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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 21-2946 & 21-2954

IN RE:

JOSEPH C. SHEEHAN,

Debtor.

JOSEPH C. SHEEHAN,

Plaintiff-Appellant,

v.

BRECCIA UNLIMITED COMPANY, *et al.,*

Defendants-Appellees.

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division.

Nos. 1:20-cv-05282 & 1:20-cv-05283 – **Andrea R. Wood**, *Judge*.

ARGUED MAY 25, 2022 – DECIDED SEPTEMBER 7, 2022

Before RIPPLE, ROVNER, and KIRSCH, *Circuit Judges*.

ROVNER, *Circuit Judge*. Joseph Sheehan, an Illinois resident, would like the bankruptcy court in Illinois to enforce that court's stay against his Irish creditors. Those creditors, who are residents of Ireland, seek to sell Sheehan's Irish property to recoup their loss on loans made in Ireland, and on which Sheehan defaulted in Ireland. The bankruptcy court determined it had no personal jurisdiction over the foreign defendants and granted their motions to dismiss. The district court on appeal affirmed the orders of the bankruptcy court, and we affirm that court's judgment.

I.

Joseph Sheehan is a retired surgeon who emigrated from Ireland several decades ago and currently lives in Winfield, Illinois. In 2006, Sheehan obtained loans from an Irish bank to buy interest in Blackrock Hospital Limited, an Irish medical company (the "Blackrock Shares"), and also to purchase personal real estate located in Ballyheigue, Ireland (the "Ballyheigue property"). In 2008, he obtained additional loans to pay for more Blackrock Shares. Both loans were secured by the Blackrock Shares themselves. Sheehan defaulted on both loans in 2010. In 2014, defendant-appellee Breccia Unlimited Company ("Breccia"), an Irish entity that also owned shares in Blackrock Hospital Limited, acquired the loans—both the loans secured by the Blackrock Shares and the Irish bank's interest in the Ballyheigue property mortgage—and proceeded to take steps to foreclose on the underlying collateral. Breccia is a private unlimited company incorporated under the laws of Ireland

and maintains its principal place of business in Dublin. Sheehan sued to prevent those foreclosure efforts in Irish courts, but in July 2019, an Irish appellate court found in Breccia's favor and gave the company authorization to enforce its security interest in the Blackrock Shares and the Ballyheigue property with the aid of an Irish receiver. The Irish Supreme Court declined to disturb that final judgment. Subsequently, in December 2019, Breccia registered the Blackrock Shares in its name and appointed a receiver, defendant-appellee Damien Murran, to take possession of the Ballyheigue property, secure it, market it, and sell it. Murran is an Irish citizen who resides in Ireland and is an employee of defendant-appellee, RSM Ireland Business Advisory Limited ("RSM Ireland"). RSM Ireland is an Ireland limited liability company.[1] On March 5, 2020, Breccia appointed Murran as the receiver for the Ballyheigue

[1] Sheehan alleges that RSM Ireland holds itself out as having a presence and capabilities within the United States, and specifically in Chicago, as part of a global RSM network. RSM Ireland, on the other hand, describes itself as an Irish limited liability company which is part of a network of other companies trading as RSM. According to RSM Ireland, and as noted on the website, "Each member of the RSM network is an independent accounting and advisory firm each of which practices in its own right. The RSM network is not itself a separate legal entity of any description in any jurisdiction." https://www.rsm.global/ireland/offices. RSM Ireland does not conduct and is not related to any business in the United States. Sheehan has not provided any factual or legal authority for the bare assertion that an independent company affiliated with a network of other independent companies can be considered to be doing business in any jurisdiction in which any company in the network operates.

Property as well. Murran accepted the receivership on March 23, 2020.

