No. 22-1010

In The

Supreme Court of the United States

BEATRICE M. HEGHMANN AND
ROBERT A. HEGHMANN,

Petitioners,

v.

DJAMEL HAFIANI, MARY HAFIANI,
MIRIAM HAFIANI, JAMEL JOSEPH HAFIANI,
JULIA SARAH HAFIANI AND
THE TOWN OF RYE, N.H., et al.,

Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit**

PETITION FOR A WRIT OF CERTIORARI

ROBERT A. HEGHMANN
BEATRICE M. HEGHMANN
Post Office Box 2108
Leander, Texas 78646
(603) 866-3089
(603) 205-1787
Bob_Heghmann@Reagan.com
BHeghmann@hotmail.com

QUESTIONS PRESENTED

1. Does the Bankruptcy Court or the U.S. District Court, or both, have jurisdiction to entertain a complaint filed by a debtor seeking compensatory and punitive damages for violation of their automatic stay?

On this question there is currently a split in the circuits and among the district courts. The First and Second Circuits say no, the district court does not have jurisdiction over the debtors' complaint. The Fifth, Seventh and Eleventh Circuits say yes, the district courts have jurisdiction. The Eleventh Circuit Opinion below also held that both the district court and the Bankruptcy Court had jurisdiction. District courts have come down on both sides of the issue. Thus, there is total chaos on this issue of critical importance to debtors in bankruptcy.

2. Does the Bankruptcy Court judge-made law that a defendant who violates an automatic stay must restore the status quo or else pay a per diem fine based upon the value of the property converted control in a case filed in the U.S. District Court?

The Petitioners did not initiate their federal court complaint immediately upon the bankruptcy court ruling that the defendants had violated the automatic stay. They reminded the counsel for the Respondents of their responsibility to restore the status quo. It was only when the Respondents did nothing for four months that the Petitioners sought relief in the district court.

QUESTIONS PRESENTED—Continued

At every stage in the proceedings below, the Petitioners cited and briefed the bankruptcy court requirement that the Respondents restore the status quo. Yet, in neither the district court opinion nor the Eleventh Circuit opinion do the words restore the status quo even appear. In fact, in the Eleventh Circuit opinion, two of the three dismissals rely on the fact that the obligation to restore the status quo does not apply in the federal courts. The Petitioners request that this Court restore the requirement which is a crucial protection for Debtors in bankruptcy.

PARTIES TO THE PROCEEDING

Petitioners:

Robert A. Heghmann and Beatrice M. Heghmann

Respondents:

Djamel Hafiani, Mary Hafiani, Miriam Hafiani, Jamel Joseph Hafiani, Julia Sarah Hafiani, The Town Of Rye, N.H., John Does 1 thru 6000, and Mary Roes 1 thru 6000

RELATED CASES

- *Robert A. Heghmann and Beatrice M. Heghmann v. Djamel Hafiani, Mary Hafiani, Miriam Hafiani, Jamel Joseph Hafiani, Julia Sarah Hafiani, The Town Of Rye, N.H., John Does 1 thru 6000, and Mary Roes 1 thru 6000*, No. 3:20-cv-670-BJD-JBT, United States District Court for the Middle District of Florida, Jacksonville, Division. Judgment entered Jul. 14, 2021.
- *Robert A. Heghmann and Beatrice M. Heghmann v. Djamel Hafiani, Mary Hafiani, Miriam Hafiani, Jamel Joseph Hafiani, Julia Sarah Hafiani, The Town Of Rye, N.H., et al.*, No. 21-12650, United States Court of Appeals for the Eleventh Circuit. Judgment entered Oct. 26, 2022 (petition for rehearing and petition for rehearing en banc denied on Jan. 12, 2023).

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INTRODUCTION

On August 19, 2003, Chief Judge Vaughan found that Djamel Hafiani violated the Automatic Stay protecting Petitioner Beatrice Heghmann. Shortly thereafter Petitioner Robert Heghmann contacted counsel for the Respondents and reminded them of their clients obligation to restore the status quo. When after four months the Respondents took no steps to restore

the status quo, the Petitioners filed a complaint in the U.S. District Court for New Hampshire.

