IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2013

__________________________________________

FOODSTAR, INC.

Petitioner

v.

IN RE FOODSTAR, INC.,

Debtor

RAVI VOHRA

Respondent.

__________________________________________

On Writ of Certiorari
To the United States Court of Appeals
For the Thirteenth Circuit

__________________________________________

BRIEF FOR PETITIONER

Team P 9
Counsel for Petitioner
QUESTION PRESENTED

1. Whether rejection of a trademark licensing agreement under 11 U.S.C. section 365 terminates the licensee’s right to continue to use the trademark.

2. Whether the presumption against extraterritorial application of statutes prevents the application of 11 U.S.C. section 365 to a foreign licensing agreement.
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The opinion of the United States Bankruptcy Court for the District of Moot is unreported and is set forth in the record. (R. 5). The opinion of the United States District Court for the District of Moot is unreported and is set forth in the record. (R. 6). The October 14, 2013, decision and order of the United States Court of Appeals for the Thirteenth Circuit, Case Number 13-4080, is unreported and is set forth in the record. (R. 6).

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

Foodstar, Inc. (“Foodstar” or “Licensor”) filed a motion in the United States Bankruptcy Court for the District of Moot in order to reject Ravi Vohra’s (“Vohra” or “Licensee”) license agreement regarding the planned sale of the Burger Bites trademark (“Trademark”). (R. 5). Vohra, having no connection with the United States, made an appearance to object and argued that section 365 could not apply extraterritorially to an agreement having no connection to the United States, and provided an alternative argument stipulating that the rejection was not in the best interest of the estate as it would deprive the estate of the license benefits without terminating Vohra’s exclusive rights in Eastlandia. (R. 5). No evidence was presented, however, both parties filed a joint stipulation regarding all relevant facts, which included that the license was an executory contract and the worldwide Trademark would sell for ten to fifteen percent less if subjected to Vohra’s license rather than terminating said rights. (R. 5). Further, the parties also stipulated that Eastlandian bankruptcy laws allow for rejection of trademark licenses, yet such rejection does not terminate the licensee’s rights under the United Nations Commission on International Trade (“UNCITRAL”) Model Law on Cross Border Insolvency. (R. 5).

Ultimately, the Bankruptcy Court found for Foodstar holding the rejection to be in the best interest of the estate since a higher sale price would result. (R. 5). However, Vohra timely appealed to the District Court because he refused to relinquish his rights to use the Trademark in Eastlandia. (R. 5). Vohra asserted his intent to continue to use and enforce his rights of the Trademark. (R. 5–6). Foodstar responded with an adversary proceeding in the Bankruptcy Court against Vohra seeking a declaration that the rejection of Vohra’s license terminates his rights, and requested Vohra be enjoined from continued use of the Trademark. (R. 6). Foodstar

1 The symbol “R.” will constitute a reference to the record on appeal.
moved for summary judgment, and the Bankruptcy Court ruled in favor of Foodstar, which terminated Vohra’s rights and enjoined his use of the Trademark. (R. 6).

Vohra timely appealed. (R. 6). The District Court, having combined both appeals, affirmed the Bankruptcy Court’s decision without opinion. (R. 6). However, the Court of Appeals reversed for the following two reasons: (1) Vohra may continue to use the Trademark according to the licensing agreement despite a rejection occurring; and (2) the presumption against extraterritoriality prevents the application of section 365 to an executory contract having no connection with the United States other than Vohra being the debtor to the agreement. (R. 7).

STATEMENT OF THE FACTS

Foodstar is the franchisor for Burger Bites, a popular fast-food restaurant chain, which occupies a successful niche in the industry and focuses on very small gourmet burgers. (R. 3). In attempting to increase revenue before its initial public offering of stock, Foodstar bought Minicakes, a successful miniature cupcake chain, with the desire to merge both products into a combined franchised store serving miniature food items. (R. 3). However, such expansion failed, which compelled Foodstar to withdraw from this business venture. (R. 3). Due to such misfortune, debt accumulated without enough operating capital, which forced Foodstar to reorganize the business by filing for Chapter 11 bankruptcy. (R. 3). Unfortunately, financing could not be acquired and liquidation through Chapter 11 seemed to be the answer. (R. 3–4). Foodstar intends to sell its primary asset, the Trademark, as well as assigning the buyer with all its franchise agreements. (R. 4).

The Trademark was registered within the United States as well as twenty-six other nations, giving Foodstar considerable territory with exclusive rights. (R. 4). However, Foodstar does not own the Trademark in Eastlandia, the country in which Burger Bites originated. (R. 4).
Viraj Deshmukh (“Deshmukh”) developed the Trademark in Eastlandia and granted a twenty-year exclusive license to Vohra to use the Trademark within Eastlandia; both are citizens of Eastlandia. (R. 4). Furthermore, the license was executed in Eastlandia and governed by Eastlandia laws. (R. 4). All restaurants in Eastlandia run under Vohra’s license agreement. (R. 4). However, shortly after his agreement, Deshmukh sold Foodstar the worldwide rights for the Trademark, including all of Deshmukh’s rights under Vohra’s agreement. (R. 4–5). Foodstar used the Trademark in all registered nations, except Eastlandia. (R. 5).
SUMMARY OF THE ARGUMENT

This case presents this Court with two issues: (1) whether the rejection of a trademark license agreement terminates the right of the licensee to continue to use trademark despite the rejection; and (2) whether the judicial interpretation of the Bankruptcy Code reveals the congressional intent to apply section 365 extraterritorially and thus rebuts the presumption against extraterritoriality.

The dissolution of a trademark licensee’s future usage rights upon a section 365 rejection of the license by the debtor-licensor is appropriate because it conforms with a holistic reading of the Bankruptcy Code (“Code”), advances longstanding bankruptcy policies, is consistent with legislative history and intent, and furthers the overall purpose behind debtor reorganization and restructuring. Accordingly, dissolving a licensee’s future trademark usage rights provides for a fair and equitable remedy while avoiding asset dilution and economic harm to the bankrupt estate and its creditors. Upon this Court’s determination that rejection is sufficiently beneficial to the Foodstar estate, it is further accurate to interpret section 365(g) through a broad plain meaning interpretation where the statute is read in its entirety and viewed as a structure for determining damage apportionment to the licensee upon rejection. Further, a reading of sections 101(35A) and 365(n) excluding trademarks as trademarks are excluded on the face of the statute as well as addressed in the legislative history to be the intent of the legislature due to the complexity involved with trademark licenses specifically and the need for further research prior to inclusion. It is paramount for the future of section 365 and trademark licenses in general that this Court conclude a trademark licensee’s future usage rights be dissolved upon rejection by the bankrupt estate until further research determines the ramifications of continued use.
As to the extraterritorial application of bankruptcy law, interpretation of the Code expressly provides the congressional intent to apply the entire Code extraterritorially because otherwise the fundamental policies of the Code would be severely hindered. The Code is subject to the presumption against the extraterritorially and a three-prong test. Because the plain language of section 541(a), which indicates the types of property, wherever located, defining the scope of the bankrupt estate, and section 1334(e)(1), which grants in rem jurisdiction to the bankruptcy courts over the property wherever located, unambiguously suggests an extraterritorial application of the Code. Furthermore, because the amendments Congress applied to section 541 and its predecessor section 70a affirmatively suggest the congressional grant of an extraterritorial reach. Ultimately, because a stringent effect of the “clear statement rule” has been loosened, this Court must render the Code to apply to tangible and intangible property overseas, thereby rebutting the presumption against extraterritoriality.

This Court should reverse the decision of the Thirteenth Circuit and hold that rejection of a trademark license completely terminates the future rights of the licensee to use the trademark under the purview of section 365; and that Congress’s intent was affirmatively expressed to grant the Code an extraterritorial application, thereby giving section 365 an extraterritorial reach.

ARGUMENT

In a civil appeal of a lower court’s decision, the appellate court should review findings of fact for clear error and factual findings and overturn only if the findings are “completely devoid of a credible evidentiary basis or bear no rational relationship to the supporting data.” Pension Transfer Corp. v. Beneficiaries under the Third Amendment to Fruehauf Trailer Corp. Retirement Plan NO. 003, 444 F.3d 203, 209–10 (3d Cir. 2006) (citation omitted). However, the lower court’s legal conclusions are reviewed de novo, and an appellate court need not give any
deference to a lower court’s conclusion of law. *In re Ames Dep’t Stores, Inc.*, 582 F.3d 422, 426 (2d Cir. 2009).

