No. 18-941

IN THE

Supreme Court of the United States

CARL B. DAVIS, CHAPTER 13 TRUSTEE,

Petitioner,

v.

TYSON PREPARED FOODS, INC.,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Tenth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a creditor violates one part of the Bankruptcy Code's automatic-stay provision, 11 U.S.C. § 362(a)(4), when a lien securing a post-petition debt arises as a matter of subrogation law, without any action by the creditor.

RULE 29.6 STATEMENT

Respondent Tyson Prepared Foods, Inc. is an indirect, wholly owned subsidiary of Tyson Foods, Inc., which is a publicly held company. No publicly held company owns stock in Tyson Prepared Foods, Inc.

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INTRODUCTION

Petitioner asks this Court to resolve a circuit conflict on a question of law that is not presented in this case. Petitioner seeks resolution of a narrow and nascent circuit conflict on whether a creditor violates 11 U.S.C. § 362(a)(3)—one paragraph of the Bankruptcy Code's automatic-stay provision—when the creditor refuses a request to turn over property of the estate that was seized before the bankruptcy petition was filed. But this case does not involve Section 362(a)(3) at all; and it does not involve a creditor's retention of property of the estate, with or without a request to turn over that property. Review of the decision below would have no effect on the circuit conflict to which petitioner points. The petition should be denied.

STATEMENT OF THE CASE

This case involves whether a creditor violates the Bankruptcy Code's automatic-stay provision when a lien arises by operation of law (*i.e.*, automatically, with no action by the creditor) to secure a post-petition debt.

1. a. The commencement of a bankruptcy proceeding creates an estate comprising the debtor's "property, wherever located and by whomever held." 11 U.S.C. § 541(a). The filing of a bankruptcy petition also "operates as a stay, applicable to all entities" of, *inter alia*, "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"; and "any act to create, perfect, or enforce any lien against property of the estate." *Id.* § 362(a)(3), (4).

b. As discussed more fully below, this case involves an employee in Kansas who was injured on the job, was compensated for the injury by her employer,

and who later received a tort payment (from someone other than her employer) for her injury. Pet. App. 8a-10a. In Kansas, "[e]mployers are granted subrogation liens on tort recoveries by injured workers." *Loucks v. Gallagher Woodsmall, Inc.*, 35 P.3d 782, 785 (Kan. 2001). Kansas law provides that:

> In the event of recovery from such other person by the injured worker . . . by judgment, settlement or otherwise, the employer shall be subrogated to the extent of the compensation and medical aid provided by the employer to the date of such recovery and shall have a lien therefor against the entire amount of such recovery.

Kan. Stat. Ann. § 44-504(b). The intent of Section 44-504(b) is twofold: "(1) to preserve injured workers claims against third-party tortfeasors and (2) to prevent double recoveries by injured workers." *Wishon v. Cossman*, 991 P.2d 415, 420 (Kan. 1999).

When an employer becomes entitled to such a lien on an employee's recovery, the employer is not required to file a notice of the lien or to take any other act to create or prefect the lien. *Ballard v. Dondlinger & Sons Const. Co.*, 355 P.3d 707, 716 (Kan. 2015); *see also Smith v. Russell*, 58 P.3d 698, 705 (Kan. 2002). Rather, "[s]uch subrogation and creation of a lien occurs automatically under K.S.A. 44-504(b)." *Ballard*, 355 P.3d at 716.

2. a. On June 25, 2012, debtor Elizabeth Garcia was injured while working at respondent Tyson Prepared Foods, Inc. when she slipped and fell on a wet floor mat provided by Aramark Services. Pet. App. 8a. After Garcia reported her injury, Tyson paid her

medical expenses and other worker's compensation benefits as required by Kansas law. *Ibid.*

On March 11, 2013, Garcia and her husband filed a voluntary Chapter 13 bankruptcy petition in the United States Bankruptcy Court for the District of Kansas. Pet. App. 5a, 8a. In the bankruptcy, Garcia did not disclose her personal injury claim against Aramark, but did note that she was then receiving monthly income in the form of worker's compensation. *Id.* at 8a. Garcia's Chapter 13 plan was confirmed on September 4, 2013. Tyson did not learn of the bankruptcy until 2016. *Id.* at 9a & n.11.

