8/24/18

No. 18-562

In The

Supreme Court of the United States

ELIZABETH HARING COOMES,

Petitioner,

v.

MARYLAND INSURANCE ADMINISTRATION,

Respondent.

On Petition For A Writ Of Certiorari To The Maryland Court Of Appeals

PETITION FOR A WRIT OF CERTIORARI

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Petitioner

QUESTIONS PRESENTED

Whether 11 U.S.C. 362(b)(4), the police and regulatory power exception to the automatic stay of bankruptcy, applies to a Debtor's appeal of a final regulatory action and whose bankruptcy estate includes the subject matter of the appeal?

Whether violations of the automatic stay of bankruptcy are void or voidable?

Whether the voluntary surrender of an insurance producer license in the absence of any formal or informal, final Virginia administrative agency proceeding that included fact finding or resolution of disputed facts, administrative charges, any action, admissions of guilt, findings of fact, conclusions of law or Order is the final disposition of an adverse administrative action within the ambit of the Graham-Leach-Bliley Act's Insurance Producer Licensing Model Act Section 17: Reporting of Actions as codified in all 50 states, in particular in the Annotated Code of Maryland, Insurance Article, Section 10-126(f)?

Whether the Maryland Insurance Administration had authority to assert original jurisdiction and try Petitioner *de novo* under Maryland law for acts that occurred in Virginia?

Whether the law of Double Jeopardy, Rule of Lenity and Doctrine of Merger apply to an administrative proceeding where the statute expressly criminalizes violations and contains a criminal penalty?

QUESTIONS PRESENTED – Continued

Whether the Dual Sovereignty exception to the Double Jeopardy Clause applies to regulatory actions by two state insurance regulatory agencies, and if so, whether the Court should overrule the Dual Sovereignty exception to the Double Jeopardy Clause?

Whether the Hearing Officer violated Petitioner's procedural rights and thus committed reversible error when she summarily revoked Petitioner's insurance producer license, finding that Petitioner had committed fraud or other dishonest conduct without the benefit of a full evidentiary hearing to determine whether Petitioner had the requisite intent to commit the fraud or dishonest conduct alleged by the Maryland Insurance Administration?

Whether the Circuit Court erred when it denied Petitioner's Motion for Leave to Offer Additional Evidence?

Whether the Maryland Court of Appeals abused its discretion by denying Petitioner's motion for an additional extension of time and dismissed her appeal for failure to timely file the brief?

Whether the Maryland Court of Appeals violated Petitioner's substantive and procedural Due Process rights by issuing the mandate 20 days prematurely, denying Petitioner's Motion to Reconsider, and Petitioner's Motion to Deem the Motion to Reconsider Timely Filed?

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner, who was Plaintiff-Appellant in the court below, is Elizabeth Haring Coomes.

Respondent, who was Defendant-Appellee in the court below, is the Maryland Insurance Administration.

Because no Petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

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PETITION FOR A WRIT OF CERTIORARI

Elizabeth Haring Coomes respectfully petitions for a writ of certiorari to review the judgment of the Maryland Court of Appeals in this case.

OPINIONS BELOW

The Court of Special Appeals of Maryland's opinion in the matter of *Elizabeth Haring Coomes v. Maryland Insurance Administration* is a reported opinion at 232 Md.App. 285 157 A.3d 364 2158, Sept.Term 2015. The Maryland Court of Appeals granted a writ of certiorari. The Maryland Court of Appeals Orders granting Respondent's Motion to Dismiss, finding 11 U.S.C. 362(b)(2)(D) applicable, and then later reversing and finding 11 U.S.C. 362(b)(4) applicable are not published, but are available in the Appendix.

JURISDICTION

The Maryland Court of Appeals entered judgment on March 29, 2018. This Court granted Petitioner an extension of time to file this Petition up to and including August 24, 2018. Petitioner timely filed the Petition. On August 28, 2018, this Court returned it, allowing Petitioner 60 days to revise it and file it in proper order. This Court has jurisdiction under 28 U.S.C. 1254(1), 28 U.S.C. § 1251, and Article III, Section 2 of the Constitution.

RELEVANT CONSTITUTIONAL PROVISIONS

United States Constitution, Article I, Section 8, Clause 4

United States Constitution, Article III, Section 2

The Fifth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in relevant part, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution, provides in relevant part, "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him."

The Sixth Amendment to the United States Constitution, provides in relevant part, "The accused shall enjoy the right . . . to be informed of the nature and cause of the accusation."

The Fourteenth Amendment to the United States Constitution, provides in relevant part, "nor shall any State deprive any person of life, liberty, or property, without due process of law."

INTRODUCTION

Certiorari is desirable and in the public interest because the case includes important bankruptcy and insurance law questions of national importance with splits of authority. The case is also one of first impression in bankruptcy law and administrative law. This case involves a matter of public importance to all bankruptcy Debtors, over 2,300,000 licensed insurance producers, and 37,000,000 licensed professionals like the Petitioner, who are subject to various regulatory schemes and may need the protection of the automatic stay in order to perfect an appeal. It involves interpretation of Federal statutes and Constitutional provisions with widespread application to bankruptcy debtors, insurance professionals, and the regulatory authority. The Maryland Courts have decided important questions of federal law that have not been, but should be, settled by this Court. The Maryland Courts and Maryland Insurance Administration have decided important federal questions in a way that conflicts with relevant decisions of this Court, the United States Bankruptcy Code, and the Constitution. Granting this petition is in the national interest.

This is a case of first impression which raises the question of whether an individual Debtor who is appealing a final regulatory agency action and whose bankruptcy estate includes the subject matter of the appeal is protected by the automatic stay of bankruptcy or whether the police and regulatory power exception to the automatic stay 11 U.S.C. 362(b)(4) is applicable.

This case raises an important bankruptcy law question of paramount importance, namely, whether actions taken in violation of the automatic stay are void or voidable. There is no authority on this question in the 4th circuit. The circuit courts are split on this question.

This is also a case of first impression in insurance law and administrative law involving an interpretation of Federal law, *viz*. the Graham-Leach- Bliley Act's Insurance Producer Licensing Model Act Section 17: Reporting of Actions as codified in all 50 states. Namely, whether the voluntary surrender of an insurance producer license in the absence of any formal or informal, final Virginia administrative agency proceeding that included fact finding or resolution of disputed facts, administrative charges, any action, admissions of guilt, findings of fact, conclusions of law or Order is the final disposition of an adverse administrative action within the ambit of the Graham-Leach-Bliley Act's Insurance Producer Licensing Model Act Section 17: Reporting of Actions as codified in all 50 states, in particular in the Annotated Code of Maryland, Insurance Article, Section 10-126(f). Although

there is supposed to be uniformity among the states pursuant to the Graham-Leach-Bliley Act's Insurance Producer Licensing Model Act (the PLMA), there is a split of authority among the state insurance regulators on the reporting of actions. The majority of states interpret the PLMA consistent with Petitioner's position.