**I. THE THIRTEENTH CIRCUIT ERRED IN HOLDING THAT A TRADEMARK LICENSEE’S RIGHTS ARE NOT TERMINATED UPON REJECTION OF AN EXECUTORY LICENSING AGREEMENT UNDER 11 U.S.C. SECTION 365.**

The Thirteenth Circuit erred in applying “plain language” interpretation to section 365(g) determining a trademark licensee’s future usage rights remain in effect post rejection of an executory contract by a debtor under section 365. Additionally, the Thirteenth Circuit erred in applying “plain language—no negative inference” interpretation to sections 101(35A) and 365(n) to include trademarks under the section 101(35A) definition of intellectual property (“IP”), as it applies to section 365(n). The correct standard to determine whether a licensee should be allowed use of the trademark upon a section 365(g) rejection is a “plain language” interpretation of the statute dissolving the licensee’s future usage rights. Additionally, the correct standard for determining whether trademark licenses are afforded protection under 365(n) is an “*expressio unius est exclusio alterius*” interpretation of the statute, supporting a negative inference.

A debtor is afforded certain relief powers under Chapter 11. Under section 365, a debtor may petition to confirm the rejection of an executory contract. Specifically, a debtor may reject a contract by (1) confirming the existence of an executory contract and (2) proving rejection is proper under a “business judgment” and “benefit to the estate” standard. 11 U.S.C. § 365.

Circuits have split on the question of what “rejection” actually means under section 365. Section 365(g) specifies that “rejection of an executory contract or unexpired lease of the debtor constitutes a breach . . . immediately before the date of the filing of the petition.” 11 U.S.C. § 365(g)(1). The problems arise when the license is for future IP rights that could likely be cut off upon rejection. Particularly, the issue is whether rejection should be viewed as a standard
“contract breach,” allowing specific performance retaining the licensee’s usage rights or as an avoiding power for the debtor-licensor, dissolving the licensee’s rights.

In response to the circuit confusion, Congress passed the Intellectual Property Bankruptcy Act (“IPBA”), amending the Code with two new sections providing protection to certain IP licensees. Section 101(35A) defines “intellectual property” and 365(n) provides an option for licensees to elect to retain said IP rights upon rejection. 11 U.S.C. §§ 101(35A); 365(n). Notably, trademarks, trade names, and service marks are not included in the definition of “intellectual property” under section 101(35A).

Determinations that rejection equates to an avoidance power rather than a contractual breach under section 365(g) and, upon rejection, trademarks are excluded from section 365(n) protections are appropriate. Dissolution of a licensee’s rights satisfies a holistic reading of the Code, advances longstanding bankruptcy policies, and is consistent with legislative history and intent. Accordingly, dissolving a licensee’s future trademark usage rights provides for a fair and equitable remedy while avoiding asset dilution and economic harm to the bankrupt estate and its creditors. Further, Congress expressly intended to leave trademarks out of section 365(n) protections, as the ramifications of inclusion are currently unknown due to the complex nature of trademark licenses.

A. This Court Should Properly Uphold the Bankruptcy Court’s Orders Confirming Foodstar’s Decision to Reject the Trademark’s License Under Section 365(g) as Rejection is in Alignment with the “Business Judgment” and “Benefit to the Estate” Requirements.

Section 365(a) provides that, subject to court approval, the debtor-licensor may either assume or reject any executory contract they hold. 11 U.S.C. § 365(a). The purpose is to

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2 See Vern Countryman, Executory Contracts in Bankruptcy: Part I, 57 Minn. L. Rev. 439, 460 (1973). An executory contract is not statutorily defined but is essentially any contract with outstanding obligations by both parties. Id.
enable the debtor to assume only contracts beneficial to business rehabilitation and release the debtor from continuing obligations deemed unnecessary, costly, or damaging. Thus, Foodstar may determine which of its pre-petition contracts are beneficial to the bankrupt estate and those detrimental and sufficient for rejection. (R. 7–8).

The test to determining whether rejection is appropriate is a two-prong test. That includes a determination under both “business judgment” and “benefit to the estate” tests.³ This Court should affirm the ruling of both lower courts as a finding of fact that rejection by Foodstar of the Trademark license under section 365(g) is appropriate as it satisfies both the “business judgment” and “benefit to the estate” required tests.


Unfortunately, the Code does not stipulate how a debtor should go about determining which contracts are worthy of rejection. The general rule courts follow is application of a “business judgment” test to evaluate whether to approve a debtor’s decision to reject. See NLRB, 465 U.S. at 523. Under this test, rejection is a management decision within reasonable business judgement of the debtor and deference should be given to the debtor’s decision. See Lubrizol Enters., Inc. v. Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985). The only exception is when bad faith or gross abuse of discretion by directors is seen. Id.

The Respondent does not dispute the bankruptcy court’s determination that the business judgment standard is satisfied. Nevertheless, nothing in the record suggests Foodstar’s directors engaged in bad faith or with gross abuse of discretion. Confirming Foodstar’s request to reject the Trademark license is in alignment with the “business judgment” standard.

2. Confirming Rejection of the Trademark License Under Section 365 Comports with the Requirement that Rejection be Beneficial to the Estate.

In addition to the “business judgment” test to a section 365 rejection, courts generally also required the debtor to demonstrate rejection will benefit the estate. See In re Prestige Motorcar Gallery, Inc., 456 B.R. at 544. This prong analyzes whether rejection would be a detriment to the estate. A court will again begin with the proposition that a decision by a bankrupt party must be given deference under the “business judgment rule.”

The benefit to Foodstar’s estate is an obvious one. Maximization of the Trademark value will definitely be a priority for Foodstar and its creditors. As franchisor for the successful and publicly traded Burger Bites fast-food restaurant chain, the goodwill of the Trademark was sufficient enough to provide Foodstar with a successful niche in a very competitive gourmet hamburger fast-food industry. (R. 3). The Trademark is indicated as Foodstar’s primary asset and is registered in the United States and twenty-six other countries, further reiterating the importance of this one specific asset. (R. 3–4). Most importantly, should Foodstar be unable to reject the license, it will result in the Trademark depleting roughly ten to fifteen percent in value. (R. 5). There is no doubt that rejection is a benefit to Foodstar’s estate.

As an exception to the benefit rule, a licensee may argue the harm to the licensee far outweighs the benefit to the estate or the creditors. However, this exception places a heavy burden on the licensee to produce sufficient evidence of potential harm. This argument is only

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4 See In re Chipwich, Inc., 54 B.R. 427 (Bankr. D. S.D. N.Y 1985). In Chipwich, the court stressed there as well that the licensee could not show that the damages it would incur would be disproportionate to the benefits accrued by the debtor and the estate’s general creditors by shedding this burdensome obligation. Ultimately finding the contract to be rejected and the licensee’s rights terminated, the Chipwich court permitted the debtor to reject the contract and terminate the licensee’s future rights to utilize the trademark on its goods. Id.
successful when the licensee’s business will be virtually destroyed and the debtor is unlikely to be rehabilitated successfully or there will be little benefit to the estate and the creditors.\textsuperscript{5}

Foodstar has provided sufficient evidence of a benefit from the rejection. Aside from any ramifications to Vohra, the ultimate sale of the rejected Trademark is paramount to a successful liquidation of Foodstar. The multiple franchises worldwide, overall past success of Burger Bites, and recognition as a publicly-traded company fully support the assumption that a ten to fifteen percent decrease in the Trademark value would be detrimental to Foodstar. (R. 3–5).

\textbf{B. A Broad “Plain Meaning” Interpretation of Section 365(g) is the Proper Interpretation and this Court Should Reverse the Holding of the Circuit Court and Dissolve Vohra’s Future Rights Under the Trademark License.}

The second question in a rejection determination includes addressing what then comes of the licensee’s future usage rights after rejection. Under section 365, rejection “constitutes a breach . . . immediately before the date of the filing of the petition.”\textsuperscript{6} 11 U.S.C. § 365(g)(1). Courts are split on whether to read the statute through a broad or narrow interpretation. Read narrowly, courts have segregated the statute into portions, asserting rejection merely equates a breach. \textit{See In re Exide Tech.}, 607 F.3d 957, 966–68 (3d Cir. 2010); \textit{Sunbeam Prods., Inc. v. Chi. Am. Mfg.}, 686 F.3d 372 (7th Cir. 2012). Under a broad reading, the statute is taken in its entirety and should be viewed as a structure for applying damages. \textit{See Lubrizol}, 756 F.2d at 1048. A broad “plain meaning” interpretation deeming section 365(g) to be a structure for applying damages is consistent with an overall view of the Code as a whole. This court should confirm a broad “plain meaning” interpretation of the statute as it more naturally conforms with


\textsuperscript{6} See also, 11 U.S.C. § 365(g)(2) (providing further language about converting a rejection following a prior assumption into a post-petition breach).