Tyson paid Garcia a total of $27,641.31 in worker's compensation benefits before she filed her bankruptcy petition and an additional $22,061.25 after she filed. Pet. App. 9a. On June 23, 2014, Tyson and Garcia settled Garcia's worker's compensation claim for a final lump sum of $20,000. *Id.* at 8a. Two days later, Garcia sued Aramark. *Id.* at 9a. When petitioner—the Chapter 13 trustee—later learned of the suit in 2015, he filed a motion for turnover of any lawsuit recovery "by way of settlement, judgment or otherwise" as property of the estate. *Ibid.* The bankruptcy court granted that motion, and the suit with Aramark was eventually settled in 2016 for $45,000. *Id.* at 10a.

On November 29, 2016, Garcia filed a motion for approval of the settlement pursuant to Federal Rule of Bankruptcy Procedure 9019. Pet. App. 10a. Tyson objected, noting that it had a statutory lien for $22,061.25 (the amount of benefits Tyson paid after the bankruptcy petition was filed). *Ibid.* The bankruptcy court approved the settlement and approved payment from the settlement proceeds of Garcia's attorney's fees and expenses associated with the suit

against Aramark—but ordered the remainder of the settlement proceeds held pending further litigation about the validity of Tyson's subrogation lien. *Ibid.*

b. The Chapter 13 trustee commenced an adversary proceeding to determine the validity of Tyson's subrogation lien. Pet. App. 10a. The trustee contended that Tyson's statutory lien either had never attached because the settlement had not yet been approved or was void because Tyson created the lien post-petition, in violation of the automatic stay. *Id.* at 10a-11a. On cross-motions for summary judgment, the bankruptcy court upheld the validity of Tyson's subrogation lien. *Id.* at 5a-21a. Relying on the Tenth Circuit's decision in *WD Equipment, LLC v. Cowen (In re Cowen)*, 849 F.3d 943 (10th Cir. 2017), the bankruptcy court held that the lien "arose by operation of law, and without Tyson committing any affirmative post-petition act that breached" the automatic stay. Pet. App. 20a.

c. The trustee appealed, and the Tenth Circuit affirmed in an unpublished, non-precedential opinion. Pet. App. 1a-4a. The court explained that "it is undisputed that Tyson's subrogation lien arose solely by operation of law," *id.* at 4a—*i.e.*, "in the absence of affirmative conduct" by Tyson, *id.* at 2a—and explained that the question before it was whether the automatic fixing of the lien violated Section 362(a)(4), *id.* at 3a n.1. The court relied on *In re Cowen*, *supra*, which addressed whether a creditor's refusal to turn over property of the estate to the trustee violates a different provision of the automatic stay (11 U.S.C. § 362(a)(3)) and held that because retention of property is passive (rather than affirmative) conduct, it does not qualify as an "act" that violates the automatic stay. Pet. App. 2a. The court thus concluded in this case that "the lien is

valid and enforceable, and that no violation of the automatic stay has occurred." *Id.* at 4a.

The court of appeals also noted that, even if the court had been inclined to revisit the holding in *Cowen*, Tyson had raised "several alternative grounds" for affirmance. Pet. App. 4a n.2. In particular, Tyson noted that unlike *Cowen*, which involved a pre-petition affirmative act to seize the debtor's property followed by a post-petition refusal to turn over the property, "the underlying financial transactions here took place *post*- rather than pre-petition, such that Tyson's [worker's compensation] payments to the debtor had the effect of benefitting the bankruptcy estate." *Ibid.* And Tyson noted that the automatic stay applies only to "acts of 'entities,'" not to claims arising solely by operation of law. The court did not address these distinctions. *Ibid.*

Although the panel explained that the en banc Tenth Circuit could revisit the decision in *Cowen*, Pet. App. 2a, petitioner did not seek rehearing en banc.