This case also raises the question of whether the law of Double Jeopardy, Rule of Lenity and Doctrine of Merger apply to an administrative proceeding where the statute expressly criminalizes violations and contains a criminal penalty. It is distinguishable from others.

This case also raises the question of whether the Dual Sovereignty exception to the Double Jeopardy Clause applies to regulatory actions by two state insurance regulatory agencies, and if so, whether the Court should overrule the Dual Sovereignty exception to the Double Jeopardy Clause.

This case is an ideal vehicle to re-examine the dual sovereignty doctrine because it is so extreme and the facts are compelling. Over the course of the past seven years, Petitioner has endured serious health problems, fourteen surgeries, four years of total disability, four Chapter 13 bankruptcies due to the financial distress caused in large part by the lengthy criminal investigation in Virginia, a lengthy regulatory investigation in Virginia, a regulatory investigation in Maryland, a lengthy administrative proceeding in Maryland (including a short motions hearing in which Petitioner testified) resulting in the summary revocation of her

professional license, and over five years of litigation in Maryland, including appeals, over the same allegations. If the Virginia Voluntary Surrender Agreement was an adverse administrative action (punishment), Petitioner cannot be punished twice for the same alleged offense. The Maryland Insurance Administration's case against Petitioner was based upon the same facts, arises out of and relates directly to the Virginia allegations. The instant case occurs in an administrative context where the statute includes a criminal penalty; the Maryland Insurance Article Section 1-301 expressly criminalizes willful violations of Maryland insurance law and provides a criminal penalty. It is criminal in nature.

If this Court does not overturn the Maryland Insurance Administration's decision in this matter, Petitioner will almost certainly be subject to another trial and another punishment for the same alleged offense because the Voluntary Surrender Agreement provides that in the event that Petitioner were to re-apply for licensure in Virginia, the Virginia Bureau of Insurance, "reserves the right to re-open the matters giving rise to this voluntary surrender, or any other matters relevant to my activities as an insurance agent or consultant . . . " Such collateral consequences are not remote since Petitioner resides in Virginia and owns an insurance business in Virginia. Petitioner will undoubtedly require a Virginia license to work in the industry again.

Assuming, *arguendo*, that the Virginia voluntary surrender was an adverse administrative action, if

Maryland's decision stands, when Petitioner re-applies for her Virginia license again in the foreseeable future and is put in jeopardy again by the Virginia Bureau of Insurance, by that point Petitioner will have been tried two times and punished three times for the same alleged offense.

Furthermore, notwithstanding the express language of the Annotated Code of Maryland, Insurance Article, Section §§2-406 which precludes a fraud prosecution for alleged fraud occurring in another state, the Maryland Insurance Administration's Amended Order provides, "This Order does not preclude any potential or pending action by the Insurance Fraud Division of the Administration or prosecution by any other person, entity or governmental authority, regarding any conduct by the Respondent including the conduct that is the subject of this Order. If the Maryland Insurance Administration's Insurance Fraud Division were to bring additional administrative action against Petitioner and succeed, Petitioner would be tried three times and punished four times for the same alleged offense.

If the Commonwealth of Virginia were to bring a criminal action and succeed, Petitioner would be tried four times and punished five times for the same alleged offense. This is inhumane. It is exactly what the Founding Fathers intended to prevent. Petitioner could end up spending the rest of her natural life in litigation over the same allegations. Such tremendous hardship, expense, anxiety, humiliation, and ordeal is precisely

what Constitutional Double Jeopardy protection was designed to prevent.

STATEMENT OF THE CASE

In a case with no legal precedent, the Maryland Insurance Administration issued an order on November 25, 2013, revoking Petitioner's license pursuant to §§ 2-108 and 2-204 of the Insurance Article, Annotated Code of Maryland, for Petitioner's alleged violation of §§ 10-126(a)(13) and 10-126(f). The Administration alleged that Petitioner violated § 10-126(a)(13) and violated § 10-126(f) by failing to report to the administration an alleged adverse administration action taken against her in another jurisdiction. Petitioner timely requested an evidentiary hearing. A three day evidentiary hearing was scheduled. On or about June 30, 2014, the Administration issued an amended order (the "Order") revoking Petitioner's license for Petitioner's alleged violation of §§ 10-126(a)(1) (6) (12) (13) and 10-126(f). The Administration crossed state lines, asserted original jurisdiction over, and charged Petitioner under Maryland's pay on demand statute § 10-126(a)(12) in connection with the repayment of a Virginia insurer in Virginia, a repayment which was legal in Virginia and had no nexus to Maryland. On June 30, 2014, the Administration moved for summary disposition of the case. Petitioner opposed the motion for summary disposition. Petitioner did not agree to convert the evidentiary hearing to a motions hearing on the motion for summary

disposition. On November 5, 2014, a motions hearing on the motion for summary disposition was held before the Administration's hearing officer. On December 9, 2014, the Hearing Officer appointed by the Maryland Insurance Administration ("the Hearing Officer") granted the Motion for Summary Disposition and affirmed the Amended Order of the Maryland Insurance Commissioner revoking Petitioner's Maryland producer license.

The Hearing Officer found that the Petitioner's voluntary surrender of her Virginia license was an "adverse administrative action" under Maryland law and found that Petitioner violated Title 10, Subtitle 1, Section 10-126(f) because she allegedly failed to report the so-called "adverse administrative action" to the Administration. The Hearing Officer found that Petitioner violated Maryland's pay on demand statute § 10-126(a)(12) in connection with her Virginia agency's repayment of a Virginia insurer.

The Hearing Officer also concluded that Petitioner violated Section 10-126(a)(1), (6), (12), and (13). The hearing officer concluded that Petitioner was either incompetent or dishonest. She ignored Petitioner's affirmative defense that she firmly believes the voluntary surrender was not an adverse action and if the voluntary surrender was an adverse administrative action, it was not final and therefore not within the ambit of 10-126(f) in the absence of findings of fact, conclusions of law, and an Order.