On March 12, 2020, Sheehan filed a petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. Under the rules of the United States Bankruptcy Code, Sheehan's bankruptcy filing triggered an automatic stay applicable to "any act to obtain pos-session 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). On the same day that Sheehan filed his bankruptcy petition, he notified the Irish receiver, Murran, that he had commenced bankruptcy proceedings, and that the automatic stay barred any efforts by the receiver to exercise control over the Blackrock Shares. Several days later, on March 18, he provided the same notice to Breccia, but this time noted that the stay applied not only to the Blackrock Shares, but also to "any other property owned by Dr. Sheehan." App. 80.[2] Nevertheless, Breccia, having prevailed in the Irish courts, continued, through the receiver, to take the necessary steps toward sale of the collateral securing the loans on which Sheehan had defaulted. For example, on March 13, 2020, Murran entered into a contract with defendant-appellee, Irish Agricultural Development Company Unlimited ("IADC") for the sale of the Blackrock Shares.[3] Like

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[2] References to "App." refer to the Appendix of Plaintiff-Appellant Joseph C. Sheehan, volumes I and II, located at R. 19-1 & 19-2 in the appellate docket.

[3] Breccia maintains that the sale occurred before Breccia's Irish counsel received any notification regarding Sheehan's bankruptcy, which according to Breccia occurred when Sheehan's

the other two companies, IADC is incorporated in Ireland, maintains its principal place of business in Ireland, and has no operations in the United States.

On March 25, 2020, Murran accepted an appointment as receiver for the Ballyheigue property, but Sheehan did not be-come aware of the Ballyheigue property receivership until April 7, 2020, when the receiver informed Sheehan that the receivership of the property had commenced, the locks had been changed, and the receivership intended to sell the property and apply the proceeds toward the discharge of Sheehan's debts. Six days later, on April 13, 2020, Sheehan filed the underlying adversary complaint in the United States bankruptcy court, alleging that Breccia, IADC, the receiver Murran, and Murran's employer, RSM Ireland, improperly exercised control over the property of his bankruptcy estate in violation of the Bankruptcy Code's automatic stay provision. In his complaint, he requested the return of the Blackrock Shares and the Ballyheigue Property to the

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counsel contacted Breccia's counsel on March 18, 2020. See App. 79–81. Nevertheless, Sheehan's counsel sent notice of the bankruptcy filing to Murran's counsel on March 12, 2020 via e-mail, (See App. 56–58). We can assume, therefore, that Murran's counsel had notice of the bankruptcy filing when Murran entered into the contract with IADC, even if Breccia did not. In any event, the timing of the transaction does not have any bearing on the outcome of this proceeding.

We also note that, as of February 24, 2020, the Irish courts were still issuing post-decision rulings, including an injunction to prevent Sheehan from disposing of his assets in Ireland, which may have affected the timing of the receiver's sales.

bankruptcy estate, an order compelling the defendant-appellees to comply with the automatic stay, and an award of damages for their willful violation of the automatic stay.

Sheehan initially e-mailed the defendants to request that they accept service of process of the complaint through their Irish attorneys. The defendants did not do so, but rather argued *inter alia* in support of their subsequent motions to dismiss that the email notice Sheehan had provided was not sufficient process under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention"). On June 12, two months after Sheehan filed his adversary complaint, and one month after the defendants filed their motions to dismiss, Sheehan formally served Murran, RSM, and IADC. He formally served Breccia on June 16.

On May 13, thirty days after Sheehan filed his complaint, Breccia and IADC together moved to dismiss the adversary proceeding, and Murran and RSM Ireland jointly did the same. Both motions sought dismissal of the adversary complaint under Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction, and 12(b)(5) for insufficient service of process.[4] In addition, Murran and RSM Ireland argued that the doctrine of *forum non conveniens* dictated dismissal. In response, and as an alternative to denial

[4] The Federal Rules of Civil Procedure apply in an adversary proceeding in bankruptcy court. *See* Fed. R. Bankr. P. 7012(b).