THE PETITION SHOULD BE DENIED

Petitioner asks this Court to resolve a shallow and nascent circuit conflict that is not even arguably presented in this case. Because the court of appeals' nonprecedential and unpublished opinion does not conflict with any decision of this Court or of any other court of appeals, it does not warrant further review.

I. The Decision Below Does Not Implicate Any Conflict In The Circuits.

Petitioner's primary contention (Pet. i) is that the non-precedential decision below exemplifies a circuit conflict on whether the Bankruptcy Code's automatic-stay provision "applies to a creditor's passively holding

or obtaining an interest in property of the debtor or the estate." But petitioner is simply wrong that the decision below implicates any circuit conflict: although courts are narrowly divided over the meaning of 11 U.S.C. § 362(a)(3), all parties agree that that provision does not apply at all in this case.

A. The Bankruptcy Code's automatic-stay provision provides that the filing of a bankruptcy petition shall (in most cases) act as an automatic stay of enumerated categories of actions that would constitute efforts to collect a debt or would otherwise interfere with the property of the estate. 11 U.S.C. § 362. One paragraph of that provision prohibits "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." *Id.* § 362(a)(3). As explained below, courts of appeals are narrowly divided over the meaning of Section 362(a)(3)—but this case does not involve Section 362(a)(3), and petitioner does not contend otherwise. This case involves a different paragraph, which prohibits "any act to create, perfect, or enforce any lien against property of the estate." *Id.* § 362(a)(4); *see* Pet. App. 3a n.1.

Petitioner therefore asks this Court to resolve a question of statutory interpretation that is not presented in this case. The Court should decline petitioner's invitation. Courts of appeals are narrowly divided about whether a creditor violates 11 U.S.C. § 362(a)(3) by refusing to turn over tangible property of the estate that it seized pre-petition. But this case does not involve *either* Section 362(a)(3) *or* a creditor's refusal to turn over property it seized before a bankruptcy petition was filed. The decision below—which

involves an entirely different paragraph of the automatic-stay provision and an entirely different type of creditor (in)action—does not conflict with any decision of this Court or of any other court of appeals. This Court's intervention in this case therefore could not resolve any circuit conflict on the meaning of Section 362(a)(3).

The circuit conflict that does exist involves the interpretation of a statutory phrase that does not apply in this case. In every case that petitioner relies on to establish a circuit conflict, the relevant court considered whether a creditor's retention of the debtor's property violated the prohibition on "any act . . . to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). In each of the decisions petitioner relies on for the "majority" view—decisions from the Second, Seventh, Eighth, Ninth, and Eleventh Circuits—the court concluded that a creditor's refusal to return property of the estate that the creditor had obtained pre-petition fell within that prohibition. *Weber v. SEFCU (In re Weber)*, 719 F.3d 72, 73, 79-80 (2d Cir. 2013) (creditor's refusal to return repossessed vehicle violated Section 362(a)(3)); *Thompson v. Gen. Motors Acceptance Corp.*, 566 F.3d 699, 701-703 (7th Cir. 2009) (same); *Knaus v. Concordia Lumber Co. (In re Knaus)*, 889 F.2d 773, 774-775 (8th Cir. 1989) (same with respect to other tangible property); *Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.3d 1147, 1152 (9th Cir. 1996) (same with respect to tax revenue that was property of the estate); *Motors Acceptance Corp. v. Rozier (In re Rozier)*, 376 F.3d 1323, 1324 (11th Cir. 2004) (per curiam) (same with respect to vehicle). In the view of those courts, the acts of

"[h]olding onto an asset, refusing to return it, and otherwise prohibiting a debtor's beneficial use of an asset all" qualify as "exercising control" over property, which is prohibited by Section 362(a)(3). *Thompson*, 566 F.3d at 702.

