No. 19-357

In the
Supreme Court of the United States

CITY OF CHICAGO,
Petitioner,
v.

ROBBIN L. FULTON, JASON S. HOWARD, GEORGE PEAKE, AND TIMOTHY SHANNON,
Respondents.

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

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES IN SUPPORT OF RESPONDENTS

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March 11, 2020

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INTEREST OF AMICUS CURIAE

The National Association of Bankruptcy Trustees ("NABT") is a nonprofit association formed in 1982 to address the needs of chapter 7 bankruptcy trustees throughout the country and to promote the effectiveness of the bankruptcy system as a whole.[1] There are currently approximately 1,500 bankruptcy trustees receiving new cases, of whom over 500 are NABT members. All are appointed under the auspices of the Office of the United States Trustee in their respective judicial districts.

A chapter 7 bankruptcy trustee is required under the Bankruptcy Code to collect and monetize the assets of the bankruptcy estate expeditiously. To do so, the trustee must act quickly and efficiently to obtain possession or control of the debtor's property. Often, that job must be undertaken urgently; in all cases, it must be conducted cost-effectively, so that administrative expenses do not consume the estate, leaving nothing for creditors. By nature, chapter 7 estates are rarely well-endowed, and litigation is a last resort, especially at the outset.

Although these are cases under chapter 13 of the Bankruptcy Code, the relevant statutes apply in all chapters, and the issues and implications present differently when analyzed in the context of chapter 7. Section 542(a) requires persons to turn over property of

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[1] Undersigned counsel for NABT authored this brief in its entirety; no other person or entity has made any monetary contribution to the preparation or submission of this brief. All parties have agreed to the submission of this amicus curiae brief.

a bankruptcy estate to its chapter 7 trustee. Section 363(e) puts the burden on a creditor to ask the bankruptcy court for adequate protection if the creditor believes its interest will not be adequately protected, but it cannot withhold the property on that basis. Section 362(a) makes it a violation of the automatic stay not to comply once it is notified of the bankruptcy case.

Chapter 7 trustees give such notice and rely upon voluntary compliance. A rule that permits a person to reject the turnover request until ordered to comply, without violating the automatic stay, renders the turnover statute ineffective. The trustee must then either sue the intransigent person at the expense of the estate's creditors, if tenable, or abandon the property. Innocent creditors lose either way. Because these issues play an important role in the performance of one of their most critical functions, NABT's members have a strong interest in the Court's decision.

SUMMARY OF ARGUMENT

Section 542(a) of the Bankruptcy Code, 11 U.S.C. § 542(a), directs that persons "shall deliver to the trustee" property that the trustee may use, sell or lease. This unambiguous mandate applies only when the property indisputably belongs to the bankruptcy estate. If persons who are asked to relinquish such property demand more protection of their interests than the trustee believes is adequate, Congress put the onus on those persons and not the trustee (or, as in these cases, the individual chapter 13 debtors) to ask the bankruptcy court for relief. 11 U.S.C. § 363(e). A person who declines to do so but refuses to permit the

trustee or debtor to use the property, as Petitioner the City of Chicago did here unabashedly, violates the automatic stay by acting to exercise control of that property. 11 U.S.C. § 362(a)(3). The statutes are plainly worded, consonant, and sensible. If § 362(a)(3) does not apply, § 542(a) loses its utility, because a statute that imposes an affirmative obligation to do something without waiting for a court order is neutered by a rule that it can only be enforced by obtaining a court order.

As construed by the City and its supporting *amici*, § 542(a)'s mandate to deliver property has a hidden introduction, "After a judicial determination of necessary adequate protection under § 363" and a silent coda, "upon entry of a judgment not subject to appeal." Accordingly, in the City's view, a person need not turn over estate property unless and until the trustee files and serves an adversary complaint, initiates litigation over adequate protection that the person did not request from the bankruptcy court (as § 363(e) requires) and, eventually, obtains a judgment. Further, the City contends that the automatic stay does not apply, because denying use of the estate property is not the same as acting to "exercise control" over estate property within the meaning of § 362(a)(3), and the automatic stay should not compel persons to do something the turnover statute does not require. As a consequence, compliance with the turnover statute could only be enforced if the bankruptcy estate pays for the lawsuit. Otherwise, the property must be abandoned.