Petitioner noted an appeal to the Circuit Court of Baltimore City which affirmed the Hearing Officer's decision. Petitioner then noted an appeal to the Maryland Court of Special Appeals, which affirmed the Hearing Officer's decision in a reported opinion.

Petitioner petitioned the Maryland Court of Appeals for a writ of certiorari. On July 31, 2017, Maryland's highest court granted Petitioner a Writ of Certiorari.

Petitioner's appeal brief was due October 16, 2017, the same day of her voluntary Chapter 13 bankruptcy petition. Petitioner filed for bankruptcy protection in part because she was unable to afford to advance the costs for the appeal brief at that time because she had incurred extraordinary one-time expert costs in her pending personal injury case just days earlier. The Maryland Court of Appeals granted an extension of time until February 20, 2018 to file the brief. Petitioner was unable to afford to pay the legal fees and printing costs for the appeal brief by February 20, 2018 because of financial hardship. Petitioner's counsel requested another extension of time for the brief. Counsel advised the Maryland Court of Appeals that the appellant was in Chapter 13 bankruptcy in the Eastern District of Virginia.

On February 20, 2018, the Maryland Court of Appeals, without explanation, denied the request for another extension of time on the brief and scheduled oral arguments for May 2, 2018. On March 2, 2018, the Administration moved the Maryland Court of Appeals to

dismiss the appeal pursuant to Rule 8-602(a)(7) for failure to timely file the brief. On March 8, 2018, the Maryland Court of Appeals entered an Order dismissing Petitioner's appeal with prejudice for failure to timely file the brief pursuant to Rules 8-602(a)(7) and 8-605.

Petitioner argued that she was protected by the automatic stay. The Maryland Court of Appeals held that the 11 U.S.C. 362(b)(2)(D) exception to the automatic stay applied. On March 15, 2018, Petitioner moved the Court to reconsider on the basis that 362(b)(2)(D) only relates to license revocations regarding overdue child support obligations and child support was not at issue. On March 23, 2018, the Administration responded, arguing that the police and regulatory enforcement power exception to the automatic stay 11 U.S.C. 362(b)(4) applied in this case, although there is no authority on whether 11 U.S.C. 362(b)(4) applies to an appeal of a final regulatory action. On March 27, 2018, the Court issued an Order denying Petitioner's Motion to Reconsider. On March 29, 2018, the Court *sua sponte* entered an Order reversing itself, holding instead that the police and regulatory enforcement power exception in 362(b)(4) applied in this case.

The Maryland Court of Appeals issued the mandate prematurely, issuing it only ten days later on April 9, 2018, foreclosing Petitioner's ability to timely file a Motion to Reconsider the March 29, 2018 Order, foreclosing her ability to file the Opening Brief late and ask that it be accepted, and foreclosing her ability to seek injunctive relief from the Bankruptcy Court. On

May 3, 2018, Debtor objected to the premature issuance of the mandate and moved the Maryland Court of Appeals to recall the mandate, moved the Court to reconsider, and moved the Court to deem the motion to reconsider timely filed. On May 15, 2018, the Court entered an Order denying Petitioner's Motion to Reconsider, Motion to Deem the Motion to Reconsider Timely Filed, and Motion to Recall the Mandate.

On July 10, 2018, the United States Bankruptcy Court for the Eastern District of Virginia granted the Chapter 13 bankruptcy Trustee's Motion to Dismiss Petitioner's voluntary Chapter 13 case. Petitioner timely filed a Motion to Reconsider. On September 28, 2018, the United States Bankruptcy Court for the Eastern District of Virginia denied Petitioner's Motion to Enforce the Automatic Stay in the Matter of *Elizabeth Haring Coomes v. Maryland Insurance Administration*. On October 16, 2018, Petitioner filed a Motion for New Hearing on the basis she was denied proper notice and a hearing for the reasons surrounding the bankruptcy dismissal. On October 17, 2018, the Bankruptcy Court denied Petitioner's Motion for a New Hearing. On October 23, 2018, Petitioner filed A Notice of Appeal in the United States District Court for the Eastern District of Virginia, A Motion for Leave to Appeal Interlocutory Order, and an Emergency Motion for Temporary Injunction or Order Staying Bankruptcy Dismissal Pending an Evidentiary Hearing on the Merits. Petitioner's house in Leesburg, Virginia was sold at a foreclosure auction on October 24, 2018.

REASONS FOR GRANTING THE PETITION

I. This Petition Involves Important Questions of First Impression and Questions with Splits of Authority in Bankruptcy Law, Insurance Law and Administrative Law which are of National Importance. Granting the Petition is in the Public Interest.

A. Application of the Police and Regulatory Power Automatic Stay Exception 11 U.S.C. 362(b)(4) to an Appeal of a Final Regulatory Action is Inconsistent with the Plain Text, Legislative Intent, and Purpose of the Bankruptcy Code.

The intent of bankruptcy legislation is to give good faith debtors such as Petitioner an opportunity to make a fresh start. The Court should effectuate the intent and purpose of the Bankruptcy Act, allow her to reorganize, and make a fresh start. Doing so will protect the Petitioner, Petitioner's property, the bankruptcy estate assets, and allow an orderly administration of the estate.

When the plain meaning of the Bankruptcy Code is ambiguous, courts are required to resort to policy and purpose behind the Code. Bankr.Code, 11 U.S.C.A. § 101 et seq. Congress intended license revocation proceedings be stayed via the automatic stay. The legislative history of 11 U.S.C. 362(a)(1) bears this out:

> "Subsection (a) defines the scope of the automatic stay, by listing the acts that are stayed by the commencement of the case. The commencement or continuation, including the issuance of process, of a judicial, administrative, or other proceeding against the debtor that was or could have been commenced before the commencement of the bankruptcy case is stayed under paragraph (1). The scope of this paragraph is broad. **All proceedings are stayed, including arbitration, license revocation, administrative, and judicial proceedings. Proceeding in this sense encompasses civil actions as well, and all proceedings even if they are not before governmental tribunals.**" H.R.Rep.No.95-595, 95th Cong., 1st Sess. 340, U.S.Code Cong. & Admin.News 1978, p. 6297 (1977) (emphasis added).