In contrast, the Tenth Circuit held in *WD Equipment, LLC v. Cowen (In re Cowen)* that a creditor does not violate Section 362(a)(3) by retaining possession of property it seized before the bankruptcy petition was filed. 849 F.3d 943, 949 (10th Cir. 2017). That court reasoned that Section 362(a)(3)'s prohibition on "exercising control over" a debtor's property should be limited to acts that are "tantamount to obtaining possession and have the same effect"—and concluded that a creditor does not *obtain* possession of a debtor's property post-petition by merely *retaining* possession of it. *Ibid.* (citation omitted). That decision conflicts with decisions of the Second, Seventh, Eighth, Ninth, and Eleventh Circuits—but on a question that is not presented in this case.

Petitioner also contends (Pet. 20) that the D.C. Circuit's interpretation of Section 362(a)(3) conflicts with those in the "majority" and is aligned with the Tenth Circuit. But that court was faced with a slightly different question: whether a party with a colorable claim of "legal right" to intangible property rights violates Section 362(a)(3) by "refus[ing] to capitulate to a bankrupt's assertion of rights in that property." *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1473 (D.C. Cir. 1991). The creditor in that case claimed a contract right to use the debtor's trade secrets. The court concluded that the creditor need not abandon its asserted contract right upon filing of the bankruptcy petition, explaining that "[i]t is common ground that"

the Code's turnover provisions "cannot be used against property held by another under a claim of legal right." *Ibid.* It is unclear how the courts that have adopted the "majority" view of Section 362(a)(3) would apply that provision in those circumstances.

At bottom, then, petitioner has identified a relatively new five-to-one circuit conflict on the meaning of the phrase "exercise control over property of the estate" in 11 U.S.C. § 362(a)(3). As the panel hinted in this case, Pet. App. 2a, the en banc Tenth Circuit may revisit its recent ruling in *Cowen* to resolve that conflict. This Court recently denied a post-*Cowen* petition for a writ of certiorari that directly raised the question on which the circuits are narrowly divided. *Best Serv. Co. v. Bayley*, 138 S. Ct. 174 (2017). If an enduring and widespread circuit conflict on the meaning and scope of Section 362(a)(3) develops, this Court may wish to step in at some point. But this Court's intervention in *this* case will not resolve any conflict over that question of statutory interpretation—because Section 362(a)(3) is simply not at issue here. Pet. App. 3a n.1 (explaining that "[t]he statutory provision at issue here" is 11 U.S.C. § 362(a)(4), which prohibits "any act to create, perfect, or enforce any lien against property of the estate").

B. In discussing the circuit conflict, petitioner fails to acknowledge that this case involves Section 362(a)(4), not Section 362(a)(3). Petitioner instead asks (Pet. 20) this Court to correct the Tenth Circuit's reasoning in *Cowen*, a separate case that did involve Section 362(a)(3). But granting the petition in this case would not resolve the question presented in *Cowen* and in all of the cases petitioner relies on for the "majority" position.

The extent to which the automatic-stay provision applies to a particular class of creditor conduct is a question of statutory interpretation. And the statutory analysis employed in the cases petitioner relies on for the "majority" position (and employed by petitioner himself) confirms that the question decided in those cases is not implicated by the decision below. The courts in the majority relied on two aspects of the statutory scheme that are irrelevant in this case: (1) Congress's 1984 amendment to Section 362(a)(3) (Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 441(a)(2), 98 Stat. 333, 371), which added the prohibition on "any act . . . to exercise control over property of the estate"; and (2) the interaction between 11 U.S.C. § 362(a)(3) and 11 U.S.C. § 542(a), which requires creditors to turn over property of the estate to the trustee or debtor upon commencement of bankruptcy proceedings. *See Weber*, 719 F.3d at 75, 80; *Thompson*, 566 F.3d at 702-704; *Del Mission*, 98 F.3d at 1151; *Knaus*, 889 F.2d at 775. Those courts explained that "the mere fact that Congress expanded [Section 362(a)(3) in 1984] to prohibit conduct above and beyond obtaining possession of an asset" indicated that Congress intended to prohibit creditors' retention of estate property seized prepetition. *Thompson*, 566 F.3d at 702; *accord Weber*, 719 F.3d at 80; *Del Mission*, 98 F.3d at 1151. And those courts reasoned that the turnover provision in Section "542(a) also indicates that turnover of a seized asset is compulsory." *Thompson*, 566 F.3d at 704; *accord Knaus*, 889 F.2d at 775. Petitioner similarly relies on the 1984 amendment and the turnover provision in Section 542(a). Pet. 16-24. None of that reasoning is applicable here, where there is no allegation that the creditor exercised control over any property of