The City posits that it is logical and equitable to require the chapter 13 debtor, whose financial distress caused the seizure, to first obtain a determination on adequate protection. But the statute says the opposite, and depriving a chapter 13 debtor of property, such as a car to get to work, frustrates chapter 13's goal of allowing the debtor to formulate a wage-earner's plan to repay creditors. Moreover, in chapter 7, the turnover request is made by a fiduciary appointed by the United States Trustee, whose statutory duty is to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]" 11 U.S.C. § 704(a)(1). The beneficiaries of the turnover request are other creditors; if the automatic stay does not apply, they are the ones penalized.

The statutory scheme in which the statutes are harmonious with each other and with the rest of the Bankruptcy Code is the one that follows the text of §§ 542(a), 363(e) and 362(a)(3): a person has a duty to turn over property of the estate, the onus is on that person to request adequate protection from the bankruptcy court, and failing to comply is an exercise of control in violation of the automatic stay. Together, these rules protect the estate from diminution and enable trustees to perform their statutory duty to marshal the debtor's property expeditiously, distribute funds to creditors and close the estate. If § 542(a) is deemed not to be self-executing and § 362(a)(3) is deemed inapplicable, the chapter 7 trustee faces a no-win predicament: file a lawsuit at the expense of the bankruptcy estate (if it is not cost-prohibitive), abandon

the property, or settle for recovery of less than all of the property to which the estate is entitled. Innocent creditors lose in all of these scenarios.

Congress did not intend "shall deliver" to be an invitation to litigate, any more than it did § 521's mandate that a debtor "shall . . . surrender to the trustee all property of the estate[.]" 11 U.S.C. § 521(a)(4). Section 362(a)(3) enforces compliance with these mandates without diminishing the bankruptcy estate. The City's proposed shifting of costs and burdens to trustees and debtors to enforce these mandates runs counter to the purpose and design of the federal bankruptcy laws. The Seventh Circuit's statutory construction adheres to the plain language of the statutes, applies them coherently and in harmony with the Bankruptcy Code as a whole. The Seventh Circuit's decision should be affirmed.

ARGUMENT

I. SECTION 542(a) IS MANDATORY AND SELF-EXECUTING

1. The Court interprets a statute "as a symmetrical and coherent regulatory scheme," *Gustafson v Alloyd Co.*, 513 U.S. 561, 569 (1995), and seeks to "fit, if possible, all parts into an harmonious whole." *FTC v. Mandel Bros. Inc.*, 359 U.S. 385, 389 (1959). Accordingly, a cornerstone of the City's argument that § 362(a)(3) does not apply to the "passive retention" of property is that § 542(a) does not impose an affirmative obligation to "deliver to the trustee" property of the estate until the trustee or debtor sues and obtains a judgment requiring it.

So construed, the City contends, the two statutes fit together, because the automatic stay should not be interpreted to require turnover before the turnover statute itself requires it. To do so, it continues, would make § 362(a)(3) into a stand-alone turnover statute, a rhetorical turn that leads to another cornerstone of the City's argument: that § 362 could not possibly be a turnover statute because a "stay" by nature is meant to prohibit action, not require it, as a turnover statute does.

2. But that is a red herring, because although the City and its supporting *amici* relentlessly conflate § 542(a) and § 362(a)(3) toward this end, the only turnover statute is § 542(a). It is an unambiguous, self-executing mandate to turn over property of the bankruptcy estate without waiting for the trustee to obtain an order (in contrast to provisions such as § 542(e), which requires an order to turn over books and records). That is the only reading that honors the text and is harmonious with related provisions of the Bankruptcy Code, including § 363(e) and § 704(a)(1). This matters because if § 542(a) is self-executing and mandatory, then the City's postulated consistency between § 542(a) and the interpretation of § 362(a)(3) that it urges this Court to adopt disappears.