On November 7, 2004, the federal court complaint was dismissed for lack of subject matter jurisdiction. Since then, the Respondents, believing the dismissal let them off the hook, have taken no action to restore the status quo.

Since then, the Petitioners have sought a district court in which they could file a new complaint. That district court had to be (1) in a circuit which permitted district courts to entertain complaints concerning violation of the automatic stay (2) where the Respondents had property which could be garnished or attached since jurisdiction would have to be *quasi in rem*, (3) where state law did not require a bond of 100% or 200% of the value of the property being garnished or attached and (4) the debtors could afford to travel to the district court for hearings.

The district court and appellate court were both critical of the delay in beginning this litigation. In fact, it was a miracle the Petitioners found a district court meeting the above criteria.

OPINIONS BELOW

The court of appeals' opinion (App. 1-17) is not reported. The court of appeals' order denying rehearing en banc (App. 43-44) is unreported.

JURISDICTION

The court of appeals entered judgment on October 26, 2022. The court of appeals denied a timely petition for rehearing en banc on January 12, 2023. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULES INVOLVED

U.S. Constitution Article I

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

U.S. Constitution Article III

> The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

11 U.S.C. § 362(k)

> An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

18 U.S.C. § 1341

Whoever, having devised or intending to devise any scheme or artifice to defraud . . . places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service . . . shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1343

Whoever, having devised or intending to devise any scheme or artifice to defraud . . . by means of wire, radio, or television communication in interstate or foreign commerce . . . shall be fined under this title or imprisoned not more than 20 years, or both.

28 U.S.C. § 157

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1334

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . **(1)** To recover damages for injury to his person or property

STATEMENT

1. THERE IS A SEVERE SPLIT BETWEEN CIRCUITS WHICH THIS COURT MUST RECONCILE

At the heart of the Bankruptcy Code is the Automatic Stay, 11 U.S.C. § 362. And what makes the Automatic Stay so effective is its enforcement by an Article III Judge and a jury in a United States District Court under Sec. 362(k);

As this case amply illustrates, without access to an Article III Judge and a district court jury, the protection of Sec. 362 is totally illusory and the debtor in bankruptcy has no protection against their estate being totally converted by banks, landlords, creditors or anyone who pleases.

There is a split in the Circuit Courts of Appeals as to whether a district court can exercise jurisdiction over a complaint under Sec. 362(k) seeking compensatory and punitive damages for violation of the automatic stay. The First and Second Circuit Courts of Appeals and individual district courts have dismissed

complaints filed by debtors who claimed their automatic stay was violated. The leading authority is *Eastern Equip. Servs. Corp. v. Factory Point Nat'l Bank*, 236 F.3d 117, 121 (2d Cir. 2001) (holding that claims under 11 U.S.C. § 362(h) (now Sec. 362(k)) must be brought in the bankruptcy court, rather than in the district court, which only has appellate jurisdiction over bankruptcy cases). According to Shepard's Citations, *Eastern Equipment* has been cited hundreds of times and followed in dozens of cases.

On the opposite side are *Martin-Trigona v. Champion Fed'l Sav. Loan Assoc.*, 892 F.2d 575, 577 (7th Cir. 1989) *Pettitt v. Baker*, 876 F.2d 456, 458 (5th Cir. 1989) *Price v. Rochford*, 947 F.2d 829 (7th Cir. 1991) and *Justice Cometh, Ltd v. Lambert*, 426 F.3d 1342 (11th Cir. 2005). Each of these cases held or suggested that debtors whose automatic stay was violated could bring an action in the district court for compensatory and punitive damages.

What is significant here is that neither line of cases has been discussed subsequent to this Court's decision in *Stern v. Marshall*, 564 U.S. 462 (2015).

2. THE ELEVENTH CIRCUIT DECISION CANNOT BE RECONCILED WITH EITHER THIS COURT'S DECISION IN *STERN V. MARSHALL* OR CONGRESSIONAL REVISIONS OF 28 U.S.C. § 157.