the estate and where the turnover provision has no application because respondent has never been "in possession, custody, or control, during the case" of property of the estate, 11 U.S.C. § 542(a).

In *Cowen*, the Tenth Circuit adopted a conflicting interpretation of both the 1984 amendment and the interaction between Sections 362(a)(3) and 542(a). 849 F.3d at 949-950. Unlike the "majority" courts, the Tenth Circuit held that the language added to Section 362(a)(3) in 1984 should be interpreted as "consonant" with the pre-existing language, rather than as a significant "enlargement" of the original text. *Id.* at 949 (citation omitted). The court similarly rejected reliance on Section 542(a), noting that there is "no textual link between § 542 and § 362." *Id.* at 950. The court instead focused on Section 362(a)(3)'s use of the word "act," holding that "only affirmative acts to gain possession of, or to exercise control over, property of the estate violate § 362(a)(3)." *Ibid.* That reasoning is essentially nonresponsive to most of the decisions espousing the "majority" view because in those cases, the court viewed the creditor's act of refusing to turn over property of the estate as an affirmative act—and the question was just whether it was an act covered by Section 362(a)(3). *See Weber*, 719 F.3d at 74; *Thompson*, 566 F.3d at 708; *Rozier*, 376 F.3d at 1324; *Del Mission*, 98 F.3d at 1152; *Knaus*, 889 F.2d at 774.

Because the Tenth Circuit panel in this case felt bound by *Cowen*'s interpretation of the word "act" (which also appears in Section 362(a)(4)), it held that Section 362(a)(4) "encompass[es] only affirmative conduct on the part of [a] lienholder" and therefore does not apply where a lien arises "solely by operation of law." Pet. App. 3a-4a. The only question this Court

could consider if it granted the petition, therefore, would be whether Section 362(a)(4) applies to statutory liens that arise by operation of law without any affirmative conduct by the relevant creditor. That question is indisputably *not* the subject of a circuit conflict. Indeed, because the decision below was designated non-precedential, it does not even bind future panels of the Tenth Circuit. The petition should therefore be denied.

C. To the extent this Court is inclined to resolve the circuit conflict on the meaning of Section 362(a)(3), it should have ample opportunities to do so in a case in which that question is actually presented. As petitioner explains (Pet. 24-25), whether Section 362(a)(3) requires a creditor to return property (most often a vehicle) that it seized pre-petition is a question that arises with some regularity. One such case (in which the district court adopted the view expressed in *Cowen*) is currently pending in the Third Circuit. *Denby-Peterson v. Nu2u Auto World*, 595 B.R. 184 (D.N.J. 2018) (district court held that post-petition retention of repossessed vehicle did not violate automatic stay), *appeal pending*, No. 18-3562 (3rd Cir. docketed Nov. 28, 2018). Another is pending in the Seventh Circuit. *In re Peake*, 588 B.R. 811 (Bankr. N.D. Ill. 2018) (bankruptcy court held that City of Chicago's continued retention of debtor's vehicle violated automatic stay), *appeal pending*, No. 18-2835 (7th Cir. docketed Aug. 23, 2018).

