide Open fired its employees and shut down operations. *Id.* On the day originally set for arbitration, Great Wide Open filed for Chapter 7 bankruptcy. *Id.* Petty, as a separate debtor, filed Chapter 11 bankruptcy in the Bankruptcy Court of the District of Moot. *Id.* However, Petty neglected his due diligence and failed to provide the court with a schedule of his debts and assets. *Id.* Without the required documents, the bankruptcy court dismissed Petty's claim. *Id.* The arbitration was rescheduled, giving the parties four months to prepare. *Id.* But yet again, Petty filed Chapter 11 bankruptcy on the eve of arbitration. *Id.* Petty worked outside of court to settle with several creditors before filing. *Id.* at 6. Petty never attempted to negotiate with Wildflowers. *Id.*

On his second attempt, Petty was ready with the full documents to move forward. *Id*. The proposed reorganization offered a mere forty cents on the dollar, a proposal that would leave one of his oldest and most generous creditors with nearly 20 million dollars unpaid. *Id.* Despite his vastly undervalued proposal, Petty disclosed at court that negotiations with his landlord had been successful, and while Great Wide Open had collapsed, Petty had opened a new brewery with a new name. *Id.* Petty's new venture was profitable in its first month. *Id.* Despite his reinvention of the business, Petty used the same equipment he had during Great Wide Open's term. *Id.* The same equipment, in fact, used to guarantee his agreement with Wildflowers. *Id.*

While certainly more prepared than his first attempt at bankruptcy, Petty failed to file a motion to extend the automatic stay during the acceptable time under 362(c)(3)(B). *Id.* Because Petty did not take the appropriate steps to ensure that the automatic stay protected the property, Wildflowers peaceably repossessed the equipment securing the original agreement. *Id.*

II. Procedural History

Petty filed Chapter 11 bankruptcy on January 11, 2019. *Id.* at 5. Because Petty failed to file a motion to extend the automatic stay under Section 362(c)(3)(B) within thirty days, the stay terminated. *Id.* at 6. After Wildflowers repossessed the equipment, Petty filed a motion alleging that Wildflowers violated the stay. *Id.* He sought $500,000 in damages under Section 362(k). *Id.* On March 5, 2019, Wildflowers responded to the motion and argued that property of the estate, including the equipment, was not protected by the automatic stay. *Id.* Wildflowers also sought to enforce the arbitration agreement between the parties, noting that Petty contracted to resolve all disputes between the parties in arbitration. *Id.* The Bankruptcy Court for the District of Moot found that arbitration conflicted with Section 362 of the Bankruptcy Code and denied Wildflowers's request to compel arbitration. *Id.* The Bankruptcy Court also held that although Petty failed to file a motion to extend the stay under Section 362(c)(3)(B), the automatic stay continued to protect the property of the debtor's estate, including the equipment. Accordingly, the court found that Wildflowers willfully violated the automatic stay and awarded Petty compensatory damages of $200,000. *Id.* Wildflowers timely appealed to the Thirteenth Circuit, which affirmed the lower court's decision. *Id.* at 19. This Court granted Wildflowers's petition for writ of certiorari. *Id.* at 1.

STANDARD OF REVIEW

The issues presented before the Court are solely legal. Thus, as questions of law, de novo review is proper. *Anderson v. Liberty Lobby,* Inc., 477 U.S. 242, 250 (1986).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit erred in holding that Section 362 of the Bankruptcy Code impliedly repealed the Federal Arbitration Act (FAA). The FAA reflects a congressional policy favoring arbitration. Claims arising under other federal statutes are arbitrable absent an irreconcilable

conflict between the two statutes. The most recent Supreme Court case held that arbitration of such claims must be enforced unless the text of the potentially conflicting federal statute explicitly disapproves of arbitration. The Bankruptcy Code is completely devoid of any reference to arbitration. In fact, several circuit courts have emphasized the Code's silence on the arbitrability of bankruptcy proceedings. Because the Code does not address arbitration, Respondent cannot plausibly argue that Congress intended to repeal the FAA in this context. The Thirteenth Circuit ignored this Court's recent precedent and instead relied on policy rationales to find that the parties' arbitration agreement was unenforceable. But under the controlling standard, policy issues can not overcome a lack of clear and manifest Congressional intent in the statute to preclude arbitration.

Even if this Court intended its most recent decision to serve as an extension of previous case law addressing conflicts between the FAA and other federal statutes, rather than a new controlling standard, the parties' arbitration agreement is enforceable. The party opposing arbitration, Respondent, bears the heavy burden of proving an inherent conflict between arbitration and the purposes of the automatic stay. As the Second Circuit already concluded, arbitration does not undermine the purposes of the automatic stay. Courts have upheld arbitration of bankruptcy proceedings irrespective of whether the outcome of arbitration will impact the debtor's reorganization. Moreover, although bankruptcy envisions a collectivist dispute resolution process, the problems related to piecemeal litigation or impact on parties outside of the arbitration are insufficient to show an inherent conflict. In addition, Congress has already determined that bankruptcy disputes may be decided outside of the bankruptcy courts by granting concurrent jurisdiction over such disputes. Clearly, Congress does not believe that bankruptcy courts are uniquely situated to interpret Section 362. Thus, the parties may properly arbitrate their automatic stay dispute. Although other circuit courts have considered arbitration of bankruptcy proceedings,

these courts addressed the discharge injunction, which is sufficiently different from the automatic stay to render these cases inapplicable to this Court's analysis.