3. In construing the Bankruptcy Code, the Court "begin[s] with the understanding that Congress 'says in a statute what it means and means in a statute what it says there[.]'" *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)). "[W]hen 'the statute's language is

plain, the sole function of the courts -at least where the disposition required by the text is not absurd-' is to enforce it according to its terms." *Id.* (quoting *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (internal quotation marks omitted).

Here, the statutory language is plain and the disposition required by the text is not absurd. Far from it. The Bankruptcy Code sensibly imposes on persons holding property that indisputably belongs to the debtor an affirmative obligation to turn that property over to the trustee. Section 542 provides:

> Except as provided in subsection (c) or (d) of this section, an entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell, or lease under section 363 of this title, or that the debtor may exempt under section 522 of this title, *shall deliver* to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate.

11 U.S.C. § 542(a) (emphasis added). The requirement is self-executing: as this Court held in *Whiting Pools*, the persons with the property are not allowed to withhold it from the trustee and await judicial action. *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 212 (1983) ("Section 542(a) simply requires the Service to seek 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.").

4. Because a self-executing turnover requirement backed by the automatic stay is a powerful tool, it is important to note that the only property to which it applies is property in which the debtor's interests are undisputed. "It is settled law that the debtor cannot use the turnover provisions to liquidate contract disputes or otherwise demand assets whose title is in dispute." *United States v. Inslaw, Inc.*, 932 F.2d 1467, 1472 (D.C. Cir. 1991). It was a debtor's transparent attempt to circumvent this limitation by inappropriately invoking §§ 542 and 362(a)(3) in what was patently a contract dispute that the D.C. Circuit court of appeals rejected in *Inslaw*, one of the decisions cast as supporting the minority rule.[2]

Illustrating this restriction, subsection (b)'s turnover requirement for amounts owed to the debtor is limited to undisputed debts: "an entity that owes a debt that is property of the estate and that is *matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee*" except to the extent it is subject to offset. 11 U.S.C. § 542(b) (emphasis added).

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[2] On its facts, the decision in *Inslaw* is consistent with the majority rule. In a debtor's software contract dispute with the government over the right to use the debtor's software, the bankruptcy court held that the intangible trade-secret rights utilized within the software were property of the bankruptcy estate subject to turnover under § 542(a), over which the government was exercising control in violation of § 362(a). 932 F.2d at 1472. Unsurprisingly, the court of appeals rejected this overexpansive application of the automatic stay, noting the result would be a rule that "every party who acts in resistance to the debtor's view of its rights violates § 362(a) if found in error by the bankruptcy court." *Id.* at 1473.

5. "When a statute distinguishes between 'may' and 'shall,' it is generally clear that 'shall' imposes a mandatory duty." *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016). "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Id.* And so § 542 uses the word "may" when discretion was clearly intended. For instance, subsection (d) provides that "[a] life insurance company *may* transfer property of the estate or property of the debtor to such company in good faith," in payment of certain obligations, and subsection (e) provides that the court *may* order parties to turn over books and records to the trustee. 11 U.S.C. § 542(d)-(e) (emphasis added).

6. Furthermore, "identical words used in different parts of the same statute are generally presumed to have the same meaning . . . ." *IBP, Inc. v. Alvarez*, 546 U.S. 21, 34 (2005). The words "shall" and "may" are used consistently throughout title 11. Tellingly, Congress instructed that a debtor "shall . . . surrender to the trustee all property of the estate[.] 11 U.S.C. § 521(a)(4). It is unlikely that Congress intended "shall surrender to the trustee" as giving a debtor discretion to keep the property until the trustee sues and obtains a judgment, yet intended "shall deliver to the trustee" to confer exactly that discretion. As well, it runs counter to Congress's expectation and directive that trustees collect and monetize the estate's property as expeditiously as is compatible with the interests of the parties in interest. 11 U.S.C. § 704(a)(1).