II. Review Of The Decision Below Would Require This Court To Resolve Multiple Questions In The First Instance.

As explained, this case does not implicate the circuit conflict on the scope of Section 362(a)(3) because

that provision indisputably does not apply here. That is a sufficient reason to deny the petition. In addition, if this Court were to review the decision below, it would be required to address multiple questions that were not addressed below and have not been addressed by other courts of appeals.

Petitioner characterizes (Pet. i) the question presented as whether "a creditor's passively holding or obtaining an interest in property of the debtor or the estate" is covered by the automatic stay. That characterization has at least two flaws. First, it masks the fact that the Tenth Circuit is the only court (in *Cowen*) to base its decision on the active/passive distinction. Indeed, only one of the decisions petitioner relies on for the "majority" view even uses the word "passive." *Thompson*, 566 F.3d at 702-703. Second, petitioner's characterization elides the logically antecedent question of whether the relevant creditor behavior was in fact active or passive. Petitioner repeatedly characterizes the creditors in the "majority" cases as "passively" holding property of the estate or "fail[ing] to return" property of the estate. Pet. 17. But in all of those cases, the creditor took the affirmative act of refusing to turn over property in the face of a request from the debtor or a demand from the trustee or bankruptcy court. *Weber*, 719 F.3d at 74; *Thompson*, 566 F.3d at 708; *Rozier*, 376 F.3d at 1324; *Del Mission*, 98 F.3d at 1152; *Knaus*, 889 F.2d at 774. The same was true in *United States v. Whiting Pools, Inc.*, 462 U.S. 198 (1983), which petitioner contends (Pet. 21-24) conflicts with the decision below even though it did not purport to interpret any part of the automatic-stay provision. To answer the question petitioner has presented, then,

this Court would have to decide both whether the active/passive distinction is dispositive (an issue addressed by only one court of appeals) and if so, determine what types of creditor behavior qualify as passive.

Answering those questions in *this* case would require the Court to resolve additional questions that have not been addressed (widely, or sometimes at all) in the courts of appeals. Resolution of the dispute in this case likely turns, for example, on whether a lien that arises by operation of law as a result of the *debtor's* actions is a lien that arose from "any act to create, perfect, or enforce any lien against property of the estate" within the meaning of Section 362(a)(4). It is undisputed that the lien at issue in this case arose automatically upon Garcia's settlement of her claim against Aramark and without any requirement that Tyson file a notice of lien. Pet. App. 12a-13a; *Ballard v. Dondlinger & Sons Const. Co.*, 355 P.3d 707, 716 (Kan. 2015); Kan. Stat. Ann. § 44-504(b). In this context, the only "acts" that caused the lien to affix to Garcia's settlement proceeds were Garcia's settlement of her cause of action and her request that the bankruptcy court approve the settlement. Those acts by *the debtor* surely cannot give rise to liability on the part of *a creditor* for violating the automatic stay. Only *after* the lien was already in place (automatically) did Tyson file an objection in the bankruptcy court to Garcia's retention of the settlement proceeds. But even petitioner does not contend that a creditor violates the automatic stay when it "seek[s] protection of its interest according to the congressionally established bankruptcy procedures, rather than by withholding the seized property from the debtor's efforts to reorganize"

or otherwise circumventing the bankruptcy scheme. *Whiting Pools*, 462 U.S. at 212.