Furthermore, even if the Thirteenth Circuit's policy arguments were persuasive, policy considerations are insufficient to preclude arbitration. This Court has continuously upheld arbitration of disputes arising under federal statutes that implicate broad public policy issues, including the Sherman Act, Age Discrimination in Employment Act, and Racketeer Influenced and Corrupt Organizations Act. Clearly, the automatic stay's policy is no more important than the policy objectives served by these other federal statutory schemes. Finally, if this Court agreed with Respondent, it would undermine decades of well-established case law.

The Thirteenth Circuit also incorrectly held that the automatic stay only terminates with respect to the debtor. Under Section 362(c)(3), a debtor who files a second bankruptcy petition within one year is presumably filing in bad faith, and therefore only receives a thirty day automatic stay unless an interested party files a motion for extension and rebuts this presumption. Absent judicial extension, the stay terminates "with respect to the debtor." Although this phrase is facially clear, it is ambiguous when read in the context of the subsection, the broader provision, and the Bankruptcy Code as a whole. Even if the Court finds the phrase unambiguous, the plain language leads to an absurd result. If the stay only terminated with respect to the debtor, only property that is already protected by statute or has no value would be available to a creditor. Further, a debtor presumably abusing the bankruptcy system would receive the same benefit under the automatic stay as a good faith debtor. Congress enacted Section 362(c)(3) as part of amendments designed to deter abuses of the bankruptcy system. This purpose is only served if the stay completely terminates absent judicial extension. Therefore, this Court should overrule the Thirteenth Circuit.

ARGUMENT

I. The Thirteenth Circuit incorrectly held that Section 362 and related judicial code provisions impliedly repealed the Federal Arbitration Act.

Congress enacted the Federal Arbitration Act (FAA) "[t]o overcome judicial resistance to arbitration." *Vaden v. Discover Bank*, 556 U.S. 49, 58 (2009) (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006)). "Congress directed courts to abandon their hostility and instead treat arbitration agreements as 'valid, irrevocable, and enforceable.'" *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621 (2018) (quoting 9 U.S.C. § 2).

"The Arbitration Act, standing alone, therefore mandates enforcement of agreements to arbitrate statutory claims." *Shearson/Am. Express v. McMahon*, 482 U.S. 220, 226 (1987). Because of this clear mandate, 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. . . ." *Epic*, 138 S. Ct. at 1627 (National Labor Relations Act); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013) (Sherman Act); *CompuCredit Corp. v. Greenwood*, 565 U.S. 95 (2012) (Credit Repair Organization Act); *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79 (2000) (Truth in Lending Act); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 32 (1991) (Age Discrimination in Employment Act); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 E.S. 477 (1989) (Securities Act of 1933); *McMahon*, 482 U.S. at 238, 242 (Securities Exchange Act of 1934 and Racketeer Influenced and Corrupt Organizations Act); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) (Sherman Act).

In rejecting arguments that arbitration is inappropriate for disputes arising under federal statutes, this Court has continuously reaffirmed that "by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi*, 473 U.S. at 628. Thus, a party who

contracts to arbitrate disputes is held to the agreement unless "Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Id.*

This Court has not yet considered whether Congress intended to preclude arbitration in the bankruptcy context. The issue on appeal—whether the automatic stay provision of the Bankruptcy Code, 11 U.S.C. § 362, impliedly repealed the FAA—is one of first impression for this Court. However, circuit courts have adopted differing approaches on the relationship between the Bankruptcy Code and the FAA. *See, e.g.*, *In re Belton v. GE Capital Retail Bank*, 961 F.3d 612 (2d Cir. 2020); *Matter of Henry*, 944 F.3d 587 (5th Cir. 2019); *In re Anderson*, 884 F.3d 382 (2d Cir. 2018); *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006).

This Court should agree that its most recent decision controls the outcome, and thus disputes related to the automatic stay are arbitrable because Congress did not expressly address arbitration in the Bankruptcy Code. However, even if this Court intended its most recent case to clarify its precedent, rather than create a new standard, this Court must enforce the parties' arbitration agreement because there is no inherent conflict between arbitration and the automatic stay. Ultimately, this Court should refrain from undermining decades of precedent upholding the liberal policy favoring arbitration.

A. This Court's recent precedent requires the enforcement of an arbitration agreement unless the challenger affirmatively shows a "clear and manifest" congressional intent to preclude arbitration.

This Court recently readdressed the proper standard for evaluating potential federal statutory conflicts with the FAA. *Epic*, 138 S. Ct. at 1624. A statute only conflicts with the FAA when Congress clearly indicates within the statute that arbitration is impermissible. *Id.* Because Congress is aware of its past statutes when enacting legislation, "'Congress will specifically address' preexisting law when it wishes to suspend its normal operations in a later statute." *Id.*

(quoting *United States v. Fausto*, 484 U.S. 439, 453 (1988)). Absent a "clear and manifest" expression to preclude the FAA, the parties' dispute must be arbitrated. *Id.* The party opposing arbitration faces a "stout uphill climb" and bears a "heavy burden" because this Court strongly disfavors repeal by implication. *Id.* The Court must "interpret Congress's statutes as a harmonious whole rather than at war with one another" unless there is an "irreconcilable conflict" between the statutes. *Id.* at 1619, 1624.