Even closer to home in this statutory scheme, § 543(b) applies the identically worded "shall deliver"

requirement to custodians (such as receivers).[3] Section 543(b) is generally characterized as self-executing, yet seems not to have generated the same resistance as § 542(a), perhaps because receivers are less determined than creditors to find ways to defeat the statute in order to hold on to property. *See, e.g., In re 29 Brooklyn Ave., LLC*, 548 B.R. 642, 645 (Bankr. E.D.N.Y. 2016) (turnover must occur "when the custodian learns of the bankruptcy"); *Hernandez v. Park Fed. Nat'l Sav. Bank (In re Hernandez)*, Nos. 15-bk-13715, 15-ap-00485, 2016 Bankr. LEXIS 872, at *9 (Bankr. N.D. Ill. Mar. 14, 2016) ("compliance with § 543(a) and (b) is mandatory and self-executing"); *In re 245 Assocs.*, 188 B.R. 743, 753 (Bankr. S.D.N.Y. 1995) ("We recognize that Section 543 does not say when the receiver must turn over the property, but the receiver must do so promptly.") (citation omitted); *In re U.S. Advert.*, 131 B.R. 537, 540 (Bankr. D.R.I. 1991) ("This is a self-executing provision").

7. Even if the language of the statute were not plain, as it is here, there is no clear indication of legislative intent that might support grafting the City's proposed substantive and procedural preconditions onto § 542(a). The phrase "*after notice and a hearing*" is utilized throughout the Bankruptcy Code when such a condition is intended. It is even utilized within § 542.

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[3] "A custodian shall— (1)deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case[.]" 11 U.S.C. § 543(b).

Section 542(e) illustrates what Congress says when an order is needed to enforce the turnover requirement:

> Subject to any applicable privilege, *after notice and a hearing*, the court may order an attorney, accountant, or other person that holds recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs, to turn over or disclose such recorded information to the trustee.

11 U.S.C. § 542(e) (emphasis added).

The City argues that the conditions should be adopted in order to return the law to turnover practice as it existed prior to 1984, when Congress added the "exercise control" clause to § 362(a)(3) of the Code. But there is no express legislative intent to that effect; the argument is based merely on an inference to be drawn from Congress's silence on whether it intended to depart from prior turnover practice when it amended § 362(a)(3) in 1984—even though it is § 542(a) that the City is effectively asking this Court to amend.

8. There is no "elephant hidden in a mousehole" here to support drawing an inference from Congress's silence. *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001). Insofar as § 542(a) is concerned, the practical issue is whether, when a trustee asks for turnover of the debtor's property but does not agree on what protection is adequate, it is the trustee or the person with the property who must request the bankruptcy court to decide what protection is adequate.

Congress answered this question, and so did this Court in *Whiting Pools*: the person with possession or control of the property is responsible for seeking adequate protection. Section 542(a) requires turnover of property that the trustee may use, sell or lease under § 363 of the Code. Section 363, in turn, provides:

> Notwithstanding any other provision of this section, at any time, *on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee*, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(e) (emphasis added).[4] Section 542(a) does not permit the creditor to effectively exercise self-help by withholding the seized property in the meantime. *Whiting Pools*, 462 U.S. at 212.

9. Section 542(a)'s provision that a person "shall deliver" the debtor's property to the trustee is worded as an affirmative obligation. Nothing suggests that the turnover obligation only matures after the filing of an adversary complaint, a determination of adequate protection, and entry of a final judgment. This Court

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[4] The Congressional Record statement to § 542(a) confirms what the statute plainly says: "This section is not intended to require an entity to deliver property to the trustee if such entity has obtained an order of the court authorizing the entity to retain possession, custody or control of the property." 124 Cong. Rec. H11096-97 (daily ed. Sept. 28, 1978); S17413 (daily ed. Oct. 6 1978) (remarks of Rep. Edwards and Sen. DeConcini).

rejected exactly that in *Whiting Pools*. In short, § 542(a) is self-executing. The language is plain and the statutory scheme is far from absurd. There is no evidence that Congress intended otherwise, nor any persuasive argument that any other scheme is superior. If there is such a scheme, it should be created by Congress, not by judicial fiat.