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a holistic reading of the Code and furthers the overall purpose behind debtor rehabilitation and restructuring.

1. **Canons of Statutory Interpretation Dictate that this Court’s Inquiry Be a Broad “Plain Meaning” Interpretation of Section 365(g) Consistent with a Holistic Statutory Reading.**

When interpreting section 365(g) to determine proper application, the initial question must be whether the plain language of the Code disposes of the question presented, presuming the legislature properly construed the statute to fully present its intended interpretation. *In re Phila. Newspapers, LLC*, 599 F.3d 298 (3d Cir. 2010). If the statute is unambiguous, the legislative history is not considered, and the court’s inquiry ends after a plain language review. Ambiguity may be determined by looking at the statute in its entirety, considering the context of the entire provision, and whether the language is reasonably susceptible to more than one interpretation. *Id.* Legislative history may be used to resolve ambiguities, but only where the history indicates a clearly expressed contrary legislative intent to the plain language. *Id.*

This Court’s application of a broad “plain language” interpretation is sufficient to address the question at hand. By reading the statute holistically and in accordance with the lower court’s dissenting opinion, the true purpose behind section 365(g) is to provide a structure to determine appropriate damages for the licensee. (R. 14–17). Thus, a proper interpretation of 365(g) does not include a narrow interpretation that converts the rejection into a contract breach as other courts have chosen to do in the past.\(^7\) This Court need not go any further than the plain language of the statute to determine this purpose and answer the question before the Court.

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\(^7\) *Sunbeam*, 686 F.3d at 376–77; *Exide*, 607 F.3d at 966–68. The *Sunbeam* court created a circuit split supporting the position that the rejection of a license agreement in bankruptcy has the same effect as a breach of the agreement outside of bankruptcy, and thus allows continued use of the trademark by the licensee post-rejection. *Sunbeam*, 686 F.3d at 376–77.
However, the acknowledgement of more than one “plain language” interpretation may be seen to lead to a less than “plain” interpretation and thus legislative history may be necessary. Should this Court find ambiguity on the face of the statute, as an alternative to a “plain language” interpretation, an interpretation of the legislative history of section 365(g) would even further support a determination that the statute was designed to be read as a structure for determining appropriate damages for the licensee. *See* H.R. Rep. No. 95–595, at 349 (1978), *reprinted* in 1978 U.S.C.C.A.N. 5963, 6305; S. Rep. No. 95–989, at 60 (1978), *reprinted* in 1978 U.S.C.C.A.N. 5787, 5846 (“[s]ubsection (g) defines the time as of which a rejection . . . constitutes a breach”).

In the notable *Lubrizol* “rejection” case, the court interpreted section 365(g) by its plain language, further indicating support to section 365(g) being interpreted as a damages remedy stating, “the legislative history of section 365(g) makes clear that the purpose of the provision is to provide only a damages remedy for the non-bankrupt party,” and no application of specific performance is available, even if specific performance would ordinarily be available upon a breach under contract law. *Lubrizol*, 756 F.2d at 1043. The *Lubrizol* court further indicated that it saw no way around the plain language of section 365(g).

If Congress had wanted the term rejection to mean “breach” they would have called it a breach. Both the plain language and legislative history interpretation of section 365 supports the view that Congress intended rejection to convert the licensee’s contract rights into monetary claims against the estate. Upon rejection, a licensee may seek “rejection” damages under sections 365(g) and 502(g) as opposed to contract damages, including specific performance, under the Uniform Commercial Code 2–716.
2. A Broad “Plain Language” Interpretation of Section 365(g) Dissolving the Licensee’s Future Usage Rights is Consistent with Longstanding Bankruptcy Policy and the Facilitation of a Plan for Liquidation.

The Code attempts to balance the interests of all parties involved “by providing worthy debtors a mechanism to gain relief from crushing debt while retaining some measure of fidelity to creditors.” Bruce A. Markel, *The Sub Rosa Subchapter: Individual Debtors in Chapter 11 After BAPCPA*, 2007 U. Ill. L. Rev. 67, 67 (2007). An advancement of the rehabilitation and reorganization of the estate as an economically viable entity protects the debtor’s interests. Additionally, the creditor’s interests are protected by maximizing the value of the bankruptcy estate. *See In re Philadelphia*, 599 F.3d at 303. Executory contracts, particularly those involving trademark rights, may very well be a critical asset, if not the most critical, for the debtor estate because it is possible that much of the business’s equity is invested into this particular trademark and “goodwill” associated with it.

In accordance with longstanding bankruptcy policies, a close analysis of relevant bankruptcy law reveals “a common theme and objective . . . avoidance of the consequences of economic dismemberment and liquidation[.]” *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119 (3d Cir. 2004). For example, in the *Chrysler* bankruptcy case, denying the future usage rights of the trademark licensees, multiple dealerships ultimately saved the American automotive industry. *In re Chrysler LLC (Chrysler I)*, 405 B.R. 84, 108 (Bankr. S.D.N.Y. 2009), aff’d, 576 F.3d 108 (2d Cir. 2009). Allowing licensee rights to continue upon Chrysler’s rejection of various executory contracts would have potentially resulted in a catastrophic result to not only Chrysler, or the automotive industry, but to the entire economic future of the country as we know it today.
Further, it may be inferred that the Code does not seek to create incongruency within the law. If a licensee is able to retain future usage rights after rejection, this would free the licensor-debtor from performance obligations, thus eliminating the obligation to monitor and control quality of the licensee’s goods or services and may result in a statutorily mandated naked license, completely destroying the trademark which the debtor is bound to preserve. See 15 U.S.C. § 1055 (2006). Imposing upon the debtor continuing duties and a continuing relationship with the licensee in order to protect the trademark would most certainly thwart the rehabilitative and reorganization purposes as well.

A broad “plain language” interpretation dissolving the licensee’s rights is also in line with the overall facilitation of a plan of liquidation. Section 365(g) interpreted this way is necessary in order to convert the post-bankruptcy rejection into a pre-bankruptcy breach so that the resulting damage claim will be treated just like other pre-petition debts. (R. 16). Under bankruptcy law, the timing of the breach and when the claim arose is critical knowledge. (R. 16). Claims arising before bankruptcy was filed would be a “claim” that would receive its ratable distribution and be discharged. See 11 U.S.C. §§ 101(5); 1141(d)(1). Claims arising after the filing would be an “administrative expense” paid in full ahead of pre-petition creditors. See 11 U.S.C §§ 503(b); 507(2). This interpretation provides a foreseeable damage structure to be followed after a rejection and allows for security of the asset value. A determination that rejection equals breach would leave further uncertainty as to what the trademark’s exact value is upon transfer or sale by the debtor.

Should this Court grant specific performance, allowing continued using of the Trademark by Vohra would seriously undermine the goals of bankruptcy proceedings and thwart a plan for liquidation by preventing Foodstar from efficiently relinquishing debt by putting its assets to the
most profitable use. Foodstar would be restrained by the continuation of the license agreement against achieving maximum benefits from either selling or licensing the trademark as a rejected unburdened asset of the estate.

C. An "Expressio Unius Est Exclusio Alterius" Interpretation of Sections 101(35A) and 365(n) is the Proper Interpretation, and this Court Should Affirm the Holding of the Bankruptcy Court Prohibiting Petitioner From Retaining Usage Rights Under the Contract.

The final inquiry pertains to section 365(n) and whether its application includes trademarks. Section 365(n) represents an exception to the general rule that a debtor may freely reject an executory contract under its rejection powers, and operates to shield the non-debtor licensee from the consequences of the debtor’s rejection. 11 U.S.C. § 365(n). Read in concurrence, section 101(35A) defines the term “IP” and 365(n) provides a mechanism for licensees to elect retention of certain rights when a licensing agreement is rejected by a trustee or debtor-in-possession. 11 U.S.C. §§ 101(35A); 365(n). However, on its face, section 365(n) does not apply to trademarks. 11 U.S.C. § 365(n). Much like section 365(g), courts have struggled to determine the proper treatment of trademark licenses in bankruptcy, considering their absence in the definition. This Court should affirm the lower courts’ ruling to exclude trademark licenses from the application of sections 101(35A) and 365(n) specifically because this interpretation of the statutes provides for a proper negative inference towards exclusion of trademarks; congressional intent has asserted that further research is required; and an inclusion of trademarks would thwart longstanding bankruptcy policy and a successful liquidation for Foodstar.
1. Canons of Statutory Interpretation Dictate that this Court’s Inquiry Must Include an “Expressio Unius Est Exclusio Alterius” Interpretation Toward Inclusion of a Trademark License Under Sections 101(35A) and 365(n) to be Consistent with a Holistic Statutory Reading.