In *Epic*, Respondent employees agreed to arbitrate claims against their employers, but they sued their employers in federal court for alleged violations of the Fair Labor Standards Act. *Id.* at 1619–20. The employers moved to enforce the arbitration agreements. *Id.* at 1620. The employees resisted, arguing that Section 7 of the NLRA, which guarantees workers the right to collective litigation, conflicted with their arbitration agreements waiving this right in favor of individualized proceedings. *Id.* at 1624. This Court rejected the employees' argument and held that the arbitration provisions were enforceable because the NLRA provision is silent as to arbitration. *Id.* Because Section 7 "does not express approval or disapproval of arbitration," or "even hint at a wish to displace the Arbitration Act," the Court concluded that the NLRA could not plausibly evidence Congress's "clear and manifest" intention to preclude arbitration. *Id.*

The Bankruptcy Code provides no express provisions that prohibit arbitrators from deciding automatic stay violations. As numerous courts have noted, similar to the NLRA at issue in *Epic*, the text of the Bankruptcy Code does not reflect a congressional intent to preclude arbitration. *See, e.g.*, R. at 10; *In re Thorpe Insulation Co.*, 671 F.3d 1011, 1020 (9th Cir. 2012); *Whiting-Turner Contracting Co. v. Elec. Mach. Enters., Inc.*, 479 F.3d 791, 796 (11th Cir. 2007). Because the Bankruptcy Code is completely silent as to arbitration, Respondent certainly cannot meet the high burden of showing a clear and manifest Congressional intent. Indeed, "Congress has

[...] shown that it knows how to override the Arbitration Act when it wishes. . . ." *Epic*, 138 S. Ct. at 1626 (citing several federal statutes that explicitly address arbitration); *see also* R. at 23 (citing 7 U.S.C. § 26(n)(2)) ("The Bankruptcy Code's silence is contrasted with other federal statutes, such as the Commodity Exchange Act, where Congress expressly repealed the FAA."). Under this Court's binding precedent, the text controls, and Congress's silence in the Bankruptcy Code evidences its intention for the FAA to be given effect in the bankruptcy context.

Despite *Epic*'s call for a textual analysis, the Thirteenth Circuit improperly relied on policy considerations to find that arbitration over automatic stay disputes is improper. *Epic,* 138 S. Ct. at 1619 ("As a matter of policy these questions are surely debatable. But as a matter of law the answer is clear."). The court's analysis does not align with this Court's controlling precedent. *See Gaffers v. Kelly Servs., Inc.*, 900 F.3d 293, 296 (6th Cir. 2018) (declining to consider policy arguments because of "*Epic*'s command and the clear import of the statutory text"). While the Bankruptcy Code advances policy objectives, this Court expressly prohibits a policy-based holding if the statutory text is clear as to arbitration. Thus, the Thirteenth Circuit's reasoning is insufficient to overcome the presumption of arbitrability and cannot stand.

B. Even if this Court views *Epic* as merely an extension of *McMahon*, there is no inherent conflict between the FAA and the automatic stay provisions.

Under pre-*Epic* case law, Congressional intent to override the FAA's mandate may be discerned through the text, legislative history, or an "inherent conflict between arbitration and the statute's underlying purpose." *McMahon*, 482 U.S. at 227. The party opposing arbitration "bears the heavy burden of showing a clearly expressed congressional intention" that the statute displaces the FAA. *Epic*, 138 S. Ct. at 1624. The circuit courts have "overwhelmingly concluded [...] that neither the text nor the legislative history of the Bankruptcy Code reflects a congressional intent

to preclude arbitration in the bankruptcy context." R. at 10 (citing *In re Thorpe Insulation Co.*, 671 F.3d at 1020). Therefore, Congress only intended to displace the FAA if there is an inherent conflict between the two statutes. *Id.* This standard applies to "core" proceedings, such as the automatic stay. R. at 11 (citing *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1068–69 (5th Cir. 1997)) (noting that courts have distinguished between "core" and "non-core" proceedings, but "[e]ven when a proceeding is core, a bankruptcy court must still analyze whether arbitration of the proceeding would result in an inherent conflict").

An inherent conflict exists only when arbitration enforcement would "seriously jeopardize" the objectives of the code. *In re Am. Classic Voyages, Co.*, 298 B.R. 222, 224 (D. Del. 2003). The court must consider "the nature of the claim and the facts of the specific bankruptcy." *Anderson*, 884 F.3d at 389 (quoting *Hill*, 436 F.3d at 108).

The automatic stay provision does not inherently conflict with the FAA. The Second Circuit—the only other circuit court to consider the relationship between the automatic stay and the FAA—agrees. *Hill*, 436 F.3d at 104. The *Hill* court properly concluded that the FAA does not interfere with the purposes of the automatic stay, including "providing the debtors with a fresh start, protecting assets of the estate, and allowing the bankruptcy court to centralize disputes concerning the estate." *Id.* at 109.