II. THE CITY'S CONDUCT VIOLATED THE AUTOMATIC STAY

1. "It is a 'fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'" *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 666 (2007) (quoting *FDA v. Williamson Tobacco Corp.*, 529 U.S. 120, 132-33 (2000)). A chapter 7 trustee is required by § 704(a)(1) to expeditiously marshal and monetize the property of the estate, as expansively defined in § 541(a). Section 542(a) commands that any person holding such property "shall deliver" it to the trustee, without waiting for an order. Hence, § 542(a) dovetails with the application of the automatic stay to "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." 11 U.S.C. § 362(a)(3).

2. The City characterizes § 362(a)(3) as comprising a turnover statute under the majority rule, ostensibly at odds with the notion of a "stay." But that is a misnomer. The City's grievance with § 362(a)(3) is not that it requires turnover but that it carries penalties that effectively compel compliance with the actual turnover statute, § 542(a), which the City believes has

been misinterpreted. But for the consequences of violating the automatic stay (which the City *also* contends is misinterpreted), the City would apparently feel entirely free to disregard the turnover statute.

Here, the City threw caution to the wind and did just that. It flatly denied Respondents the use of their cars after they filed bankruptcy petitions. It continuously refused to release the cars during their cases, even after their chapter 13 debt adjustment plans were confirmed by the bankruptcy court. It disregarded the court-approved payment plans and even added penalties to its claims. At all times the City had one condition for the release of the vehicles: payment in full of its asserted prepetition claims, including penalties.

3. When the City thumbed its nose at the chapter 13 debtors in these cases, it violated § 362(a)(3) by exercising control over property of the estate. Although the Seventh Circuit did not reach the issue, the *Shannon* court held that the City had also violated other sections of section 362, including its stay of "(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title. . . ." 11 U.S.C. § 362(a)(6). While NABT's primary concern is with the "exercise control" clause of § 362(a)(3), the § 362(a)(6) analysis illustrates the futility of attempting to distinguish what Petitioner calls "passive retention" of estate property from an "act . . . to exercise control" of estate property.

Like § 362(a)(3), § 362(a)(6) refers to the stay of an "act." Refusing to release a car until all fines and penalties are paid in full (even *after* the debt

adjustment plans were approved) is an "act" to collect a debt, no less than a dunning letter. The City was doing as cities do across the country: collecting massive amounts of revenue (in the City's case, 9% of its annual operating fund) from residents of densely populated neighborhoods who cannot afford parking garages, and holding their cars ransom in order to compel payment. The City is operating an ongoing tax collection scheme, and the fact that the vehicles were seized prepetition does not make the City's postpetition conduct "passive."

4. So it is with an "act . . . to exercise control over property of the estate" under § 362(a)(3). It would surely be considered an exercise of control over property of the estate in violation of the automatic stay if the cars were luxury cars that a chapter 7 trustee wished to sell, and the City had booted them on the street and refused to remove the boot because it was installed prepetition. Yet that is no more an "act" than the City's padlocking an impound yard and blocking access to Respondents' cars, as it did here. Respondents' brief is replete with further apt analogies and analysis, which *Amicus* will not duplicate. (Resp. Br. 24-27.)

To "exercise control," by nature, is a *process*, i.e., it involves acts on an ongoing basis. Furthermore, the very fact that any such dispute—and they would be endless—would devolve into such semantics, and the futility of devising a rule that could be applied in a consistent fashion militates against any conclusion that the passive/active distinction urged by the City was intended to be the touchstone of whether the automatic stay applies. It is unlikely that Congress intended to

force interested parties (or courts) to split hairs when it comes to deciding whether a person should be held in contempt.

5. The City and supporting *amici* hypothesize that the "exercise control" clause was added to § 362(a)(3) only to cover intangible rights over which possession cannot be obtained, lest it be duplicative of (but more expansive than) the existing language staying only acts to *obtain* possession of property, i.e., tangible property. Thus it would not apply here, because only the single prepetition act of obtaining possession of a vehicle would implicate the automatic stay. But no support is offered for that interpretation and, to continue the analogy, booting a car would seem a classic example of "exercis[ing] control" over a tangible object without actually taking possession.