Also lurking in this case—but unaddressed by petitioner or the court of appeals—is the role that subrogation plays in determining whether Section 362(a)(4) applies. By operation of state law, Tyson had a subrogation interest in Garcia's claim against Aramark. Pet. App. 4a, 12a-13a. As this Court has explained, "there are few doctrines better established than that a surety who pays the debt of another is entitled to all the rights of the person he paid to enforce his right to be reimbursed." *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 136-137 (1962). Under principles of subrogation, "when one, pursuant to obligation—not a volunteer, fulfills the duties of another, he is entitled to assert the rights of that other against third persons." *Nat'l Shawmut Bank of Bos. v. New Amsterdam Cas. Co.*, 411 F.2d 843, 844 (1st Cir. 1969). Subrogation is an equitable doctrine, intended to prevent unjust enrichment—and in this context "a subrogee does 'stand in the shoes' of the creditor, entitling him to all of the creditor's rights, including priority rights in bankruptcy." *Harris v. Supreme Plastics, Inc. (In re Supreme Plastics, Inc.)*, 8 B.R. 730, 737 (N.D. Ill. 1980). In order to decide whether the holding below is correct, this Court would need to address in the first instance whether Tyson's subrogation claim to part of Garcia's settlement proceeds was included in the property of the estate. *See*, *e.g.*, *Pearlman*, 371 U.S. at 135-136 ("The Bankruptcy Act simply does not authorize a trustee to distribute other people's property among a bankrupt's creditors."); *French v. Frey (In re Bergman)*, 467 F.3d 536, 538-539 (6th Cir. 2006) (holding that an insurer's pre-petition contractual subrogation

right created a property interest for the insurer that was not included in the property of the estate when the insured filed a bankruptcy petition).

The court of appeals also had no need to address whether Tyson's statutory lien is covered by Section 362(a)(4). The Bankruptcy Code separately defines the terms "lien" and "statutory lien"—and provides special provisions for voiding statutory liens that do not apply to other types of liens. 11 U.S.C. §§ 101(37) (definition of "lien"), 101(53) (definition of "statutory lien"), 545 (provisions to void statutory liens). Because the lien at issue in this case is a statutory lien, it can be voided only as provided in 11 U.S.C. § 545. *Saslow v. Andrew (In re Loretto Winery Ltd.)*, 898 F.2d 715, 717-718 (9th Cir. 1990). Thus, even if this Court were to disagree with the reasoning of the decision below, it could not resolve the question presented in this case without first determining whether a statutory lien receives the same treatment under Section 362(a)(4) as other types of liens.

Finally, none of the policy concerns that supported the decisions in the "majority" cases petitioner relies on would support reversal here. In many of the cases petitioner relies on, the courts noted that the creditor's refusal to return property of the estate to the debtor or trustee had the practical effect of reducing the overall value of the estate—and diminishing the recovery of other creditors—because the debtor needed to use the property in question to maintain operation of his business. *See*, *e.g.*, *Weber*, 719 F.3d at 78 ("Weber required his vehicle to conduct his construction business; Whiting Pools required its equipment and other personal property to conduct its business. In each case, the re-

organization's chances for success would seem markedly improved if operations could be maintained during the pendency of the petition and formulation of the plan."); *Thompson*, 566 F.3d at 702 ("An asset actively used by a debtor serves a greater purpose to both the debtor and his creditors than an asset sitting idle on a creditor's lot."); *Knaus*, 889 F.2d at 775 ("[I]n the present case the creditor's continued exercise of control over the property prevented the debtor from continuing his business with all his available assets."). In this case, the equities point in the opposite direction. Here, Tyson did not withhold assets from the debtor or the trustee; instead, Tyson *contributed* assets to the estate after Garcia filed for bankruptcy by continuing to pay worker's compensation benefits to Garcia. When Garcia reached a settlement with Aramark, the statutory lien went into effect "to prevent [a] double recover[y] by" Garcia. *Wishon v. Cossman*, 991 P.2d 415, 420 (Kan. 1999); *see also Lovald v. McGreevy (In re McGreevy)*, 388 B.R. 917, 922 (Bankr. D.S.D. 2008) (explaining that enforcing insurer's subrogation right in proceeds of personal injury cause of action "fosters precisely what the equitable and contractual doctrines of subrogation are designed to foster" because "[t]here is no 'double recovery' by Debtors and the bankruptcy estate from both the insurance proceeds and the settlement funds for [debtor's] pre-petition injuries, and the party that should pay for the injuries—the tort-feasor or his or her insurer—is the one who is paying the resulting medical claims"). The court below did not address those policy considerations—but consideration of those issues is certainly relevant to determining the scope of Section 362(a)(4)'s application to statutory subrogation liens in this context.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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