The Thirteenth Circuit erroneously determined that the facts in the current matter undermine the automatic stay's purposes such that arbitration was improper. Although Respondent filed Chapter 11 bankruptcy, while *Hill* involved a Chapter 7 debtor, this distinguishing fact does not pose an inherent conflict capable of precluding arbitration. *In re Morgan*, 28 B.R. 3 (B.A.P. 9th Cir. 1983); s*ee also In re Sterling Min. Co., Inc.*, 21 B.R. 66, 68 (Bankr. W.D. Va. 1982) (compelling arbitration and refusing to enjoin workers' ability to strike despite the negative effects

on Chapter 11 debtor's ability to reorganize). Courts have approved of arbitration in Chapter 11 bankruptcy cases even when the outcome of arbitration could affect other potential creditors and the debtor's reorganization.

In addition, the collectivist system of bankruptcy, contrary to the Thirteenth Circuit's ruling, is not undermined by arbitration. Arbitration of an automatic stay dispute may facially conflict with bankruptcy's goal of centralizing disputes; however, this Court has already established that arbitration agreements must be upheld "even if the result is piecemeal litigation." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985). Although bankruptcy cases envision resolution in the specialized bankruptcy courts, even a statute's provision for a particular type of legal proceeding does not necessarily preclude arbitration. *Epic*, 138 S. Ct. at 1627 (enforcing arbitration despite the NLRA's express grant of collective litigation rights); *Greenwood*, 565 U.S. at 100–01 (enforcing an agreement to arbitrate a dispute arising under the Credit Repair Organization Act despite the Act's guarantee to a judicial action in a court because the "mere formulation of the cause of action" in the statute is insufficient to preclude arbitration); *Gilmer*, 500 U.S. at 29 (enforcing an arbitration agreement with a class action waiver although the ADEA expressly permits collective actions). Thus, Respondent cannot avoid arbitration simply by pointing to the centralized nature of bankruptcy.

Similarly, this Court has already rejected arguments that arbitration conflicts with statutes simply because it affects parties outside of the agreement. *Epic*, 138 S. Ct. at 1626 (disregarding the potential impact of individualized arbitration on other employee proceedings). Under the FAA, "an arbitration agreement must be enforced notwithstanding the presence of other persons who are parties to the underlying dispute but not to the arbitration agreement." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983).

The Second Circuit's determination that arbitration of automatic stay disputes does not undermine the purposes of the stay is correct. Importantly, the Second Circuit held that the automatic stay provisions do not inherently conflict with the FAA *before* the *Epic* decision heightened the standard for finding such a conflict. In light of *Epic*'s requirement of a clear and manifest expression to preclude arbitration, it follows that this Court should agree with the Second Circuit's determination.

Although other circuit courts have considered arbitration of bankruptcy proceedings, the courts finding a conflict between the statutes considered the discharge injunction—not the automatic stay. *See In re Belton*, 961 F.3d at 612; *Matter of Henry*, 944 F.3d at 587. The discharge injunction is easily distinguishable from the automatic stay at issue in this case. In fact, these circuit courts explained the differences between these two bankruptcy concepts as justifications for declining to compel arbitration: "Unlike the automatic stay, the discharge injunction is likely to be central to bankruptcy long after the close of proceedings. The automatic stay exists only while bankruptcy proceedings continue to ensure the status quo ante, while the integrity of the discharge must be protected indefinitely." *Anderson*, 884 F.3d at 390. Moreover, "the discharge injunction is an order issued by the bankruptcy court," and "Congress afforded the bankruptcy courts wide latitude to enforce their orders. . . ." *Id.* at 391 (citing 11 U.S.C. § 105(a)). Thus, "the bankruptcy court alone possesses the power and unique expertise to enforce [the discharge injunction]." *Id.* On the other hand, the automatic stay arises by operation of a statute rather than by a court order. *Hill*, 436 F.3d at 110. The bankruptcy court is not uniquely situated to interpret the automatic stay because it differs from an injunction. *Id.*

Further, Congress has already determined that disputes concerning the automatic stay may be decided outside of the bankruptcy courts. 28 U.S.C. § 1334(b). Because Congress has expressly

granted district courts jurisdiction to hear automatic stay issues, bankruptcy courts do not have exclusive jurisdiction over such matters. This concurrent jurisdiction undermines Respondent's argument that the bankruptcy court is the only appropriate forum for resolving automatic stay issues. In *Gilmer*, this Court found that the concurrent jurisdiction of federal and state courts over ADEA claims indicated that Congress did not intend to preclude arbitration of such claims. *Gilmer*, 500 U.S. at 29. Similarly, in *Rodriguez*, the Congressional grant of concurrent jurisdiction over Securities Act claims demonstrated that arbitration does not conflict with the Securities Act. *Rodriguez*, 490 U.S. at 482–83. In light of this precedent, this Court should conclude that the concurrent jurisdiction of automatic stay issues shows that Congress did not intend to preclude arbitration. The Thirteenth Circuit's reasoning fails to demonstrate an inherent conflict.

C. The lower court's reliance on policy is insufficient to overcome the presumption of arbitrability.

Decades of case law confirm that a federal statute does not repeal the FAA simply because it is related to important policy concerns. *See, e.g.*, *Green Tree*, 531 U.S. at 90 (noting that "even claims arising under a statute designed to further important social policies may be arbitrated"); *Gilmer*, 500 U.S. at 27 (discussing that the Sherman Act, the Securities Exchange Act, and RICO all implicate broad public policy but are nonetheless arbitrable). For example, in *Gilmer*, this Court upheld the arbitrability of dispute arising under the Age Discrimination in Employment Act, a federal statutory scheme that undoubtedly involves policy issues. *Gilmer*, 500 U.S. at 27–28. Although the petitioner raised numerous policy arguments to show that the FAA and the ADEA were incompatible, the Court reiterated that an arbitrator is certainly capable of conducting a fair proceeding "further[ing] broad social purposes." *Id*. at 28.