Aside from “plain language” and “legislative history” interpretations, another relevant canon this Court may use to determine statutory meaning is “expressio unius est exclusio alterius,” which functions as a negative inference against items not included in a statutory list of exceptions to a general prohibition. See United States v. Wells Fargo Bank, 108 S. Ct. 1179, 1183 (1988). However, this interpretation may only be used when the items listed are members of an “associated group or series.” Id. Only then can an exclusion justify the negative inference that items not mentioned were deliberately excluded. Id.

In applying 365(n), courts have routinely relied on the plain language of the provision, reasoning by negative inference that trademarks should not be included under the protections of section 365(n).8 The plain language of the statute indicates the provision is not meant to include trademark licenses. 11 U.S.C. § 365(n). Further, Congress’s decision to use the more limiting term “means” instead of “includes” demonstrated that Congress acted deliberately in only extending protection to the forms of IP explicitly enumerated under section 101(35A). On the whole, an inquiry into the legislative history is unnecessary because the language of section 365(n) is unambiguous.

However, should this Court find that a review of legislative history is in fact necessary, this history too supports a negative inference of trademark licenses. The legislative history of section 365(n) explicitly states that trademarks were not addressed. See H.R. Rep. No. 100–505, 8 See In re Centura Software Corp., 281 B.R. 660, 670–71 (Bankr. N.D. Cal. 2002) (reasoning by negative inference to conclude that the IPLBA was not meant to extend protection to trademark licensees following the rejection of the license in bankruptcy. See also HQ Global Holdings, 290 B.R. 507, 513 n.5 (Bankr. D. Del. 2003) (noting the franchisees were not protected under section 365(n) and were left with a claim for damages resulting from rejection under section 365(g)(1)).
at 5 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3200, 3204 (noting that trademark licenses “raise issues beyond the scope of this legislation” because these “licensing relationships depend to a large extent on control of the quality of the products or services sold by the licensee”). Congress saw fit to create a definition defining “intellectual property” in bankruptcy proceedings, as opposed to in general. See 11 U.S.C. § 101(35A). On the whole, negative inferences are unavoidable whether through the “plain language” or “legislative history.”

2. An “*Expressio Unius Est Exclusio Alterterius*” Interpretation of Sections 101(35A) and 365(n) is Consistent with Longstanding Bankruptcy Policy and the Facilitation of a Plan of Liquidation.

In general, maximizing the value of Foodstar’s IP will most certainly be a top priority for the debtor-in-possession and its creditors. The value of estate assets should not be a surprise during bankruptcy proceedings. In enacting sections 101(35A) and 365(n), Congress undoubtedly recognized that trademarks occupy a special position in bankruptcy due to their complexity. Accordingly, trademark licenses should not be given protection under section 365(n) as it would not comport with bankruptcy policy or conform to a plan of liquidation.

Congress responsibly determined that more extensive studies needed to be done before trademarks could be included effectively. At the moment, the area remains too grey as to the ramifications of inclusion. The termination of a trademark licensee’s future usage rights under a contract is the only sensible interpretation of rejection until questions are answered.

Further, excluding trademarks aids in the facilitation of a plan of liquidation due to the “goodwill” associated with the trademark and the statutory requirements by each party to retain the trademark. *In re XMH Corp.*, 647 F.3d 690, 995–96 (7th Cir. 2011). Under the Lanham Act, trademark licensing agreements include provisions for quality assurance, along with other
statutory obligations held by both parties. If the licensor enters liquidation proceedings, it may be unable to assure the quality of the trademarked products, which could subject the mark to abandonment and termination. Further, inclusion of trademark licenses as IP under section 101(35A) could be detrimental to not only the debtor and creditors, but also to the licensee who risks losing the usage rights anyways under a theory of a “naked license.” This could lead to ramifications that defeat the purpose of bankruptcy restructuring. Thus, when enacting IPBA, Congress explained in the Senate Report that because these trademark licenses depended substantially on quality control, such protection was beyond the scope of the IPBA until a more extensive study could be performed. See S. Rep. No. 100–505, at 5.

Going further, a ruling by this Court in favor of terminating the licensee’s future usage rights, is a fair and reasonable determination. There are ways in which a court can ease any effect felt by the licensee upon rejection through application of a transition period. A transition period approach is already a growing trend within the bankruptcy court system and grants certain licensees of rejected trademark licenses a transition period to phase out their use of the trademark. See S. Rep. No. 100-505, at 5 (asserting “licensing relationships depend to a large extent on control of the quality of the products or services sold by the licensee”).

10 See, e.g., Barcamerica Int’l USA Trust v. Tyfield Imps., Inc., 289 F.3d 589 (9th Cir. Cal. 2002) (concluding that Barcamerica’s naked licensing of the mark is a sufficient ground to support summary judgment).

11 See HQ Global Holding, Inc., 290 B.R. at 514 (granting the request by the franchisees for a transition period); In re Exide, 340 B.R. at 250 (approving a two-year transition period for the benefit of the licensee while noting the importance of fashioning a transition period to mitigate any potential damage and business disruption the licensee may suffer from the lose of the trademark). The court in HQ Global Holding noted that there is no authority for any transition period. HQ Global Holdings, 290 B.R. at 514. The court in In re Exide went a step further and emphasized the importance of the licensing agreement incorporating a provision addressing such issues, while taking into account the sophistication of the parties. In re Exide, 340 B.R. at 250
II. THE THIRTEENTH CIRCUIT ERRED IN DETERMINING 11 U.S.C. SECTION 365 DOES NOT APPLY EXTRATERRITORIALLY WHEREAS THE PLAIN LANGUAGE AND LEGISLATIVE HISTORY SUGGEST OTHERWISE.

The Thirteenth Circuit erred in determining that Congress did not intend to apply 11 U.S.C. section 365 extraterritorially regarding foreign license agreements. In doing so, the Thirteenth Circuit frustrated the congressional intent, which essentially nullified Congress’s intent necessary to prove the existence of statutory language within the Code to rebut the presumption against extraterritorial applications of laws. The Code cannot be viewed with narrow vision, but rather observed in its entirety, the way Congress intended since all provisions interconnect and build upon one another. Ultimately, the dissenting opinion was correct when it interpreted the Code as a single unit and found the requisite evidence showing Congress’s intent to apply the United States’ bankruptcy laws extraterritorially.

Fitted into a society that regularly promotes international trade and commerce, it is imperative to recognize that these common activities require laws and policies to protect assets, tangible as well as intangible. This issue is not only about interpreting the Code and its extraterritorial application, but also about protecting the interests and rights of debtors and creditors in a fast-paced world, and the wealth of our nation. In order to provide such protection and maximize an estate, bankruptcy courts should be able to apply substantive law extraterritorially. In recognizing the extraterritorial reach of a specific Code provision, Judge Posner, writing for the Seventh Circuit, correctly indicated in conjunction with this matter that “[t]he efficacy of the bankruptcy proceeding depends on the court’s ability to control and marshal the assets of the debtor wherever located . . . .” In re Rimsat, Ltd., 98 F.3d 956, 961 (7th Cir. 1996). If the Code is determined to not reach assets abroad, then uncontrollable fights for a debtor’s domestic assets—an action that the Code was designed to prevent—could occur,
thereby jeopardising the efficiency of the Code as a whole. This could not have been Congress’s intent.

It is understood that “Congress has the authority to enforce its laws beyond the territorial boundaries of the United States.” *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 284–85 (1949). Whether Congress has in fact exercised that authority is a matter of statutory construction. *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) (“Aramco”). This “canon of construction, [known as the presumption against extraterritoriality]¹² . . . is a valid approach whereby unexpressed congressional intent may be ascertained.” *Foley Bros., Inc.*, 336 U.S. at 285. This important principle “serves to protect against unintended clashes between our laws and those of other nations[,] which could result in international discord.” *Id.*

In applying this rule of construction, the courts employ the *Foley Brothers* three-prong test. *Foley Bros.*, 336 U.S. at 285. The first prong is whether “language in the [relevant Act] gives any indication of a congressional purpose to extend its coverage beyond places over which the United States has sovereignty or has some measure of legislative control.” *Id.* Nevertheless, “the plain meaning of legislation should be conclusive, except in the ‘rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters[,]’” and “in such cases, the intention of the drafters, rather than the strict language, controls.” *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989) (*quoting Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)). Intent may also be deciphered through “similarly-phrased legislation or the overall statutory scheme.” *In re Simon*, 153 F.3d 991, 995 (9th Cir. 1998). However, unless there is an affirmative intention of Congress clearly expressed to give a statute an extraterritorial effect, the court must presume it is primarily concerned with domestic conditions. *Aramco*, 499 U.S. at 248.