The legislative history of 362(b)(4) shows clear evidence of legislative intent – it was only intended to be a statutory exception to the automatic stay of bankruptcy in cases of *ongoing, non-final* regulatory action. The rationale for 362(b)(4) is,

> "Under present law, there has been some overuse of the stay in the area of government regulation. For example, in one Texas bankruptcy Court, the stay was applied to prevent the state of Maine from closing down one of the Debtor's plants that was polluting a Maine river in violation of Maine's environmental

> protection laws. In a Montana case, the stay was applied to prevent Nevada from obtaining an injunction against a principal in a corporation who was acting in violation of Nevada's anti-fraud consumer protection laws. **The Bill excepts these kinds of actions from the automatic stay**." (Emphasis added) See House Report 95-595 dated September 8, 1977, page 149.

Congress never intended 362(b)(4) to apply to a debtor appealing a final Order by a regulatory agency. In over 40 years since its enactment, 362(b)(4) has never been construed by the Courts in this manner. The cases cited by the Administration are inapposite because they involve ongoing non-final regulatory actions against a Debtor. The Administration failed to meet their burden of proof to show that 362(b)(4) applies in the instant case. There is no precedent for the Maryland Court of Appeals' interpretation.

This Court held that the automatic stay is inapplicable to a pending, non-final regulatory action, but suggests that the automatic stay may indeed apply to a Debtor challenging a *final* regulatory action. This Court suggested that the automatic stay may be applicable if the administrative proceedings are final proceedings, "If and when the Board's proceedings culminate in a final order, and if and when judicial proceedings are commenced to enforce such an order, then it may well be proper for the Bankruptcy Court to exercise its concurrent jurisdiction under 28 U.S.C.

§ 1334(b). *Board of Governors of the Fed. Res. Sys. v. MCORP Fin. Inc.*, 502 U.S. 32, 112 S. Ct. 459, 116 L. Ed. 2d 358, 25 C.B.C.2d 849 (1991). This Court also considered whether the Debtor would have the opportunity for meaningful judicial review. *Leedom v. Kyne*, 358 U.S. 184, 79 S.Ct. 180 (1958). Since Petitioner's license was summarily revoked after a motions hearing and she was deprived of her scheduled three day evidentiary hearing, perfection of her appeal is her only opportunity for meaningful judicial review.

11 U.S.C. 362(b)(4) is inapplicable in this case because Petitioner is adjudicating her private rights by appealing a final Order of a regulatory agency. The Administration is not enforcing its police and regulatory power. There is no public policy justification since Petitioner's license was already revoked.

Dismissal of the Maryland Court of Appeals case threatens the bankruptcy estate as it foreclosed Petitioner's ability to recover her professional license. Petitioner's legal and equitable interest in recovering her license is an asset of her bankruptcy estate. The statutory exception of 362(b)(4) does not apply to stays under 362(a)(3). There is no statutory provision which provides for a governmental powers exception to the 362(a)(3) stay. Application of the automatic stay pursuant to 362(a)(3) is necessary to protect bankruptcy estate assets.

B. The Automatic Stay is the Most Fundamental Protection of Bankruptcy. Automatic Stay Violations are Void *ab initio* consistent with the Intent and Purpose of the United States Bankruptcy Code.

This case also raises the important question of whether actions taken in violation of the automatic stay are void or voidable. A voidable action is an action that is valid but may be annulled by one of the parties to the transaction. *United States v. Price*, D.C. Iowa, 514 F.Supp. 477, 480 (1981). Voidable is distinct from *void ab initio* (or void from the outset), of no legal effect and unenforceable. If an automatic stay violation is void *ab initio*, a debtor can focus on reorganization and not have to contend with litigating violations retroactively.

Whether a violation of the automatic stay is void or voidable has important practical consequences for the Debtor, "If an action in violation of the stay is void, the burden of validating the action rests squarely on the offending creditor's shoulders. If a stay violation is deemed to be voidable, the debtor is burdened with challenging the action. The First Circuit concluded that the former paradigm "best harmonizes with the nature of the automatic stay and the important purposes that it serves." American Bankruptcy Institute Journal, *Violations of the Automatic Stay Void or Voidable* (May 2004).

While a majority of courts have held that stay violations render an action void, the circuit courts are split on the question of whether actions taken in

violation of the automatic stay are void or voidable. The Third, Fifth, Sixth, and Eleventh Circuits have held that actions taken in violation of the automatic stay are voidable rather than void. Ordinarily, "actions taken in violation of the automatic stay are invalid and voidable and shall be voided absent limited equitable circumstances." *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir.1993). *Sikes v. Global Marine Inc.*, 881 F.2d 176 (5th Cir. 1989). *In re Siciliano*, 13 F.3d 748, 751 (3d. Cir. 1994); *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990); *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir. 1984).

The First, Second, Third, Sixth, Ninth, Tenth and Eleventh Circuits have held that violations of the stay are void *ab initio*. *In re Smith Corset Shops*, 696 F.2d 971 (1st Cir. 1982); *48th St. Steakhouse, Inc. v. Rockefeller Grp., Inc. (In re 48th St. Steakhouse, Inc.)*, 835 F.2d 427 (2d Cir. 1987); *In re Ward*, 837 F.2d 124 (3d Cir. 1988); *Smith v. First Am. Bank, N.A., (In re Smith)*, 876 F.2d 524 6th Cir. 1989); *40235 Washington St. Corp. v. Lusardi*, 329 F.3d 1076 (9th Cir. 2003); *Borg-Warner Acceptance Corp. v. Hall*, 685 F.2d 1306 (11th Cir. 1982).

There is no controlling legal authority on this question in the Fourth Circuit.

When deciding whether actions taken in violation of the stay are void or voidable, courts have inquired as to whether the state court's actions were merely ministerial. A "ministerial act," exempt from the automatic stay, is an act that is essentially clerical in nature. *In re Soares*, 107 F.3d 969, 972 (1st Cir. 1997).

In the instant case, there is no question dismissal of Petitioner's Maryland Court of Appeals appeal was not merely ministerial. It was a continuation of a judicial proceeding against the Debtor under §362(a)(1) of the Bankruptcy Code and it determined ultimate rights. *In re Edwin A. Epstein, Jr. Operating Co., Inc.*, 314 B.R. 591 (Bankr. S.D. Tex 2004). Therefore, it is void *ab initio*.