As previously discussed in Section I.B, the Thirteenth Circuit's driving policy arguments are weak at best and have already been discredited by multiple courts. Even if this Court finds the

Thirteenth Circuit's policy arguments persuasive, these arguments are insufficient to prove a congressional intent to preclude arbitration. This Court has continuously enforced arbitration agreements despite strong policy arguments that arbitration will undermine the potentially conflicting statute. *See, e.g.*, *Epic*, 138 S. Ct. at 1632; *Green Tree*, 531 U.S. at 92; *Gilmer*, 500 U.S. at 28. Undoubtedly, "the policy issues raised with respect to the automatic stay are [not] any more significant than the policies of ensuring workers' rights as in *Epic*; preventing age discrimination as in *Gilmer*; or enforcing the antitrust and racketeering laws as in *Mitsubishi Motors* and *McMahon*." R. at 25 (Tench, J. dissenting). Although the Bankruptcy Code promotes "important public policies," an arbitrator is capable of effectuating broader policy objectives. *Gilmer*, 500 U.S. at 28.

The Thirteenth Circuit's generalized attack on arbitration is also unacceptable and "far out of step with [this Court's] endorsement of the federal statutes favoring this method of resolving disputes." *Gilmer*, 500 U.S. at 30 (quoting *Rodriguez*, 480 U.S. at 481). There is no basis for the "presumption that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious, and impartial arbitrators." *Mitsubishi*, 473 U.S. at 624. Arbitration is a satisfactory dispute resolution mechanism with a large breadth of policy favoring its use. *Gilmer*, 500 U.S. at 26. "So long as the prospective litigant effectively may vindicate his or her statutory cause of action in the arbitral forum, the statute serves its functions." *Green Tree*, 531 U.S. at 90. Respondent is unable to provide any tenable argument that his rights serving the purposes of the Bankruptcy Code will be eroded by arbitration. Ultimately, "[n]o legislation pursues its purposes at all costs," and bankruptcy is no exception. *Italian Colors Rest.*, 570 U.S. at 234 (quoting *Rodriguez*, 480 U.S. at 525–26). The policy objectives the Thirteenth Circuit favored were misplaced, overemphasized, and cannot control this Court's decision.

Finally, accepting the lower court's decision would undermine decades of FAA case law. Respondents identify no valid reason why bankruptcy is distinguishable from other sectors of the law. Without a compelling difference, a decision in favor of Respondent would effectively sweep to all other federal statutes. Thus, the aforementioned case law since the FAA's conception in 1926 is discredited substantially. Further, the overarching public policy in favor of arbitration that this Court has recognized on multiple occasions is undermined and effectively overruled. Respondents provide no substantive limitations or compelling reasons for such a vast, conflicting new precedent today. This Court should uphold well-established case law and refuse to find that Section 362 of the Bankruptcy Code conflicts with the FAA.

II. The Thirteenth Circuit incorrectly held that Section 362(c)(3) terminates the automatic stay only with respect to the debtor.

The filing of a bankruptcy petition immediately triggers the automatic stay. § 362(a). Creditors are generally prohibited from collections attempts during the stay's term. § 362(a)(1–8) (providing a non-exhaustive list of violative acts). The Code differentiates three categories of debtors and the subsequent application of the automatic stay. § 362. Congress enacted these provisions in the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA): amendments to the Bankruptcy Code designed to prevent abuse of the bankruptcy system. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231–32 (2010). These provisions expressly limit the ability of repeat filers to utilize the automatic stay. 1 *Collier on Bankruptcy* P. 1.05 (16th ed. 2018). For first-time filers, the automatic stay remains in effect for the duration of the bankruptcy case. § 362 (a)(1–2). Second time filers receive only a temporary stay if the second case is within a year of the prior case's dismissal. § 362(c)(3). Specifically, Section 362(c)(3) provides:

> **(3)** [I]f 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. . . .

Id. (emphasis added). Finally, filers with three or more petitions dismissed within a year do not receive the stay on the third or subsequent cases. § 362(c)(4). Repeat filers, or any other interested party, may move for the full benefit of the automatic stay within thirty days of refiling. § 362(c)(3)(B); § 362(c)(4)(B). The burden is on the moving party to prove good faith filing by clear and convincing evidence. *Id.*

The automatic stay prevents actions against (1) the debtor; (2) the debtor's property; and (3) the bankruptcy estate. § 362(a)(1)–(8). The bankruptcy estate is created upon filing a bankruptcy petition. § 541(a). The scope of the estate is broad, including all legal and equitable interests of the debtor. § 541(a)(1); *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992) ("When a debtor files a bankruptcy petition, all of his property becomes property of the bankruptcy estate.").