In *Stern* this Court discussed the interplay between the Bankruptcy Court and *Northern Pipeline v. Marathon Pipe Line*, 458 U.S. 50 (1982).

> This is not the first time we have faced an Article III challenge to a bankruptcy court's resolution of a debtor's suit. In *Northern Pipeline*, we considered whether bankruptcy judges serving under the Bankruptcy Act of 1978—appointed by the President and confirmed by the Senate, but lacking the tenure and salary guarantees of Article III—could "constitutionally be vested with jurisdiction to decide [a] state-law contract claim" against an entity that was not otherwise part of the bankruptcy proceedings. 458 U.S., at 53, 87, n. 40 (plurality opinion); see *id.*, at 89-92 (Rehnquist, J., concurring in judgment). The Court concluded that assignment of such state law claims for resolution by those judges "violates Art. III of the Constitution." *Id.*, at 52, 87 (plurality opinion); *id.* at 91 (Rehnquist, J., concurring in judgment).
>
> . . .
>
> After our decision in *Northern Pipeline*, Congress revised the statutes governing bankruptcy jurisdiction and bankruptcy judges. In the 1984 Act, Congress provided

> that the judges of the new bankruptcy courts would be appointed by the courts of appeals for the circuits in which their districts are located. 28 U.S.C. § 152(a). And, as we have explained, *Congress permitted the newly constituted bankruptcy courts to enter final judgments only in "core" proceedings. See* supra, *at 7-8.*

Core proceedings are defined in 28 U.S.C. § 157(b)(2). Core proceedings include, but are not limited to:

> **(B)** allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

Sec. 157(b)(2)(0) provides:

> other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, *except personal injury tort or wrongful death claims*; (emphasis added)

Thus, the drafters of the Code carefully kept personal injury and wrongful death claims out of the hands of an Article I judge. Instead, they provided for personal injury claims in Sec. 157(b)(2)(5):

> The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

What is a violation of the Automatic Stay? The violator converts the property of the Debtor either for his own use or for sale. The debtor suffers loss of his estate and often mental and emotional distress. These are Common Law Torts which under *Stern* and *Marathon Pipeline* should only be litigated before an Article III Judge.

On August 19, 2003 Chief Judge Vaughan of the New Hampshire Bankruptcy Court ruled that Djamel Hafiani had violated Petitioner Beatrice Heghmann's Automatic Stay. The Petitioners did not seek compensatory or punitive damages in the Bankruptcy Court. Instead after the ruling, Petitioner Robert Heghmann reminded Hafiani and his counsel of his duty to restore the status quo. When Hafiani and his counsel ignored the request for four months, the Petitioners filed an action in the U.S. District Court for New Hampshire seeking compensatory and punitive damages. The District Court dismissed the complaint ruling the Court lacked subject matter jurisdiction.

Since then, the Petitioners have sought a district court in which they could file their complaint. They thought they had found it in the Middle District of Florida. They were wrong. Although the Eleventh

Circuit has ruled debtors may file actions in the district courts for violation of the automatic stay, many in the new generation of judges respectfully disagree. Both the District Court and the three-judge panel ruled on the basis that this case belonged in the Bankruptcy Court. The District Court dismissed the case essentially on the basis of Laches. The panel then sought excuses to dismiss the case.

This Court must give guidance to Federal Courts, Bankruptcy Courts and Debtors as to which court has jurisdiction over claims for compensatory and punitive damages.