Actions taken in violation of the automatic stay are void *ab initio* because they violate both the letter and spirit of bankruptcy law. The automatic stay is vital. It represents the very foundation of bankruptcy protection. It exists to protect insolvent Debtors, the most vulnerable members of society. It also protects the Debtor's property and property of the estate. If actions taken in violation of the automatic stay are merely voidable, this creates a perverse incentive for creditors and other third parties to ignore the stay. If actions taken in violation of the automatic stay are merely voidable, Debtors will be faced with additional litigation to be restored to their original position with no guarantee of success. Additional litigation further harms Debtors and further dissipates bankruptcy estate assets. Most Debtors do not have the resources to simultaneously reorganize and assert their rights in court and will be irreparably harmed with no redress. Debtors are at a distinct disadvantage because they are already in great financial distress. This scenario pits the strong against the weak. It is exactly what the automatic stay was intended to prevent. It is not equitable. It is contrary to the intent and purpose of the

bankruptcy code. Debtors such as Petitioner seeking bankruptcy protection in order to be temporarily relieved of the financial pressures which drove them into bankruptcy in the first place wind up having their legal problems compounded when the automatic stay is violated. They are actually worse off after having entered bankruptcy. The cruel irony in Petitioner's case is that if she had put her resources towards perfecting her Maryland appeal instead of paying her Chapter 13 creditors, she would not be in this position. She has been, in effect, severely punished for her good faith efforts to reorganize, pay her creditors and make her creditors whole. When Courts rule that violations of the stay are merely voidable, that is in effect punishing Debtors and rewarding those who violated the automatic stay.

Debtors ought to have the absolute certainty and predictability that the automatic stay has teeth, carries the force of law, and will actually protect them. When deciding whether actions in violation of the automatic stay are voidable or void, this Court ought to give great weight to public policy considerations which allow debtors to effectively reorganize.

To the extent that bankruptcy law preempts state law, actions taken in state court in violation of the automatic stay are void *ab initio*. "The automatic stay was intended to be an express waiver of sovereign immunity on the part of the federal government and an assertion of the bankruptcy power over state governments under the Supremacy Clause of the United

States Constitution, notwithstanding a state's sovereign immunity." *American Jurisprudence*, 2nd Ed. A Modern Comprehensive Text Statement of American Law, Vol. 9B, Bankruptcy 1651-2204 (2006); U.S. Const. Art. VI, cl. 2; H.R. Rep. No. 95-595, p. 342.

C. The Maryland Insurance Administration's Finding in a Case of First Impression, without Citation of Authority, that a Voluntary Surrender of an Insurance Producer License is an "Adverse Administrative Action" within the Ambit of the Reporting of Actions Statute is Plainly Wrong, Violative of all Canons of Construction, Violative of Petitioner's substantive rights under the Constitution, the APA, and is contrary to Longstanding Interpretation.

The Gramm-Leach-Bliley Act of 1999 (GLBA) sought to create national uniform insurance producer licensing laws by requiring the states to enact uniform insurance producer-licensing laws. GLBA required at least 29 jurisdictions to achieve reciprocity and uniformity in producer licensing by November 2002 or else a new Federal regulatory organization called the National Association of Registered Agents and Brokers (NARAB) would be created. GLBA's Insurance Producer Licensing Model Act Section 17: Reporting of Actions was codified in all 50 states and was uniformly interpreted to apply to only adjudicated actions that result in an Order. GLBA's reporting of actions states,

> "A producer shall report to the insurance commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents."

It was codified in substantially similar language in the Annotated Code of Maryland, Insurance Article, Section 10-126(f), which reads,

> "Within 30 days after the final disposition of the matter, an insurance producer shall report to the Commissioner any adverse administrative action taken against the insurance producer:
>
> (i) in another jurisdiction; or (ii) by another governmental unit in this State.
>
> (2) The report shall include a copy of the order, consent order, and any other relevant legal documents.

The Hearing Officer decided that Petitioner's voluntary surrender of her Virginia Producer's license was a reportable "adverse administrative action" under Section 10-126(f). This Court may review the interpretation and application of the statute *de novo* as a matter of law. The hearing Officer's interpretation is not entitled to deference because none of the factors are present which would entitle it to deference. The Hearing Officer's interpretation is neither long-standing nor consistent. This is a case of first impression.

The interpretation of the Hearing Officer was not publicly known prior to the time of the hearing below. Finally, for reasons set forth *infra.*, the Hearing Officer's interpretation conflicts with the statutory language.

Petitioner's voluntary surrender of her Virginia producer license is not the final disposition of an "adverse administrative action" that she was required to report to the Administration. The term "adverse administrative action" only applied to adjudicated agency proceedings which include fact–finding and dispute resolution and conclude with an Order.

There are three (3) reasons that support this argument:

> (1) the plain meaning of all of the words of Section 10-126(f) read in context of one another discloses that the Maryland General Assembly intended to require the reporting only of agency actions that resulted from evidentiary, i.e., fact finding and dispute resolution procedures;
>
> (2) the structure of Section 10-126 discloses the General Assembly's intent to require reporting of adjudicated agency actions that are the product of fact finding and dispute resolution procedures and conclude with an Order: and
>
> (3) the term "adverse administrative action" is situated in the context of procedural due process jurisprudence. Procedural due process jurisprudence, requires, or at least implies a full evidentiary hearing when the

> protected private interests divested by state action are fundamental and paramount, such as the interest in earning a living.

The language of Section 10-126(f) clearly evinces the legislative intent that an "adverse administrative action" include fact-finding and dispute resolution proceedings. Black's Law Dictionary defines the word "adverse" as "opposed; contrary; *in resistance or opposition to* a *claim*, application or *proceeding*." (emphasis supplied) A surrender is "voluntary." It is not in resistance or opposition to anything. By definition, it is not "adverse." The term "action," according to Merriam-Webster's On-Line Dictionary defines that word primarily as, "The initiating of a proceeding in a court of justice by which one demands or enforces one's right." The language employed by the General Assembly evinces their intent that, where the revocation of an insurance producer's license is involved, only a formal or informal proceeding that includes fact-finding and dispute resolution and results in an Order will suffice as a "adverse administrative action" that the licensee must report. A voluntary surrender of a license absent administrative charges, fact-finding, dispute resolution, and an Order is inconsistent with the idea of a "proceeding" (adversarial in nature) by which one demands or enforces one's right. The terms "adverse" and "action" denote a fact-finding and dispute resolution process (a proceeding) which is not present in a setting where one "voluntarily" surrenders one's means of livelihood.