The issue on appeal is whether the automatic stay terminates in its entirety—rather than merely with respect to the debtor—under Section 362(c)(3)(A) when an interested party fails to move for a judicial extension of the stay. Although this issue is one of first impression for this Court, two circuit courts have considered the application of Section 362(c)(3)(A). *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 231 (5th Cir. 2019) (holding the stay only terminates with respect to property of the debtor, thus leaving estate property protected); *In re Smith*, 910 F.3d 576, 591 (1st Cir. 2018) (holding that the automatic stay is terminated in its entirety when a second

time filer fails to ask for an extension of the stay). The lower courts have also disagreed about the meaning of the phrase "with respect to the debtor." *See In re Reswick*, 446 B.R. 362, 366 (B.A.P. 9th Cir. 2011) (compiling cases). This Court should agree that the automatic stay terminates completely under Section 362(c)(3)(A). The phrase must be read in the context of the surrounding language, confirming that "with respect to the debtor" means that the entire stay is terminated. To read otherwise would lead to an absurd result that clearly conflicts with the intent of Congress.

A. The phrase "with respect to the debtor" in Section 362(c)(3)(A) is ambiguous when read with the surrounding text.

A statute must be read in context and not in isolation. *Yates v. United States*, 574 U.S. 528, 537 (2015) (citing *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). The Court must consider "the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* The Court must read the phrase consistently with other similar phrases in the statute. *Hall v. United States,* 566 U.S. 506, 516 (2012). Even when a statute's text appears plain, courts and parties may disagree over its meaning, supporting ambiguity. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985); *see also United States v. Monia*, 317 U.S. 424, 431 (1943) (Frankfurter, J. dissenting) ("The notion that because the words of a statute are plain, its meaning is also plain, is merely pernicious oversimplification.").

The phrase "with respect to the debtor" in Section 362(c)(3)(A) is ambiguous because it is susceptible to conflicting interpretations. *In re Daniel*, 404 B.R. 318, 321 (Bankr. N.D. Ill. 2009) (explaining that "there are at least four different interpretations of stay termination 'with respect to the debtor'"). "With respect to the debtor" is unclear when read in the narrow context of Section 362(c)(3)(A), the broader context of Section 362, and the full scope of the Bankruptcy Code.

First, the phrase is unclear when read within the context of Section 362(c)(3)(A). The first clause in the provision reads: "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. . . .” The Thirteenth Circuit ignored two important phrases: the reference to subsection (a), and the language regarding actions taken with respect to certain property. Under Section 362(a), the stay protects the debtor against three different categories of collection activities: (1) those against the debtor; (2) those against the debtor’s property; and (3) those against the property of the estate. § 362(a)(1)–(8). In light of these protections, the express reference to subsection (a) in Section 362(c)(3)(A) clearly indicates that the stay terminates as to all three of these categories. In other words, the stay completely terminates. The Thirteenth Circuit’s interpretation ignored this important opening language in the statute and instead read “with respect to the debtor” to mean “against the debtor” only. However, if Congress intended the stay to only terminate as to actions against the debtor, rather than as to all three categories, it would have used the same phrase “against the debtor” in Section 362(c)(3)(A). In addition, if the automatic stay terminates only as to the debtor personally, the creditors can not recover any of the debtor’s property. Thus, the reference to actions taken with respect to a debt, collateral, or lease are rendered meaningless. *Reswick*, 446 B.R. at 368. The Thirteenth Circuit’s reading “does not give sufficient consideration to the intervening phrases” and “would in fact read those phrases out of the statute with its interpretation of ‘with respect to the debtor.’” *In re Bender*, 562 B.R. 578, 582 (Bankr. E.D.N.Y. 2016). Clearly, the Thirteenth Circuit’s reading creates an internal inconsistency.

Second, the phrase at issue is ambiguous when read in the context of Section 362 in its entirety. Section 362(c)(3)(A) provides that the automatic stay will terminate “with respect to the debtor on the 30th day” after filing a second case. The next subsection, Section 362(c)(3)(B), explains how a “party in interest” may extend the stay past the thirty day period. The Thirteenth Circuit’s interpretation cannot be reconciled with (B) because if Section 362(c)(3)(A) only applies

with respect to the debtor, the debtor is the only party who would have reason to extend the stay. *In re Jones*, 339 B.R. 360, 364 (Bankr. E.D.N.C. 2006). "Parties in interest—the trustee and creditors of the estate—would only want an extension of the automatic stay if it would allow the trustee to sell estate property for the benefit of claimants to the estate." *Daniel*, 404 B.R. at 323. In other words, "[p]roperty of the estate would have to be subject to the stay termination for any party other than the debtor to have sufficient reason to file the motion." *Reswick*, 446 B.R. at 369. The phrase "with respect to the debtor" must include property of the estate to "make meaningful the right of parties in interest to seek an extension of the stay." *Daniel*, 404 B.R. at 325. Because Section 362(c)(3)(B) allows interested parties to extend the stay, it is apparent that Section 362(c)(3)(A) terminates the stay in its entirety such that secured creditors can take action against property of the estate. *Id.*

In addition, the Thirteenth Circuit's interpretation is inconsistent with Section 362(j), a mechanism that allows an interested party to confirm that the stay has terminated under subsection (c). If Section 362(c)(3)(A) does not terminate the stay in its entirety, Section 362(j) would distinguish between property that remains protected by the stay. *In re Jupiter*, 344 B.R. 754, 760 (Bankr. D.S.C. 2006). However, Section 362(j) "does not carve out exceptions for property that remains protected by the stay but broadly and summarily allows parties to confirm that the stay has been terminated under Section 362(c)." *Id.* In light of the provisions surrounding Section 362(c)(3)(A), the only sensible reading is that the stay is completely terminated.