To apply the second prong, this Court should look to the “context” of the statute,\(^\text{13}\) including the legislative history and even the historical settings. *Kiobel*, 133 S. Ct. at 1666–69. The third prong refers to administrative interpretations of the law. *Foley Bros.*, 336 U.S. at 286–88. This prong is not at issue in this case because only the United States courts are vested with the power to interpret the Code.

**A. The United States Bankruptcy Code Must be Considered in its Entirety when Applying the Presumption Against Extraterritoriality so as to Properly Ascertain Congressional Intent.**

Congress fundamentally intended that all the provisions of the Code be read together to give effect when considering statutory construction. *In re Fiorilli*, 196 B.R. 83, 86 (Bankr. N.D. Ohio 1996) (*citing In re Fryer*, 172 B.R. 1020, 1025 (Bankr.S.D.Ga.1994)); *In re John*, 352 B.R. 895, 902 (Bankr. N.D. Fla. 2006) (explaining that “the Bankruptcy Code in its entirety is a comprehensive statutory scheme, the provisions of which should read in context as an integrated whole”). Piecemeal interpretations will frustrate Congress’s intent when it drafted the Code. *See In re Simon*, 153 F.3d at 996 (indicating that Congress clearly intended to apply the Code extraterritorially when claims involve a bankruptcy estate). This requirement sets out the framework of analysis of the Code: if congressional intent is seen to apply the Code extraterritorially in its entirety then, logically, section 365 will have extraterritorial reach as well.

**B. The United States Courts Departed from “Clear Statement Rule” Set Out by *Aramco* and Used a Less Stringent Approach to Analyze Statutes.**

Justice Marshall vigorously criticized the majority opinion of *Aramco* because he believed that the majority had departed from the precedence when it transformed the *Foley Brothers’s* three-prong test in a “clear statement rule.” *Aramco*, 499 U.S. 244, 261 (1991) (Marshall, J., dissenting). While Justice Marshall did not deny that the “clear statement rule”

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could be used in some circumstances, he suggested that the *Foley Brothers’s* three-prong analysis is the default test, which the Court should use to determine the geographical scope for the United States’ laws. *Id.* at 262–66. Although the majority considered the statutory language, legislative history, and administrative interpretations, Justice Marshall argued that the majority’s application of the “clear statement rule” was so strict that no statute could ever have an extraterritorial reach unless Congress clearly expressed its intentions. *Id.*

This Court, in *Aramco*, concluded that Title VII did not apply extraterritorially, notwithstanding the contrary position taken by the federal agency empowered to administer Title VII and Justice Marshall. *Id.* at 258–78. However, shortly after the *Aramco* decision, Congress enacted the Civil Rights Act of 1991, which stated that “the term ‘employee’ under Title VII includes ‘[w]ith respect to employment in a foreign country . . . an individual who is a citizen of the United States.’” *Souryal v. Torres Advanced Enter. Solutions, LLC*, 847 F. Supp. 2d 835, 842 (E.D. Va. 2012) (emphasis added). By this amendment, Congress superseded *Aramco*’s interpretation of Title VII. *Id.* Thus, Congress implicitly indicated the initial intention to apply the statute extraterritorially, but the stringent “clear statement” requirement used in *Aramco* produced the wrong result. *Aramco*’s interpretation under “clear statement rule” of the language, legislative history, and administrative interpretation frustrated the congressional intent.14 Post *Aramco*, subsequent Supreme Court cases pertaining to extraterritoriality either followed Justice Marshall’s approach to ascertain congressional intent or significantly loosened the application of “clear statement rule.”

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14 In *Aramco*, this Court rejected that the definitions of the terms “commerce” and “employers” are not broad enough to give the statute extraterritorial effect. *Aramco*, 499 U.S. at 248–52. This Court also found the broad jurisdictional language of the statute argument unpersuasive. *Id.* at 249–50. Further, this Court rejected the boilerplate language argument stating that such language can be found in a number of statutes that do not apply abroad. *Id.* at 250–51. This Court pointed out that the “evidence, while not totally lacking in probative value, [fell]short of demonstrating the affirmative congressional intent . . . .” *Id.* at 249.
This Court, in *Smith*, departed from “clear statement rule.” *Smith v. United States*, 507 U.S. 197, 203–04 (1993). This Court examined the language and structure of the Act and, most significantly, its legislative history. *Id.* *Smith* did not address or otherwise attempt to reconcile the so-called “clear statement rule.” *Id.* *Smith* was unwilling to use such a stringent approach as the majority suggested in *Aramco*. Significantly, although Chief Justice Rehnquist wrote both opinions for *Smith* and *Aramco*, he disregarded the “the clear statement” rule in *Smith*, thereby reverting back to the three-prong test. *Id.* at 201–03.

Similarly, in *Sale*, this Court did not treat the presumption as “the clear statement rule” either. *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993). Justice Stevens, analyzing the Nationality Act of 1952, acknowledged that “all available evidence” about the meaning of a particular statute should be carefully examined to determine whether the statute was intended to have an extraterritorial reach. *Id.* at 177. Lower courts followed this Court’s lead in applying the presumption and three-prong test instead of “the clear statement” rule. See, e.g., *United States v. Weingarten*, 632 F.3d 60 (2d Cir. 2011); *Kollias v. D & G Marine Maintenance*, 29 F.3d. 67, 72–75 (2d Cir. 1994); *Envtl. Def. Fund, Inc. v. Massey*, 986 F.2d. 528, 530–32 (D.C. Cir. 1993). Ultimately, this Court resolved the issue in conjunction with a stringent application of “the clear statement rule.”

Recent interpretation by this Court, in *Morrison*, regarding the presumption against extraterritoriality reinforces the canon of construction regarding a statute’s meaning, rather than imposing a limit upon Congress’s ability to legislate. *Morrison*, 130 S.Ct. at 2877 (2010). In *Morrison*, Justice Scalia explained and clarified the implications of the so-called “clear statement rule.” *Morrison*, 130 S.Ct. at 2883. The canon is not a clear statement requirement, which stipulates that the statute must contain language explicitly indicating that such particular statute
shall apply abroad thereby allowing contextual interpretation to aid in obtaining a statute’s meaning. *Id.* The Thirteenth Circuit’s statement that “[t]he proponent of extraterritorially bears a very heavy burden of producing unmistakable clear evidence” is thus misleading. (R. 10).

C. The Plain Language of the Code Weighs Heavily in the Direction of the Congressional Intent to Apply the Code Extraterritorially.

At least two instances exist in the Code where Congress showed intent to grant extraterritorial application to the Code’s provisions. The first is 28 U.S.C. section 1334(e), which grants exclusive jurisdiction of the Code to “all the property, wherever located . . . .” 28 U.S.C. § 1334(e)(1) (emphasis added). The other provision is 11 U.S.C. section 541(a) providing that the commencement of a Title 11 bankruptcy case creates an estate, which is comprised of property “wherever located and by whomever held.” 11 U.S.C. § 541(a) (emphasis added). Although the Code does not define “wherever,” the word “wherever” is surely intended to be used in its ordinary sense; that is, “in all places (emphasizing the lack of restrictions).” *New Oxford American Dictionary* 1968 (3d ed. 2010). Indeed, a common sense meaning of the phrase “property wherever located” stipulates a broad understanding to mean all property regardless of any boundaries. For example, if a will provides that a devisee shall inherit all the decedent’s property, regardless of its location, the probate court will have no problem disposing all the property, including such property located abroad, in accordance to the will. Thus, the ordinary meaning of the plain language provides for a broad geographical application of the statute for property held both domestically and overseas.

Additionally, the scope of what constitutes the property of an estate is broad enough and intended to maximize an estate’s value, and eventually benefit creditors, debtors, or both, regardless of the physical location of the property. Such an all-encompassing definition of what constitutes property of an estate clearly indicates Congress’s intent to not be bound by the
physical location of the property. The Trademark originated in Eastlandia and was later sold to Foodstar, which included the twenty-year exclusive license to Vohra. (R. 4). Not allowing section 365 to apply in this situation would preempt the plain language interpretation defining the scope within section 541 since “wherever located” would necessarily include property located in Eastlandia. Therefore, the plain reading of the Code enables courts to apply the United States’ bankruptcy law to property located abroad.