Other language in Section 10-126(f) supports the conclusion that the General Assembly intended that the "adverse administrative action" of another jurisdiction is the result of an adjudicated adversarial proceeding. Section 10-126(f) requires the licensee to submit a copy of the "order" and "consent order." Orders denote the completion of a formal, adversarial process (adjudication) that results in the adverse administrative action. Section 10-126(f) speaks in terms of a "final disposition," a term that is also associated with the culmination of adjudicated adversarial proceedings. Section 12-101 of the Criminal Procedure Article of the Annotated Code of Maryland, defines "final disposition" in the context of forfeiture and Section 12-304(a)(2) and (b) of the Criminal Procedure Article. The APA defines an Order as a final disposition.

D. Administrative agencies lack implied authority to assert original jurisdiction and try licensees *de novo* under their state laws for acts that occurred in another state.

The Administration lacked jurisdiction because the alleged violations charged in Sections 10-126(a)(1)(6) and (12) did not occur in Maryland and had no nexus to Maryland. Virginia never administratively charged Petitioner. Maryland's regulatory action was therefore not a reciprocal action. The Administration lacked express statutory authority to charge Petitioner. The Administration lacked implied authority to charge Petitioner. Express statutory authority was

required because the Maryland Insurance Article 1-301 expressly criminalizes willful violations of the MD Insurance Article as misdemeanor offenses and carries a criminal penalty. Furthermore, the Administration lacked jurisdiction insofar as the 1 year misdemeanor statute of limitations for the alleged violations had already expired.

All of the factual predicates to support findings that violations occurred under paragraphs (1), (6) and (12) of Section 10-126(a) occurred in Virginia. The Commissioner lacks authority to try these alleged regulatory violations *de novo.* The statute permits the Commissioner and the Hearing Officer to find that a regulatory violation has occurred where the licensee fails to report an "adverse administrative action" from a foreign jurisdiction, but Section 10-126 does not give the Commissioner the authority or jurisdiction to adjudicate offenses that did not occur in Maryland or under the licensee's Maryland license. Accordingly, the Hearing Officer committed reversible error when she granted summary disposition to the Agency based on Section 10-126(a)(1), (6) and (12).

E. Double Jeopardy, the Rule of Lenity and Doctrine of Merger apply to administrative proceedings where the statute expressly criminalizes violations and contains a criminal penalty.

The Hearing Officer committed reversible error when she declined to apply the law of double jeopardy, the Rule of Lenity and Doctrine of Merger

to this proceeding. Specifically, the Hearing Officer erred as a matter of law when she found that "double jeopardy protection only guarantees that a *criminal* defendant will not be subjected to a second trial." To the extent that MD 1-301 expressly criminalizes violations of the MD Insurance Article, Petitioner's case was criminal in nature. Double Jeopardy protection prevents one from being tried twice for the same offense and also prevents one from being punished twice for the same offense. Double Jeopardy protection extends to civil cases as well as criminal cases. Petitioner never waived her right to Double Jeopardy Protection in Maryland.

The Hearing Officer's reliance on *Schuele v. Case Handyman & Remodeling Services*, LLC, 412 Md. 555,576 (2010) is misplaced; Schuele does not support the Hearing Officer's erroneous conclusion that, "double jeopardy protection only guarantees that a criminal defendant will not be subjected to a second trial." Although Double Jeopardy typically applies in traditional criminal cases, it has been applied in civil, administrative cases, as well. *U.S. v. Halper, 490 U.S. 435 (1989), Hudson v. U.S., 522 U.S. 93 (1997).*

Had the Hearing Officer applied the analysis employed by this Court in *Hudson*, the *Hudson* factors would have been met. The sanction here involves a restraint or a disability, i.e., the loss of a license and the ability to earn a living; a finding of "scienter" or knowledge is required in a number of the paragraphs contained in Section 10-126(a) to permit the Commissioner to invoke the sanctions; the revocation of the license will certainly promote the goals of punishment

and deterrence because the licensee is without the ability to earn a living; fraud and other dishonest conduct is culpable as a crime. The instant case occurs in a civil context where the statute includes a criminal penalty. Even if the sanction imposed is regarded as a civil sanction, proper application of the *Hudson* test would have resulted in a finding that Double Jeopardy barred the revocation of Petitioner's Maryland license.

The Hearing Officer was arbitrary and capricious insofar as she failed to seriously consider Petitioner's defense that, in addition to precluding being tried twice, Double Jeopardy protection also precludes being punished twice for the same alleged offense. Double jeopardy protection bars, "multiple punishments and trials for the same offense." *State v. Long*, 405 Md. 527, 536 (2008) (citing *United States v. Wilson*, 420 U.S. 332, 343 (1975)). If the Virginia Voluntary Surrender Agreement was an adverse administrative action (punishment), Petitioner cannot be punished twice for the same alleged offense. The Administration's case against Petitioner is based upon the same facts, arises out of and relates directly to the Virginia allegations.

Alternatively, the Hearing Officer should have applied the Doctrine of Merger and the Rule of Lenity. Although normally applied in traditional criminal matters, the concepts are relevant here. Maryland Insurance Article Section 1-301 criminalizes willful violations of Maryland insurance law and includes a criminal penalty. The allegations against Petitioner are essentially criminal in nature (fraud, misappropriation, etc.) Merger of offenses, for example, occurs

when all of the elements of one offense are included in a separate offense; see, e.g., *State v. Jenkins, 307 Md. 501, 517 (Md. 1986).*

The alleged conduct which the Hearing Officer found constituted violations of Section 10-126(a)(1), (6), and (12) occurred in Virginia but also formed the basis of the original allegations investigated by the Administration against Petitioner pursuant to Section 10-126(a)(13) and (f) i.e., the alleged failure to report the Virginia voluntary license surrender that was based upon the series of transactions and events connected with the Anthem checks. These transactions and events merged into Section 10-126(a)(13) and (f) because these events formed the basis of the "adverse administrative action" which the Commissioner initially contended the Petitioner did not report. The Commissioner overreached when she then attempted to charge Petitioner with violations of Maryland law that had already been the subject of a previous alleged adverse administrative action. In effect, the Commissioner was punishing the petitioner for a second time on the same conduct which had resulted in the voluntary surrender in Virginia and, in fairness, Petitioner ought not have to contend with a second punishment for the same alleged offense that she had settled in Virginia.

Procedurally, there is something fundamentally unfair about the manner in which the charges were brought in Maryland against the Petitioner based upon her alleged conduct in Virginia which goes to notions of fundamental fairness and Due Process of law,

if not double jeopardy, specifically. The Anthem check episode formed the basis of the regulatory investigation that resulted in Petitioner's voluntary surrender of her Virginia producer license. Petitioner was never administratively charged in Virginia yet she gave up her right to a contested hearing to contest the allegations which could have resulted in her exoneration of the alleged wrongdoing.