Third, the phrase is ambiguous when read within the broad context of the Bankruptcy Code. The phrase "with respect to the debtor" (or a variant "with respect to a debtor") appears in seventeen separate provisions of the Bankruptcy Code. Peter E. Meltzer, *Won't You Stay A Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code S 362(c)(3)(a)*, 86 Am. Bankr.

L.J. 407, 431 (2012). The phrase "with respect to the debtor" has no practical meaning—and could be deleted with no impact to the text—almost every time that it appears in the Code. *Id.* Indeed, the phrase appears to be "subconscious filler." *Id.* There is no reason to believe that the phrase is exceptional as used in Section 362(c)(3)(A) to warrant a departure from its overall non-meaning in the Bankruptcy Code. Notably, several courts have criticized BAPCPA as confusing, sloppy, and poorly drafted. *In re Gonzalez*, 597 B.R. 133, 141 (Bankr. D. Colo. 2018) (citing Jean Braucher, *The Challenge to the Bench and Bar Presented by the 2005 Bankruptcy Act: Resistance Need Not Be Futile*, 2007 U. Ill. L. Rev. 93, 97 (2007)).

The phrase is ambiguous when read narrowly in its specific provision, when read more broadly in its specific section, and when read in light of the entire Code. Therefore, Thirteenth Circuit's adoption of the plain language was improper. Instead, this Court must reconcile the phrase with its purpose of deterring abuse of the bankruptcy system.

B. Even if this Court finds the phrase "with respect to the debtor" unambiguous, a plain language interpretation yields an absurd result.

A statute's plain meaning does not control when it produces an absurd result. *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982). The literal application of a statute creates an absurd result if it is "demonstrably at odds with the intentions of its drafters." *Id.* at 571. Congress's intent must control in such circumstances. *Id.*

The Thirteenth Circuit's interpretation produces an absurd result. Under this interpretation, the stay continues to protect property of the estate. *See Smith,* 910 F.3d at 586. Thus, only non-estate property would be available to creditors, which includes (1) property that is expressly excluded from the estate under Section 541(b); (2) exempted property, which the debtor may protect regardless of whether the stay is in place; and (3) abandoned property. *In re Smith*, 573 B.R. 298, 304 (Bankr. D. Me. 2017); 4 *Collier on Bankruptcy* P. 522.01 (16th ed. 2018). This is

demonstrably an absurd result because each category of available property is either protected by statute or valueless. First, Congress already identified excluded property under Section 541(b) as inherently inappropriate for the bankruptcy estate. Second, Section 522 and state law expressly allow the debtor to protect certain compelling categories of property. Third, the trustee already determined that abandoned property is "burdensome" or "of inconsequential value" such that it produces no value for a creditor. § 554(a). It is evident that Congress did not intend to leave only these categories available to creditors when a repeat filer has failed to show that he is not abusing the bankruptcy system. The Thirteenth Circuit interpretation eliminates nearly all creditor collection activities because "[i]n most if not all cases, collateral securing a pre-petition debt will fall within the category of 'property of the estate,' not property of the debtor." *Bender*, 562 B.R. at 584.

The Thirteenth Circuit's interpretation also renders Section 362(c)(3)'s mechanism of proving a good faith filing meaningless. Under Section 362(c)(3), a debtor who refiles within one year is presumably abusing the bankruptcy system. Section 362(c)(3)(B) allows a party in interest to move to extend the stay. The interested party must prove that the debtor filed his second petition in good faith. §§ 362(c)(3)(B)–(C). Under the Thirteenth Circuit's holding, a debtor who is presumably filing in bad faith still enjoys the automatic stay without any real need to utilize Section 362(c)(3)(B). Ultimately, these provisions serve no function if the debtor can still protect his expansive estate property. This mechanism differentiates between debtors filing in good faith from those filing in bad faith. Yet, under the Thirteenth Circuit approach, a debtor who files in bad faith receives the same protections under the automatic stay. Because the Thirteenth Circuit's interpretation of Section 362(c)(3)(A) fails to give the surrounding provision any operative effect, it produces an absurd result. The Thirteenth Circuit refused to read the phrase "with respect to the

debtor" as meaningless. However, its interpretation ultimately renders the entire next subsections, Sections 362(c)(3)(B) and (C), surplusage. This Court favors an interpretation that renders *one phrase* surplusage when an alternative reading renders *an entire subsection* surplusage. *United States v. Atlantic Research Corp.*, 551 U.S. 128, 137 (2007). Because the Thirteenth Circuit's reading impacts additional provisions in Section 362, this Court should agree with the interpretation that respects each part of the statute.

C. The purpose of Section 362(c)(3)(A) confirms that Congress intended the automatic stay to terminate completely.

A court must reference extrinsic evidence if the statutory language is ambiguous or produces an absurd result. *Kosak v. United States*, 465 U.S. 848, 855 (1984). The court must effectuate Congress's intent by interpreting the statute in light of its purpose. *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 676–677 (2001). In the bankruptcy context, this Court frequently references the legislative history for guidance. *Smith*, 910 F.3d at 589 ("The Supreme Court often consults legislative history in bankruptcy decisions to ensure that its interpretations are consistent with Congress's purposes.").