3. THE ELEVENTH CIRCUIT HAS ISSUED A SEVERELY FLAWED DECISION THAT DEEPENS CONFUSION ON AN ISSUE OF NATIONAL IMPORTANCE

A. This Court must Preserve the Duty to Restore the Status Quo

The District Court and the Circuit Court were vexed by the failure of the Petitioners to begin this litigation for almost 20 years. Yet in neither Court's Opinion do the words "restore the *status quo*" even appear. For almost 20 years, the Respondents have not taken a single step to restore the *status quo*. And neither Court expressed any concern whatsoever. At the very least, the Petitioners expected the District Court once the Respondents had appeared by counsel, to order *sua sponte* the Respondents to restore the *status quo* forthwith or face contempt. Under bankruptcy law,

the Petitioners did not have to file a lawsuit. They did not have to file a motion, contempt or otherwise. Once the Bankruptcy Court finds a violation of the automatic stay the duty to restore is established automatically. In effect, the duty to restore is an order of the court and failure to restore the *status quo* is contempt of court. There was no reason for the District Court to hesitate unless, of course, the duty to restore does not exist in the 11th Circuit.

B. Dismissal of Case Against Town of Rye

At page 17 of the Opinion, the case against the Town of Rye is dismissed for lack of personal jurisdiction. The Opinion rejects the Petitioners' argument that its jurisdiction is *quasi in rem* because the Town of Rye has no property in Florida. The Opinion not only ignores the presence of three banks with operations in both New Hampshire and Florida but it ignores the U.S. Supreme Court decision in *Shaw v. U.S.*, 580 U.S. ___ (2016). In *Shaw*, Justice Breyer discussed the legal relationship between banks and depositors in relation to depositors' funds held by the bank.

> When a customer deposits funds, the bank ordinarily becomes the owner of the funds and consequently has the right to use the funds as a source of loans that help the bank earn profits (though the customer retains the right, for example, to withdraw funds). 5A Michie, Banks and Banking, ch. 9, §1, pp. 1-7 (2014) (Michie); id., §4b, at 54-58; id., §38, at 162; *Phoenix Bank v. Risley*, 111

> U.S. 125, 127 (1884). Sometimes, the contract between the customer and the bank provides that the customer retains ownership of the funds and the bank merely assumes possession. Michie, ch. 9, §38, at 162; *Phoenix Bank*, supra, at 127. But even then the bank is like a bailee, say, a garage that stores a customer's car. Michie, ch. 9, §38, at 162. And as bailee, the bank can assert the right to possess the deposited funds against all the world but for the bailor (or, say, the bailor's authorized agent). 8A Am. Jur. 2d, Bailment §166, pp. 685-686 (2009). *Shaw v. U.S.*, 580 U.S. at ___.

Thus, the banks with operations in Florida have property within the State of Florida and are therefore subject to garnishment in Florida. But Justice Breyer's Decision also covers the property rights of the depositors.

> [t]he bank can assert the right to possess the deposited funds against all the world but for the bailor (or, say, the bailor's authorized agent). 8A Am. Jur. 2d, Bailment §166, pp. 685-686 (2009). *This right, too, is a property right*. 2 W. Blackstone, Commentaries on the Laws of England 452-454 (1766) (referring to a bailee's right in a bailment as a "special qualified property"). (Emphasis added) Ibid.

Thus, the Town of Rye and the residents of the Town of Rye have a "special qualified property" in the three banks with operations in both states. The banks have a debt to the depositors which is payable on demand. The Petitioners claim the right to attach this

debt to establish *quasi in rem* jurisdiction. The Supreme Court case directly on point is *Shaffer v. Heitner*, 433 U.S. 186 (1977), a case neither cited nor discussed by the Respondents either in the District Court or the Circuit Court.

> Attachment is a procedure by which the court, at the request of a plaintiff, directs an officer of the court to seize or assert dominion and control over a defendant's assets. Attachment may be used as a vehicle to preserve assets of a defendant with respect to claims pending in that forum or in foreign litigation. *See Barclays Bank, S.A. v. Tsakos*, 543 A.2d 802 (D.C. 1988) (Greek defendants' assets were attached by foreign bank in the District of Columbia pending outcome of litigation in Europe because allegation was made of nonresidents' intended effective removal of property by way of sale and nonavailability of assets elsewhere); *Carolina Power & Light Co. v. Uranex*, 451 F.Supp. 1044, 1046-49 (N.D. Cal. 1977) (assets of French company over which in personam jurisdiction could not be obtained in any state in the United States were permitted by a California federal court to be attached, provided that the plaintiff filed suit within 30 days in a jurisdiction—presumably France—where in personam jurisdiction could be obtained over the defendant to resolve the underlying controversy); *Louring v. Kuwait Boulder Shipping Co.*, 455 F.Supp. 630 (D. Conn. 1977) (debt owed to Kuwait was garnished, providing quasi in rem jurisdiction for that same Connecticut federal court to