The Administration, wanting a second bite at the apple, then essentially resurrected the allegations that Petitioner thought had been put to rest by the Voluntary Surrender Agreement and decided those allegations on a motion for summary disposition.

If Maryland's summary decision stands and Virginia later re-opens the matters giving rise to the voluntary surrender, these findings against her would be extremely prejudicial yet Petitioner would be forever barred from litigating the allegations under the doctrine of res judicata and collateral estoppel. In this scenario, Petitioner would have been permanently deprived of her right to an evidentiary hearing in all three instances, permanently deprived of redress, tried twice and punished three times for the same offense, and subject to what is tantamount to a personal and professional death sentence.

In fairness to the Petitioner, the violations alleged under Section 10-126(a)(1), (6) and (12) ought to be regarded as merging into the violation alleged under Section 10-126(a)(13) and (f).

F. The Dual Sovereignty exception to the Double Jeopardy Clause does not apply to regulatory actions by two state insurance regulatory agencies since their source of authority is the same.

The Hearing Officer cites no authority, but appears to reference the dual sovereignty exception to Double Jeopardy law to support her position that, "Any action in Virginia related to asserted violation(s) of that state's insurance laws. Double jeopardy would therefore not apply to this Maryland administrative matter, and is not a ground to deny the MIA's Motion for Summary Disposition." Dual sovereignty is inapplicable in this matter insofar as the states derive their ultimate source of insurance regulatory authority from the same source: Congress, which delegated insurance regulatory authority to the states. Insurance is, by nature, interstate commerce which falls under Federal authority. The McCarran–Ferguson Act was passed by the 79th Congress in 1945 after the Supreme Court ruled that the federal government could regulate insurance as it is "interstate commerce" under the Commerce Clause in the U.S. Constitution. *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944). The McCarran–Ferguson Act allows states to regulate insurance, allows states to establish mandatory licensing requirements, and preserves certain state laws of insurance.

G. If the Dual Sovereignty exception to the Double Jeopardy Clause applies to regulatory actions by two state insurance regulatory agencies, the Court should overrule the Dual Sovereignty exception to the Double Jeopardy Clause as it is Inconsistent with the Plain Text, Original Meaning, Legislative Intent and Purpose of the Constitution.

If the Dual Sovereignty exception to the Double Jeopardy Clause applies to regulatory actions by two state insurance regulatory agencies, the Court should overrule the Dual Sovereignty exception to the Double Jeopardy Clause because the states are not sovereign.

The states have not been sovereign since the days of the thirteen colonies and the first few years of our nation's independence. Dual sovereignty is a legal fiction. It is a stain on our nation's jurisprudence. It is inconsistent with the Plain Text, Legislative Intent, and Purpose of the Constitution. The states are not sovereign. Multiple punishments are inhumane. Dual sovereignty disproportionately harms women and minorities, who are among the most vulnerable defendants. The time has come to overrule dual sovereignty.

H. Summary Disposition of the Maryland Insurance Administration Matter violated Petitioner's Substantive and Procedural rights.

Summary disposition was not appropriate because there were numerous material facts in dispute and questions of intent. Petitioner was deprived of presenting character and fact witnesses, evidence of mitigating circumstances, her right to confront and examine the affiant witnesses, and put on all appropriate evidence in her defense. The hearing office erred when she treated the Virginia investigation and voluntary surrender as dispositive of regulatory violations. Petitioner did not have the intent to commit a violation of the statute. The evidence should have been taken into account, but only at a full evidentiary hearing. The failure to do so contravenes the Maryland Court of Appeals' admonition that questions involving intent, knowledge or motive, or other subjective considerations are rarely appropriate for disposition on summary proceedings. The Hearing Officer erred when she awarded summary disposition to the Administration.

The Administration's "evidence" is itself thin on this point. The affidavit of the Virginia representative clearly states that the voluntary surrender is considered, in Virginia, an "adverse administrative action." This statement is conclusory, at best. There is no citation of judicial or administrative authority. There is no evidence of the Virginia agency practice that would provide an evidentiary basis to support a finding that Virginia Bureau of Insurance considers the voluntary

surrender of a license, without an evidentiary hearing, an "adverse administrative action." The Virginia representative merely says that it is but does not explain how the Virginia agency arrived at such a conclusion or how long the Virginia agency has treated a voluntary surrender (as opposed to a "withdrawal") as an "adverse administrative action."

The Hearing Officer found Petitioner's letter " . . . In truth . . . looks like an attempt by Respondent to downplay the information about the Virginia surrender to shift the burden onto the MIA to uncover the facts related to the surrender, which is ultimately what happened. . . ." The Hearing Officer found a deliberate effort to conceal without affording Petitioner the benefit of a full evidentiary hearing on the matter (. . . "show[s] a lack of trustworthiness to act as an insurance producer, or at least a lack of competence.")

The Hearing Officer did exactly what the Maryland Court of Appeals has said that she should not have done: she injected the issue of the Petitioner's state of mind into her decision and then drew adverse inferences *against* her on the motion for summary disposition, rather than resolving the conflict in inferences in Petitioner's favor. The Hearing officer, if she in fact believed that Petitioner's state of mind was relevant, should have reserved the issue for a full evidentiary hearing on the merits. The conflicting evidence is that Petitioner testified that she did not know that the action taken by the Virginia Bureau either was considered an "adverse administrative action." The Hearing Officer assumes that Petitioner is intentionally trying

to conceal the fact and points to the Petitioner's "cryptic letter" (E. 166) about, *inter alia*, the voluntary surrender of petitioner's license which is "tucked in the middle of a letter." The Hearing Officer concludes, " . . . *In truth* . . . looks like an attempt by Respondent to downplay the information about the Virginia." (emphasis supplied) The Hearing Officer then goes on to say that Petitioner" . . . attempt[ed] to downplay the Virginia action by disclosing the surrender of her Virginia license in the middle of an otherwise unrelated letter show[ing] a lack of trustworthiness to act as an insurance producer . . . (E. 164-167).