The Thirteenth Circuit's holding is inconsistent with Congress's intent. Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) to prevent abuses stemming from repeat filings. *Milavetz*, 559 U.S. at 244. Section 362(c)(3)(A) is part of this Act. The House Judiciary Committee report explains that "BAPCPA amends Section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period." E–2 *Collier on Bankruptcy* App. Pt. 10(b) at App. Pt. 10–333 (15th ed. Rev.2005) (quoting Report of the Committee on the Judiciary, House of Representatives, to Accompany S. 256 (April 8, 2005)). The seven years of legislative history

never distinguishes between a complete or partial termination of the stay. R. at 31 (Tench, J. dissenting) ("Notably, nothing in the House Report suggests that it was Congress' intention that [S]ection 362(c)(3) would terminate only a small portion of the automatic stay."). The numerous committee reports related to the statue never suggested a distinction between actions against the debtor, the debtor's property, or property of the estate. *Daniel*, 404 B.R. at 329. Because Congress did not discuss this distinction, it is clear that Congress intended the stay to terminate completely. Indeed, the primary purpose of Congress was "to deter successive bankruptcy filings by imposing stricter limitations on the power of the automatic stay as subsequent bankruptcy cases are filed." *Reswick*, 446 B.R. at 372.

The Thirteenth Circuit's interpretation will not serve this purpose. Under Section 362(c), a debtor who refiles bankruptcy within a year is presumably abusing the bankruptcy system. The debtor, or an interested party, must rebut this presumption in order to extend the stay. In order to deter potential abuse, Congress sought to deprive a repeat filer of one of the primary benefits of bankruptcy—the automatic stay—until the court established that the debtor filed a second petition in good faith. Under the Thirteenth Circuit's holding, however, the repeat filer receives the benefit of the automatic stay without proving that he filed in good faith. Congress intended to *penalize* repeat filers by enacting Section 362(c)(3)(A). Because the Thirteenth Circuit interpretation allows the debtor to protect property of his bankruptcy estate, it completely contradicts Congress's intent. This Court should instead adopt Petitioner's reading of Section 362(c)(3)(A), which effectuates the purpose of the statute.

CONCLUSION

This Court should reverse the Thirteenth Circuit. Under this Court's most recent precedent, Congress did not express that the FAA and Section 362 of the Bankruptcy Code are incompatible.

Further, under the long line of this Court's cases, there is no inherent conflict between the two statutes. Thus, arbitration must be compelled. Moreover, the text of Section 362(c)(3)(A) is ambiguous when read in light of its surrounding text, and a plain language interpretation leads to an absurd result. As such, it is clear that Congress intended the purpose of 362(c)(3)(A) to deter serial filers, and the Thirteenth Circuit's interpretation is squarely at odds with that purpose.

Appendix A

The Federal Arbitration Act (USA)

CHAPTER 1. GENERAL PROVISIONS

Section 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transaction", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

Section 2. Validity, irrevocability, and enforcement of agreements to arbitrate

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

Section 3. Stay of proceedings where issue therein referable to arbitration

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

Section 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making

of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

Section 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Section 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

Section 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

Section 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have

jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

Section 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

Section 10. Same; vacation; grounds; rehearing

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

(1) Where the award was procured by corruption, fraud, or undue means.

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

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

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

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

(b) The United States district court for the district wherein an award was made that was issued pursuant to section 590 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 582 of Title 5.

Section 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

Section 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

Section 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

Section 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

Section 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

Section 16. Appeals

(a) An appeal may be taken from

(1) an order

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292 (b) of title 28, an appeal may not be taken from an interlocutory order

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or (4) refusing to enjoin an arbitration that is subject to this title.

CHAPTER 2. CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Section 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

Section 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

Section 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of Title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

Section 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration

agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

Section 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

Section 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

Section 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

Section 208. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

CHAPTER 3. INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

Section 301. Enforcement of Convention

The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

Section 302. Incorporation by reference

Sections 202, 203, 204, 205, and 207 of this title shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

Section 303. Order to compel arbitration; appointment of arbitrators; locale

(a) A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

(b) In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with Article 3 of the Inter-American Convention.

Section 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.

Section 305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

When the requirements for application of both the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

(1) If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.

(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

Section 306. Applicable rules of Inter-American Commercial Arbitration Commission

(a)For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in Article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on July 1, 1988.

(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of that Commission, the Secretary of State, by regulation in accordance with section 553 of Title 5, consistent with the aims and purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

Section 307. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.

11 U.S.C. § 362. Automatic Stay

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

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

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

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)-

(A) of the commencement or continuation of a civil action or proceeding-

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

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

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

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

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[(5) Repealed. Pub. L. 105-277, div. I, title VI, §603(1), Oct. 21, 1998, 112 Stat. 2681-866;]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was

formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of-

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap

agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer-

> (A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or
>
> (B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
>
> but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property-

> (A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or
>
> (B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease

or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of-

> (A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;
>
> (B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or
>
> (C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue;

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act); and

(29) under subsection (a)(1) of this section, of any action by-

> (A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or

(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(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.

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

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

(2) with respect to a stay of an act against property under subsection (a) of this section, if-

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

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

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

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that-

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing

of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)

(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless-

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended-

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section-

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)

(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)-

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)

(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that-

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)

(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)-

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)-

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)

(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name

and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify-

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)

(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)

(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied-

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)-

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)

(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor-

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply-

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if-

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.