Furthermore, Congress has had ample opportunities to clarify the geographical scope of the Code as it applies to property that should be included within an estate and provide guidance so courts know the extent of in rem jurisdiction. The mere inclusion of qualifying language so that “wherever located” is followed by “in the United States” would resolve the issue pertaining to the Code’s extraterritorial application. Provided the importance of the issue, such omission has a strong implication on the congressional intent to grant the Code extraterritorial effect. The omission was not a mistake, but served to intentionally broaden the scope of the Code’s reach.

Analogously, while being aware of the difference the omission would make, Congress expressly limited the “wherever located” language within a “similarly-phrased” statute, 15 G.C.A. section 1207. Congress specifically limited the “wherever located” language to a particular geographical location. 15 G.C.A. § 1207. The statute provides: “[a]ll tangible personal property owned by the decedent, wherever located at the decedent’s death, that was customarily kept in Guam . . . .” Id. (emphasis added). By expressly narrowing the location to Guam, Congress resolved any potential claims regarding the statute’s extent. It is presumed that Congress is “aware of the need to make a clear statement that a statute applies overseas” if Congress wishes this intent. Aramco, 499 U.S. at 258. The lack of such restriction in the language of sections 541 or 1334—and existence of such restrictions in the similarly-phrased
statute—impliedly serves as proof of congressional intent to grant the Code an extraterritorial reach according to the plain language of the statute.

Moreover, in the notable and recent Kiobel case, this Court provided an example of clear congressional intent ascertainable from the language of the “similarly-phrased legislation.” Kiobel, 133 S. Ct. at 1665. This Court singled out 18 U.S.C. section 1091(e) granting this Court jurisdiction over the offenses of genocide “regardless of where the offense is committed.” 18 U.S.C. § 1091(e) (emphasis added). According to Kiobel, the phrase “regardless of where” indicates affirmative congressional intent clearly expressed to apply the statute overseas. Id. In this case, section 1334(e)(1) is also a jurisdictional grant over property of the debtor “wherever located.” This Court noted that “Congress, even in a jurisdictional provision, can indicate that it intends federal law to apply to conduct occurring abroad.” Id. Semantically and logically, both phrases in the context of the language of the statutes mean the same thing; certain United States laws have an extraterritorial reach. Even more significantly, “wherever” is also defined as “regardless of where.” New Oxford American Dictionary 1968 (3d ed. 2010). Thus, “wherever located” and “regardless of where” may be used interchangeably without altering the meaning of this sentence.

Furthermore, basing its conclusion on Kiobel’s holding rendering the Alien Tort Statute “strictly jurisdictional,” the Thirteenth Circuit contended that section 1334(e)(1) merely has a jurisdictional effect. (R. 12). However, section 1334(e)(1) is not a jurisdictional statute of the kind Kiobel discussed. That follows from congressional grant of extraterritorial jurisdiction to the bankruptcy courts through the doctrine of in rem jurisdiction.15

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As general principle, protection of *in rem* jurisdiction is a sufficient basis for a court to restrain another court’s proceedings. *Donovan v. City of Dall.*, 377 U.S. 408, 412 (1964). In such circumstances, “the federal courts will have custody over such property and the exclusive jurisdiction to proceed.” *Id.* This rationale extends to foreign proceedings. *Gau Shan Co. v. Bankers Trust Co.*, 956 F.2d 1349, 1356 (6th Cir. 1992). In exercising its *in rem* jurisdiction alone, this Court is constitutionally empowered to adjudicate rights to property only when such property is legally or physically located within its own jurisdiction. 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1070 (3d ed. rev. 2004). The creation of the estate at the commencement of a bankruptcy case simultaneously creates the fiction, through the doctrine of *in rem* jurisdiction, that the property of the estate is legally located within the jurisdictional boundaries of the district in which the court sits, regardless of the actual location. *In re Simon*, 153 F.3d at 996. The Ninth Circuit, discussing *in rem* jurisdiction for bankruptcy courts, concluded that “as to actions against the bankruptcy estate, Congress clearly intended extraterritorial application of the Bankruptcy Code.” *Id.* Therefore, *Kiobel* is clearly distinguishable from the case at hand.

The Thirteenth Circuit’s majority’s argument that the generic terms cannot indicate the congressional intent is irrelevant to this case and thus unavailing. Comparatively, the statute at issue in *Kiobel* was the ATS. *Kiobel*, 133 S. Ct. at 1662; 28 U.S.C. § 1350. The ATS states the following: “The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” 28 U.S.C. § 1350. This Court, in *Kiobel*, stated that generic terms like “any” and “every” do not rise to the level of clear evidence of congressional intent. *Kiobel*, 133 S. Ct. at 1665–69. This

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1982) (concluding that Congress created “a statutory rule designed to reflect that the totality of *in personam* and *in rem* jurisdiction should be exercised by the bankruptcy courts in order to avoid fragmentation of litigation and in furtherance of the spirit of economy in administration of bankruptcy estates.”).
Court, in *Aramco*, added that “boilerplate terms” do not give statutes extraterritorial effect without more specificity. *Aramco*, 499 U.S. at 250–51.

Section 541(a) does not contain generic terms, rather it is more specifically written. For example, section 541(a) does not have possessive determiners like “any” or “every” that fall within the scope of the analysis. On the contrary, legislators included the relative adverb “wherever,” which in the phrase “wherever located” provides for a broad geographical interpretation of the modified noun. Further, extensive research of the federal codes does not yield usage of the phrase as a boilerplate term. By no means is the adverb “wherever” either generic or a boilerplate term. Rather, by accurately expressing its purpose, Congress used a geographical term to extraterritorially apply the Code.

In *Aramco*, this Court analyzed Title VII and was concerned that Congress did not provide the mechanisms for overseas enforcement of that statute. *Aramco*, 499 U.S. at 256. Such mechanisms are provided for the Code. For example, in 1997, the UNCITRAL approved a Model Law on Cross Border Insolvency. Jay Lawrence Westbrook, *Modeling International Bankruptcy*, 1998–1999 Ann. Surv. of Bankr. L. 465. Eastlandia adopted the UNCITRAL. (R. 5). The Model Law recognizes the existence of a “main proceeding” and a “non-main proceeding.” *In re Bd. of Dirs. of Hopewell Int’l Ins. Ltd.*, 272 B.R. 396, 406 (Bankr. S.D.N.Y. 2002). "The estate representative in the main proceeding is authorized to seek relief in an ancillary proceeding before the courts of another nation, including enforcement of its orders and decrees.” *Id.* (emphasis added). Under section 105(a), a bankruptcy court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Code].” *In re Rimsat*, 98 F.3d at 961. In order to enforce a United States bankruptcy court’s judgment in conjunction with property in a foreign country, a bankruptcy court should be
initially able to apply the Code to such property. Such judgment will be enforceable in Eastlandia under the Model Law, which serves as a mechanism to enforce extraterritoriality.

Continuing the discussion regarding Title VII, this Court, in *Aramco*, stated that the statute at issue “fails even to mention foreign nations or foreign proceedings.” *Aramco*, 499 U.S. at 256. On the contrary, the Code contains numerous instances of various aspects that address foreign matters. According to *Aramco*, this factor serves to prove a statute can apply abroad. *Id.*

Furthermore, this Court explained that application of the Lehman Act abroad was due to the defendant’s conduct outside the United States because it had a domestic effect resulting from the “broad jurisdictional grant” of the statute, and “sweeping reach into all commerce.” *Aramco*, 499 U.S. at 252 (internal quotations omitted). Applying this framework to the case at hand, section 1334(e) also provides a broad jurisdictional grant over the property “wherever located” and Vohra’s conduct, in refusing to relinquish the use of the Trademark, while disregarding a court’s order, produces a significant effect in the United States. (R. 4–6). Vohra’s conduct ultimately deprives the estate of ten to fifteen percent of its potential sale value. (R. 5). Such conduct violates the primary purpose of the Code, to make creditors whole and aid debtors to relinquish debts. 28 U.S.C. § 1334(e)(1). Given this Court’s reasoning from *Aramco*, this Court should reverse the Thirteenth Circuit’s decision.

Failing to extend the application of the Code to property outside the territorial boundary of the United States will set a poor precedent. Additionally, it will create a loophole for unscrupulous debtors to freely transfer their assets to shell entities abroad or merely acquire

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assets overseas to avoid the reach of the Code. The *Stegeman* court cured this type of fraudulent conduct by holding that section 152 applies extraterritorially. *Stegeman v. United States*, 425 F.2d 984, 988 (9th Cir. 1970); 18 U.S.C. § 152. But wrongdoing of this type may well fall within other statutes of the Code which is another reason to grant the Code the extraterritorial reach.