adjudicate plaintiff's underlying claim; Chris Helmer, *PLI 2006: Using Prejudgment Remedies to Preserve Non-Resident's United States Assets During Foreign Litigation, 03.29.06,* at 2-3 (hereinafter Helmer).

Thus, by attaching the deposits in the banks made by the Town and residents of Rye in New Hampshire here in Florida, the Petitioners could obtain *quasi in rem* jurisdiction over all of the Respondents. Once the Petitioners attach the "special qualified property" of the Town and its residents, they can no longer withdraw the funds on deposit. Those funds must be held for the Petitioners. This clearly establishes *quasi in rem* jurisdiction. The complaint against the Town of Rye should not have been dismissed.

C. Dismissal of the Complaint against Djamel Hafiani

In their Opinion the Court dismissed the Complaint against Djamel Hafiani based upon *res judicata*. The Court ruled the Bankruptcy Court had jurisdiction over the claim for compensatory and punitive damages based upon the violation of Petitioners' automatic stay and ruled no compensatory or punitive damages would be awarded. The 11th Circuit Court then ruled that the Bankruptcy Court's ruling would block the attempt by the Petitioners to obtain damages in the district court.

The Court in this instance ignored several important points. First, the Petitioners never sought

damages in the Bankruptcy Court. The Petitioners filed a Motion for Contempt. The Bankruptcy Court sua sponte converted the Motion for Contempt into a Motion for Damages without notice to the Petitioners and ruled no damages would be awarded. The Petitioners' position is that since the actions of the Respondents constituted Common Law Torts the Article I judge in the Bankruptcy Court had no jurisdiction over their damage claims and this is why they did not seek damages in the Bankruptcy Court.

In this instance, the Court ignored the Respondents failure to restore the status quo. As discussed in *Bodner v. Banque*, 114 F.Supp.2d 117 (E.D.N.Y. 2000), "[t]he defendants' allegedly ongoing refusal to return the plaintiffs' property would represent a 'continuing violation' of international law that persisted up through the time of suit." *Bodner* has been universally followed including one case in the Eleventh Circuit, *Rosner v. U.S.*, 231 F.Supp.2d 1202, 1208 (S.D. Fla. 2002). In this action the continuous violation is the failure to restore the *status quo* and based upon the facts, res judicata would not apply to this suit for damages.

The Supreme Court decisions directly on point are *Lawler v. National Screen Services Corp.*, 349 U.S. 322 (1955) and *Davis v. Brown*, 94 U.S. 423 (1876). In *Lawler*, the plaintiff, and the National Screen defendants were involved in distribution of motion picture advertising. Lawler claimed National Screen and others were creating a monopoly and in 1942 filed an antitrust lawsuit. In 1943, the suit was settled with

Lawler getting certain assurances and National Screen getting the suit dismissed "with prejudice." Immediately after the settlement, National Screen resumed its monopolistic practices. After attempting to resolve the dispute without further litigation, in 1949 Lawler re-filed the original suit alleging the same violations against the same defendants. The suit sought damages for the post-1993 violations. National Screen defended that the second suit was blocked by *res judicata*. The Third Circuit agreed and affirmed the dismissal of the suit by the District Court. Lawler appealed to the Supreme Court and the Court granted Certiorari.

The Supreme Court reversed the Third Circuit ruling that whether the defendants conduct was regarded as a series of individual torts or as one continuous tort, the two suits were not based on the same cause of action because the post-1943 violations were separate and therefore 1949 suit was not barred by the 1942 settlement.