The difficulty with the Hearing Officer's conclusion is that the "cryptic" mention of the voluntary surrender of Petitioner's Virginia license is also consistent with her testimony that she did not know that the voluntary surrender would be considered an "adverse administrative action." For example, a finder of fact could find, based upon Petitioner's evidence, that she omitted any details that the Hearing Officer says that she should have included because she believed that the voluntary surrender was not an "adverse administrative action" and no further comment was required. The Hearing Officer, however, chose to draw an inference that was adverse to the Petitioner and that adverse inference is that she is purposefully being deceitful. This is a finding about the Petitioner's state of mind, knowledge, motive and intent that the Hearing Officer herself is injecting into the case. On summary disposition, Petitioner was entitled to the benefit of the doubt. The Hearing Officer should have recognized that the

omission of further details and the passing mention of the voluntary surrender were entirely consistent with the subjective belief Petitioner testified that she had, and denied the motion for summary disposition.

A word about "the letter". The letter itself is not a lengthy epistle. The reference to the voluntary surrender is neither buried nor surrounded by tons of verbiage. Moreover, if a "voluntary surrender" is such an obvious "adverse administrative action" as is evidently believed, then the regulator surely should have recognized the implication of the information that was being conveyed.

The hearing officer's conclusion that Petitioner was being dishonest in "the letter" is illogical. Since the insurance industry had never previously construed a voluntary surrender as an adverse action, when she wrote the letter in late March 2013, unless Petitioner was a psychic (which she is not), she could not possibly have foreseen that the Administration would depart from longstanding industry interpretation of the reporting of actions statute, construe her voluntary surrender as an adverse action, and bring a case against her with no legal precedent.

The evidence concerning Petitioner's belief and understanding of the significance of the voluntary surrender of her license and the manner in which she presented the information to the Administration consists of evidence bearing upon the Petitioner's subjective state of mind. Rulings or findings thereon should have been reserved for a fact finder at a full evidentiary

hearing (the 3 day hearing that had been scheduled) and not decided on summary disposition.[1]

The second problem with the Hearing Officer's findings and conclusions is that the Hearing Officer holds the Petitioner to a standard that the law, whether the statute, Section 10-126(a) or administrative regulation, does not require. For instance, the Hearing Officer concludes that the "letter" " . . . did not meet the standard of a report to the Commissioner about an adverse administrative action . . . " The Hearing Officer believed that Petitioner should have included details that " . . . the surrender resolved a disputed matter with the Virginia Bureau resulting from an investigation including allegations of mishandling of an insurer's money or fraud. . . ." as well as " . . . details about the investigation by the Virginia Bureau, the checks that were sent in error by Anthem or her failure to refund the money she had received in error on demand . . . " The difficulty is that the statute only requires the Petitioner to report an "adverse administrative action" which could be as simple as a statement that another jurisdiction revoked the producer's license, without further comment. There is no

[1] In fact, there is an abundance of information from which one could have concluded that only "adjudicated" adverse administrative actions are subject to the reporting of actions statute; see, e.g., Appendix K: "Insurance Department's Requirements for Reporting Administrative Actions Against Insurance Producers," Office of General Counsel, New York State Insurance Department Advisory Opinion dated 3/4/2008. All of this could have had a bearing on the finding of Petitioner's subjective intentions and understandings.

requirement in the statute that the licensee go into any further detail other than to report the outcome of an administrative action that is "adverse." The Hearing Officer points to no other regulation which sets forth the standard to which she is holding Petitioner. This is the Hearing Officer's own standard which has no support in the statutory language and, presumably, in no other authority. If such authority did exist in regulation, the Hearing Officer would have pointed to it. She did not and, consequently, her findings and conclusions, based on a standard not articulated in law are arbitrary and capricious in that respect.

I. The Baltimore Circuit Court ought to have considered the additional evidence since the statute expressly criminalizes violations and the evidence was material.

The Baltimore Circuit Court erred when it denied the Petitioner's Motion to offer additional evidence. Petitioner moved the Court for leave to introduce additional evidence: the Affidavit and related evidence of Caren Brown. The additional evidence was relevant and probative on the issue of whether the Virginia Voluntary Surrender Agreement was an "adverse administrative action" for the reasons set forth in her Affidavit and supporting documents. Caren Brown, a licensed insurance agent from Virginia, had been charged with murder for hire in August 2008. Brown had signed an almost identical Virginia voluntary surrender agreement while facing felony charges. Her voluntary surrender was not construed as an "adverse

administrative action" nor was it included in the RIRS regulatory action database. This was a critical issue in the case. The Circuit Court erred when it held, without any explanation or citation of authority, the additional evidence was not material and denied Petitioner's Motion. The Court ought to have considered this exculpatory evidence since it was material and the Maryland Insurance Article expressly criminalizes violations and carries a criminal penalty.

J. The Maryland Court of Appeals abused its discretion denying Petitioner additional time to file the brief for good cause shown and dismissing her appeal.

The Maryland Court of Appeals denial of Petitioner's request for additional time to file the brief for good cause shown and dismissal of her appeal was an abuse of discretion. The Court approved a second extension of time based upon Petitioner's financial distress. Petitioner continued to experience severe financial distress. Another extension of time would not have prejudiced Respondent or the Court. The Court did not even give a reason for denying an additional extension of time. The Maryland Court of Appeals chief judge is on record as stating the Court tries to move all the cases through during the same term, although not all cases move that fast. Denying an extension of time for this apparent arbitrary reason deprived Petitioner of an appeal of the decision depriving her of her livelihood. It was contrary to the public interest.

K. The Maryland Court of Appeals violated their own Rules as well as Petitioner's substantive and procedural Due Process rights by issuing the mandate 20 days prematurely, foreclosing Petitioner's Motion to Reconsider being considered timely filed and foreclosing her ability to seek injunctive relief in the Bankruptcy Court.

II. THIS CASE IS AN IDEAL VEHICLE.

Petitioner preserved the aforementioned arguments for appeal below This case is an ideal vehicle for the Court to decide two important questions of bankruptcy law: whether the police and regulatory power exception to the automatic stay applies to an appeal of a final regulatory action and resolve the split of authority over whether violations of the automatic stay are void or voidable. It is also a case of first impression with widespread application to the insurance industry and all licensed professionals, an ideal case to revisit and overrule the dual sovereignty doctrine, an opportunity to shore up the rule of lenity *vis a vis* hybrid administrative-criminal statutes, elevate the rule of lenity from mere footnote *dicta*, an opportunity to apply the doctrine of merger *vis a vis* hybrid administrative-criminal statutes, rein in the out of control administrative state, restore the Rule of Law and full panoply of Constitutional rights in the administrative setting to the benefit of millions of Americans.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari.

Respectfully submitted,

ELIZABETH HARING COOMES

October 26, 2018