Negative implication indirectly shows the congressional intent to apply the Code abroad. For instance, the Southern District of New York stated that section 1520(a) “refers to ‘property of the debtor’ to distinguish it from the ‘property of the estate’ that is created under section 541(a).” *In re JSC BTA Bank*, 434 B.R. at 335 (citing *In re Atlas Shipping A/S*, 404 B.R. 726, 739 (Bankr. S.D.N.Y. 2009)). The court, in *In re Gold & Honey*, observed that section 1520 only makes sections 361 and 362 apply with respect to the debtor and the debtor’s property within the physical borders of the United States. *In re Gold & Honey, Ltd.*, 410 B.R. 357, 373 n.19 (Bankr. E.D.N.Y. 2009).

Providing another example, the court, in *In re Pro-Fit Holdings*, held that the automatic stay arising from a recognition order in a Chapter 15 case applies only within the territorial jurisdiction of the United States. *In re Pro-Fit Holdings Ltd.*, 391 B.R. 850, 863 (Bankr. C.D.Cal. 2008). The court concluded that, in the context of Chapter 15, “a bankruptcy court’s jurisdiction over property of the debtor is expressly limited to property located ‘within the territorial jurisdiction of the United States.’” *In re JSC BTA Bank*, 434 B.R. at 345. Thus, Congress excluded Chapter 15 of the Code from having an extraterritorial reach, yet it has not done so to other chapters. Had Congress desired to, it easily could have phrased sections 1334(e)(1) and 541(a) as “wherever located in the United States.” Nevertheless, both provisions read as “wherever located,” providing for a broad geographical scope. 11 U.S.C. § 541(a); 28
U.S.C. § 1334(e)(1). Therefore, the entire Code, save Chapter 15, should have an extraterritorial reach.

One cannot carry an ocean in a thimble, yet one can build lighthouses to guide ships in the ocean to prevent shipwrecks and save lives. (R. 12). Sections 541(a) and 1331(e)(1) are such lighthouses on two different shores of the Code in the ocean of bankruptcy law to guide the courts as to the extraterritorial reach of the Code, thereby saving debtors and creditors. These two provisions are not isolated instances that attempt to prove Congress’s intent. Both are essential parts of the Code. Section 1334(e)(1) is a jurisdictional provision providing in rem jurisdiction so courts can exercise their powers over the property wherever located. In turn, section 541 also reaches into several chapters under the purview of Title 11. Section 541 actually defines the types of property, regardless of its location, to be included in the estate over which section 1334 provides in rem jurisdiction.17

Interpreting the plain language of the Code’s statutes produces a clear and simple result, the presumption against extraterritoriality has been rebutted. Congress has expressed its intent to apply the Code overseas through sections 541 and 1334, as well as through “all available evidence” and “context.” Nonetheless, the legislative history should be examined to find more evidence of such intent.

D. The Legislative History of Statute 541 Produces Substantial Evidence that Rebutsthe Presumption Against Extraterritoriality, which Favors the Code Having a Foreign Reach

The Code’s legislative history makes it clear that Congress intended “wherever located” to be broadly construed so as to include property located both domestically and overseas. The legislative history of section 1334(e)(1) does not mention the requisite congressional intent.

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17 See Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 474 B.R. 76, 81 (S.D.N.Y. 2012) (explaining that commencing a bankruptcy action, section 541(a) produces a worldwide estate of all legal and equitable interests held by the debtor at the time of such commencement, wherever located) (emphasis added).
Nevertheless, the legislative history of section 541 leaves no room to argue against the overseas application of the Code.

The legislative history of section 541 states that the statute includes the property described in section 70a of the Bankruptcy Act, which was repealed when the Code became effective in 1979. Specifically, the House and Senate Reports read as follows:

The scope of this paragraph [§ 541(a)(1)] is broad. It includes all kinds of property, including tangible or intangible property, causes of action (see Bankruptcy Act § 70a (6)), and all other forms of property currently specified in section 70a of the Bankruptcy Act § 70a, as well as property recovered by the trustee under section 542 of proposed [T]itle 11, if the property recovered was merely out of the possession of the debtor, yet remained “property of the debtor.”


The trustee of the estate of a bankrupt . . . shall . . . be vested by operation of law with the title of the bankrupt as of the date of the filing of the petition initiating a proceeding under this Act, except insofar as it is to property which is held to be exempt, to all of the following kinds of property wherever located . . . (5) property . . . which prior to the filing of the petition he [the bankrupt] could by any means have transferred or which might have been levied upon and sold under judicial process against him, or otherwise seized . . . .

11 U.S.C. § 70a (repealed) (emphasis added). Although this language is not clear as to the applicability of the Code abroad, the ambiguity disappears when referring to the legislative history of the 1952 amendment. It makes clear that Congress intended section 70a to have extraterritorial reach because the most important feature of the amendment was the addition of the geographical scope indicator—the phrase “wherever located”—to the text of the provision.

The House Report accompanying the bill provides: “[s]ection 23 amends § 70a to make clear that a trustee in bankruptcy is vested with the title of the bankrupt in property which is located without, as well as within, the United States . . . . The words ‘wherever located’ have
therefore been added at appropriate places . . . .” H.R. REP. No. 2320 (1952), reprinted in 1952 U.S.C.C.A.N. 1960. Based on the analysis of these excerpts, the Ninth Circuit held that the property of an estate as defined in section 541 includes property of the debtor located outside the United States. In re Simon, 153 F.3d at 996. Several other courts that dealt with this issue are in accord with this conclusion. Once the estate includes the property both within and outside the United States’s boundaries, the bankruptcy courts are enabled to apply the Code to such estates through the doctrine of in rem jurisdiction.

By applying the presumption against extraterritoriality, the courts preserve a “stable background against which Congress can legislate with predictable effects.” Morrison, 130 S. Ct. at 2881. It is most certainly not an accident that the 1952 amendment was made seven years after the conclusion of World War II. At that time, participating nations all over the world were rebuilding their economies with the aid of the United States and most certainly utilizing numerous contracts for the sale of goods and services internationally. Prior to the amendment and inclusion of the phrase “wherever located,” the bankruptcy courts could not fully implement the Code’s policies and apply substantive law extraterritorially. This generated a need for substantial change because “predictable effects” of the domestic application of the Code would frustrate the congressional intent. The purpose of the new legislation was to remedy these defects, correct an imbalance, and grant an extraterritorial reach of the Code.

The intended extraterritorial effect of the Code is absolutely necessary for the United States courts’ ability to effectively apply the Code to debtors’ assets all over the world. Such necessity emerged due to globalization, international commerce, and the development of IP rights. By inserting “wherever located” into the Code, Congress intended to provide the

bankruptcy courts with the authority to exercise judicial power over debtors’ property regardless of its geographical location. Holding otherwise would undermine the fundamental policies of the Code, such as safeguarding the estate’s property and fair distribution to debtors’ creditors.

**CONCLUSION**

For the foregoing reasons, Petitioner, Foodstar, respectfully requests that this Court reverse the judgment of the Thirteenth Circuit Court of Appeals and hold that: (1) a trademark licensee’s rights are terminated upon the rejection of an executory licensing agreement under section 365; and (2) section 365 of the Code applies extraterritorially since the Code should be interpreted in its entirety, and the statutory language, legislative history, and administrative interpretations of sections 1334(e)(1) and 541(a) rebut the presumption against extraterritoriality to further indicate such congressional intent.

Respectfully submitted on this 27th day of January, 2014.

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Team P 9
Counsel for Petitioner
APPENDIX A


(35A) The term “intellectual property” means--

(A) trade secret;

(B) invention, process, design, or plant protected under title 35;

(C) patent application;

(D) plant variety;

(E) work of authorship protected under title 17; or

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law.
(a) Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title;

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement; or

(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.
(3) For the purposes of paragraph (1) of this subsection and paragraph (2)(B) of subsection (f), adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance--

(A) of the source of rent and other consideration due under such lease, and in the case of an assignment, that the financial condition and operating performance of the proposed assignee and its guarantors, if any, shall be similar to the financial condition and operating performance of the debtor and its guarantors, if any, as of the time the debtor became the lessee under the lease;

(B) that any percentage rent due under such lease will not decline substantially;

(C) that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as a radius, location, use, or exclusivity provision, and will not breach any such provision contained in any other lease, financing agreement, or master agreement relating to such shopping center; and

(D) that assumption or assignment of such lease will not disrupt any tenant mix or balance in such shopping center.

(4) Notwithstanding any other provision of this section, if there has been a default in an unexpired lease of the debtor, other than a default of a kind specified in paragraph (2) of this subsection, the trustee may not require a lessor to provide services or supplies incidental to such lease before assumption of such lease unless the lessor is compensated under the terms of such lease for any services and supplies provided under such lease before assumption of such lease.