This case presents the exact same scenario. The August 19, 2003 Judgment entered by Chief Judge Vaughan in the Bankruptcy Court is the equivalent of the 1942 settlement in *Lawler*. And as in *Lawler*, the Respondents continued to violate the automatic stay. Bankruptcy Courts have universally held that a willful violation of the stay includes the failure to undo the damages caused by the violation of the stay. Therefore, the continuous violations post-2003 support a separate lawsuit.

Every day since August 19, 2003, the Respondents have had the opportunity to undo the damage done by their violation of the Automatic Stay by restoring the status quo and they have failed to do so. Instead, they viewed the dismissal by the New Hampshire District Court as letting them off the hook and relieving them of the obligation to restore the status quo. Therefore, the Respondents are not just being sued for a violation that occurred in 2003 but for violations that have occurred every day since then. In terms of *Lawler*, the current suit is the 1949 suit and the Appellants are seeking damages for the violations that have occurred since 2003. Under *Lawler* the dismissal of the complaint against Djamel Hafiani is error.

D. Laches

In footnote 12 at page 15 of the Opinion, the Court states that this action is barred by Laches. The Court relies on *Thornton v. First State Bank of Joplin*, 4 F.3d 650, 653 (1993). While *Thornton* may have been good law in 1993, it was implicitly overruled in *Petrella v. Metro-Goldwin-Mayer, Inc.*, 572 U.S. 663 (2014).

The motion picture Raging Bull, based on the life of boxing champion Jake LaMotta, who, with Frank Petrella, told his story in a screenplay copyrighted in 1963. In 1976, the pair assigned their rights and renewal rights, which were later acquired by Respondent United Artists Corporation, a subsidiary of Respondent Metro-Goldwyn-Mayer, Inc. (collectively, MGM). In

1980, MGM released the film Raging Bull and it continues to market the film today.

Frank Petrella died during the initial copyright term, so renewal rights reverted to his heirs. Paula Petrella (Petrella), his daughter, renewed the 1963 copyright in 1991, becoming its sole owner. Seven years later, she advised MGM that its exploitation of Raging Bull violated her copyright and threatened suit. Some nine years later, on January 6, 2009, she filed an infringement suit, seeking monetary and injunctive relief limited to acts of infringement occurring on or after January 6, 2006. Invoking the equitable doctrine of laches, MGM moved for summary judgment. Petrella's 18-year delay in filing suit, MGM argued, was unreasonable and prejudicial to MGM. The District Court granted MGM's motion, holding that laches barred Petrella's complaint. The Ninth Circuit affirmed.

The Supreme Court overruled the Ninth Circuit and permitted the action to go forward. In its decision the Court ruled that, "While laches cannot be invoked to preclude adjudication of a claim for damages brought within the Act's three-year window, in extraordinary circumstances, laches may, at the very outset of the litigation, curtail the relief equitably awarded." 572 U.S. at 19. Now in *Petrella*, under copyright law the three-year window could be restarted with each new violation. None of the authorities cited in support of dismissing the Count involve the continuing violation of the duty to restore the status quo. In light of *Bodner*

and *Petrella*, the Circuit Court's ruling must be reversed.

REASONS FOR GRANTING THE PETITION

Not only is this a question of national importance but this may be the only opportunity this Court will have to take up the questions raised herein. Most debtors do not have the talents or resources to bring these issues before this Court. These Petitioners are here only because Petitioner Robert Heghmann is an attorney and dedicated himself to preventing what happened to him, his wife and family from ever happening to another family. It took years and years of research to bring these issues before this Court. No other debtor will have the resources to do this and no attorney is going to take on this task on a contingency fee basis. Currently Debtors in New York, all of the New England states and several district courts do not enjoy the protection of the automatic stay. This Court in its supervisory capacity cannot allow this to continue.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

ROBERT A. HEGHMANN
BEATRICE M. HEGHMANN
Post Office Box 2108
Leander, Texas 78646
(603) 866-3089
(603) 205-1787
Bob_Heghmann@Reagan.com
BHeghmann@hotmail.com