The limited legislative history is supportive. The short explanation of the amendment to § 362(a)(3) in the Senate and House Reports is that it "provides that the automatic stay against acts to obtain possession of property of or from the estate also encompasses acts to exercise control over *such property* without the need for actually obtaining possession;" . . . . 126 Cong. Rec. 31,153 (1980) (statement of Sen. DeConcini) (emphasis added); *see also id.* at 31,140, 31,726, 31,765-66 (statement of Sen. Byrd) (identical description); H.R. Rep. No. 96-1195, at 10 (nearly identical description). Inasmuch as "*such property*" is a reference to the property described earlier in the sentence, i.e., property over which possession can be obtained, there is no support in the legislative history for limiting the

application of the "exercise control" clause to intangible rights.

III. THE CITY'S PROPOSED STATUTORY SCHEME DOES NOT FIT COHERENTLY OR HARMONIOUSLY WITH CHAPTER 7 OF THE BANKRUPTCY CODE

The City presents its reinterpretation of the Bankruptcy Code's turnover and stay provisions as "as a symmetrical and coherent regulatory scheme," *Gustafson v Alloyd Co.*, 513 U.S. at 569, that "fit[s] . . . into an harmonious whole." *FTC v. Mandel Bros. Inc.*, 359 U.S. at 389. But the implicated Bankruptcy Code provisions are important tools in the administration of the chapter 7 liquidation cases administered by NABT's members, and the City's scheme is an especially unhappy fit with chapter 7.

1. In the City's construction, (1) § 542(a) is not self-effectuating, in that the party entitled to turnover must first sue and obtain a judicial determination on adequate protection before turnover becomes mandatory, and (2) failing to turn over estate property before that time does not violate the automatic stay because the "exercise control" clause of § 362(a)(3) does not apply to the "passive retention" of seized property. The City argues this scheme is coherent and harmonious because the logical and equitable sequence of events is that a person should only be required to turn over property after a court fully adjudicates what will adequately protect that person against the loss of possession, and it follows that the automatic stay should not apply when it would compel conduct that the turnover statute does not require.

2. There is no "coherence" or "harmony" to this structure as it relates to chapter 7. A chapter 7 trustee's first-described statutory duty is to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest[.]" 11 U.S.C. § 704(a)(1). Chapter 7 trustees rely on voluntary compliance with the turnover statute to carry out this statutory directive.

Whereas adequate protection may be an immediate concern anytime an individual chapter 13 debtor demands the return of his or her property, turnover and adequate protection are not necessarily joined at the hip when the party making the demand is a chapter 7 trustee. In those instances, the form, extent, and timing of whatever protection may be adequate will vary with the nature and timing of the trustee's proposed use or sale of the property. Indeed, a disposition may not yet be proposed. And when appropriate, a chapter 7 trustee will be able to provide adequate protection and be objective about what protection is adequate.

3. The consequences of the City's scheme are dire in chapter 7. If, as the City urges, persons do not have an affirmative obligation to deliver a debtor's property to the trustee, do not violate the automatic stay by spurning that obligation, and can force the trustee to file a lawsuit by demanding any level of adequate protection that is not so ridiculous as to be sanctionable, intransigence is encouraged and rewarded. Chapter 7 trustees administering estates with very limited resources will be forced to choose

between filing a lawsuit in which fees are nonrecoverable and simply abandoning the property will readily be leveraged into accepting materially less than the property to which the estate is entitled. Innocent creditors are harmed, case administration is delayed, and the risk to chapter 7 trustees that their services will not be compensated is increased.

4. The scheme that is most coherent and harmonious is the one plainly laid out in the statute: a person holding property that indisputably belongs to the estate must deliver it to the trustee, and has the responsibility and right to request adequate protection of its interest at any time from the bankruptcy court. Failure to comply in the meantime violates the automatic stay, protecting the estate, its creditors, and the trustee as its representative from any loss resulting from exactly the kind of recalcitrance exhibited by the City in these cases.

CONCLUSION

Amicus submits that the decision of the Seventh Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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