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor in possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(B) such party does not consent to such assumption or assignment; or

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; or

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief.

(d)(1) In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

(2) In a case under chapter 9, 11, 12, or 13 of this title, the trustee may assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor at any time before the confirmation of a plan but the court, on the request of any party to such contract or lease, may order the trustee to determine within a specified period of time whether to assume or reject such contract or lease.

(3) The trustee shall timely perform all the obligations of the debtor, except those specified in section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title. The court may extend, for cause, the time for performance of any such obligation that arises within 60 days after the date of the order for relief, but the time for performance shall not be extended beyond such 60-day period. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f) of this section. Acceptance of any such performance does not constitute waiver or relinquishment of the lessor’s rights under such lease or under this title.

(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of--

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming a plan.

(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

(5) The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee’s obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor’s rights under such lease or under this title.

[(10) Redesignated (5)]

(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on--

(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

(B) the commencement of a case under this title; or

(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

(2) Paragraph (1) of this subsection does not apply to an executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if--

(A)(i) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to the trustee or to an assignee of such contract or lease, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and

(ii) such party does not consent to such assumption or assignment; or

(B) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

(f)(1) Except as provided in subsections (b) and (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

(2) The trustee may assign an executory contract or unexpired lease of the debtor only if--

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.
(3) Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.

(g) Except as provided in subsections (h)(2) and (i)(2) of this section, the rejection of an executory contract or unexpired lease of the debtor constitutes a breach of such contract or lease--

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title--

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection; or

(B) if before such rejection the case has been converted under section 1112, 1208, or 1307 of this title--

(i) immediately before the date of such conversion, if such contract or lease was assumed before such conversion; or

(ii) at the time of such rejection, if such contract or lease was assumed after such conversion.

(h)(1)(A) If the trustee rejects an unexpired lease of real property under which the debtor is the lessor and--

(i) if the rejection by the trustee amounts to such a breach as would entitle the lessee to treat such lease as terminated by virtue of its terms, applicable nonbankruptcy law, or any agreement made by the lessee, then the lessee under such lease may treat such lease as terminated by the rejection; or

(ii) if the term of such lease has commenced, the lessee may retain its rights under such lease (including rights such as those relating to the amount and timing of payment of rent and other amounts payable by the lessee and any right of use, possession, quiet enjoyment, subletting, assignment, or hypothecation) that are in or appurtenant to the real property for the balance of the term of such lease and for any renewal or extension of such rights to the extent that such rights are enforceable under applicable nonbankruptcy law.
(B) If the lessee retains its rights under subparagraph (A)(ii), the lessee may offset against the rent reserved under such lease for the balance of the term after the date of the rejection of such lease and for the term of any renewal or extension of such lease, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such lease, but the lessee shall not have any other right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

(C) The rejection of a lease of real property in a shopping center with respect to which the lessee elects to retain its rights under subparagraph (A)(ii) does not affect the enforceability under applicable nonbankruptcy law of any provision in the lease pertaining to radius, location, use, exclusivity, or tenant mix or balance.

(D) In this paragraph, “lessee” includes any successor, assign, or mortgagee permitted under the terms of such lease.

(2)(A) If the trustee rejects a timeshare interest under a timeshare plan under which the debtor is the timeshare interest seller and--

   (i) if the rejection amounts to such a breach as would entitle the timeshare interest purchaser to treat the timeshare plan as terminated under its terms, applicable nonbankruptcy law, or any agreement made by timeshare interest purchaser, the timeshare interest purchaser under the timeshare plan may treat the timeshare plan as terminated by such rejection; or

   (ii) if the term of such timeshare interest has commenced, then the timeshare interest purchaser may retain its rights in such timeshare interest for the balance of such term and for any term of renewal or extension of such timeshare interest to the extent that such rights are enforceable under applicable nonbankruptcy law.

(B) If the timeshare interest purchaser retains its rights under subparagraph (A), such timeshare interest purchaser may offset against the moneys due for such timeshare interest for the balance of the term after the date of the rejection of such timeshare interest, and the term of any renewal or extension of such timeshare interest, the value of any damage caused by the nonperformance after the date of such rejection, of any obligation of the debtor under such timeshare plan, but the timeshare interest purchaser shall not have any right against the estate or the debtor on account of any damage occurring after such date caused by such nonperformance.

   (i)(1) If the trustee rejects an executory contract of the debtor for the sale of real property or for the sale of a timeshare interest under a timeshare plan, under which the purchaser is in possession, such purchaser may treat such contract as terminated, or, in the alternative, may remain in possession of such real property or timeshare interest.

   (2) If such purchaser remains in possession--

      (A) such purchaser shall continue to make all payments due under such contract, but may,1 offset against such payments any damages occurring after the date of the rejection
of such contract caused by the nonperformance of any obligation of the debtor after such date, but such purchaser does not have any rights against the estate on account of any damages arising after such date from such rejection, other than such offset; and

(B) the trustee shall deliver title to such purchaser in accordance with the provisions of such contract, but is relieved of all other obligations to perform under such contract.

(j) A purchaser that treats an executory contract as terminated under subsection (i) of this section, or a party whose executory contract to purchase real property from the debtor is rejected and under which such party is not in possession, has a lien on the interest of the debtor in such property for the recovery of any portion of the purchase price that such purchaser or party has paid.

(k) Assignment by the trustee to an entity of a contract or lease assumed under this section relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment.

(l) If an unexpired lease under which the debtor is the lessee is assigned pursuant to this section, the lessor of the property may require a deposit or other security for the performance of the debtor’s obligations under the lease substantially the same as would have been required by the landlord upon the initial leasing to a similar tenant.

(m) For purposes of this section 365 and sections 541(b)(2) and 362(b)(10), leases of real property shall include any rental agreement to use real property.

(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect--

(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for--

(i) the duration of such contract; and

(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.
(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract--

(A) the trustee shall allow the licensee to exercise such rights;

(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

(C) the licensee shall be deemed to waive--

(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity.

(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall--

(A) to the extent provided in such contract or any agreement supplementary to such contract--

(i) perform such contract; or

(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.
(o) In a case under chapter 11 of this title, the trustee shall be deemed to have assumed (consistent with the debtor’s other obligations under section 507), and shall immediately cure any deficit under, any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution, and any claim for a subsequent breach of the obligations thereunder shall be entitled to priority under section 507. This subsection shall not extend any commitment that would otherwise be terminated by any act of such an agency.

(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

(C) The stay under section 362 and the injunction under section 524(a) (2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

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

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

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

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

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

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

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

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

(A) by bequest, devise, or inheritance;

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

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

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

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

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

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;
(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

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

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

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

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

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

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

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

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

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

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

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

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,2251;
(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but--

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

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

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $6,225;

(7) any amount--

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

(i) to--

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

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

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

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

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

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

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

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

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

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

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

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

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

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

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

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

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor), unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.
Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

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

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

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

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

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

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

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.
APPENDIX D


All tangible personal property owned by the decedent, wherever located at the decedent’s death, that was customarily kept in Guam prior to the decedent’s death, escheats to the Government of Guam in accordance with the provisions of Section 1201 of this Title.
(a) Basic offense.--Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such--

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

(6) transfers by force children of the group to another group; shall be punished as provided in subsection (b).

(b) Punishment for basic offense.--The punishment for an offense under subsection (a) is--

(1) in the case of an offense under subsection (a)(1) where death results, by death or imprisonment for life and a fine of not more than $1,000,000, or both; and

(2) a fine of not more than $1,000,000 or imprisonment for not more than twenty years, or both, in any other case.

(c) Incitement offense.--Whoever directly and publicly incites another to violate subsection (a) shall be fined not more than $500,000 or imprisoned not more than five years, or both.

(d) Attempt and conspiracy.--Any person who attempts or conspires to commit an offense under this section shall be punished in the same manner as a person who completes the offense.

(e) Jurisdiction.--There is jurisdiction over the offenses described in subsections (a), (c), and (d) if--

(1) the offense is committed in whole or in part within the United States; or

(2) regardless of where the offense is committed, the alleged offender is--

(A) a national of the United States (as that term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).
(B) an alien lawfully admitted for permanent residence in the United States (as
that term is defined in section 101 of the Immigration and Nationality Act (8
U.S.C. 1101));

(C) a stateless person whose habitual residence is in the United States; or

(D) present in the United States.

(f) Nonapplicability of certain limitations.--Notwithstanding section 3282, in the case of an
offense under this section, an indictment may be found, or information instituted, at any time
without limitation.
APPENDIX F


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

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

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

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

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

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

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

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

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APPENDIX G


The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.