of the motions to dismiss, Sheehan requested discovery related to the matters set forth in the declarations attached to the defendants' motions to dismiss. The bankruptcy court granted both motions to dismiss (in separate orders), finding that the bankruptcy court lacked personal jurisdiction over the Irish defendants, as none of the defendants conducted any activity related to the adversary claims in the United States, and the only link between the defendants and the forum was the fact that Sheehan lived in Illinois. The bankruptcy court also concluded that Sheehan's e-mail service to the defendant-appellees was ineffective un-der the Hague Service Convention. In its order granting Murran and RSM Ireland's motion to dismiss, the bankruptcy court also held that the doctrine of *forum non conveniens* provided an additional basis for dismissal. Sheehan appealed to the district court which confirmed that the bankruptcy court lacked personal jurisdiction over any defendant. Additionally, the district court concluded that "all of the facts that [Sheehan] wished to investigate through jurisdictional discovery either do not involve [the defendants'] suit-related conduct or concern their contacts with Sheehan regarding the Blackrock Shares or the Ballyheigue Property," and thus the bankruptcy court had not abused its discretion in denying discovery *sub silentio*. App. 637, 651. Having found that the bankruptcy court lacked personal jurisdiction over the defendants, the district court did not reach the questions of ser-vice of process or *forum non conveniens*.

II.

We review the judgment of the district court using the same standard of review with which the district court reviewed the bankruptcy court's ruling. *Wiese v. Cmty. Bank of Cent. Wis.,* 552 F.3d 584, 588 (7th Cir. 2009). Specifically, we review a district court's dismissal for lack of subject matter jurisdiction de novo, while reviewing findings of fact considered in determining jurisdiction only for clear error. *City of Chicago ex rel. Rosenberg v. Redflex Traffic Sys., Inc.,* 884 F.3d 798, 802 (7th Cir. 2018); *see also Illinois Ins. Guar. Fund v. Becerra,* 33 F.4th 916, 922 (7th Cir. 2022) ("Subject-matter jurisdiction sometimes depends on disputed factual issues, and we review for clear error a district court's findings on jurisdictional facts.").

A. Personal jurisdiction

An assessment of jurisdiction is the starting point of every case in federal court. In this case, it happens to be the ending point as well. The bankruptcy court is a court of limited jurisdiction and receives its jurisdictional mandate in a statutory grant of power. See *Celotex Corp. v. Edwards,* 514 U.S. 300, 307 (1995) (listing the statutory sources of a bankruptcy court's jurisdiction). And of course, as the Federal Rules of Bankruptcy Procedure remind us, all jurisdiction is ultimately subject to constitutional constraints. Fed. R. Bankr. P. 7004(f) ("If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service in accordance with this rule … is effective to establish personal jurisdiction over the person of

any defendant … ."). Specifically, due process requires that out-of-forum defendants must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash. Off. of Unemp't Comp. & Placement*, 326 U.S. 310, 316 (1945).[5]

When a defendant moves to dismiss a complaint for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), the plaintiff bears the burden of demonstrating that jurisdiction exists. *Purdue Res. Found. v. Sanofi-Synthelabo, S.A.,* 338 F.3d 773, 782 (7th Cir. 2003). At this stage of the proceedings, however, Sheehan was only required to make a prima facie showing that the defendants had the necessary minimum contacts. *Durukan Am., L.L.C. v. Rain Trading, Inc.,* 787 F.3d 1161, 1163–64 (7th Cir. 2015); *Felland v. Clifton,* 682 F.3d 665, 672 (7th Cir. 2012). As with a Rule 12(b)(6) motion, the Court must "accept as true all well-pleaded factual allegations and draw all reasonable inferences in favor of the plaintiff" when evaluating personal jurisdiction. *St. John's*

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[5] Because Congress has authorized broad, nationwide service of process through Federal Rule of Bankruptcy Procedure 7004(d), personal jurisdiction disputes in bankruptcy proceedings generally implicate the Due Process Clause of the Fifth Amendment. *See Diamond Mortg. Corp. of Illinois v. Sugar,* 913 F.2d 1233, 1244 (7th Cir. 1990). By contrast, questions of personal jurisdiction in other contexts generally implicate the Due Process Clause of the Fourteenth Amendment, as Congress has directed that federal courts ordinarily follow state law in determining personal jurisdiction requirements. See *Daimler AG v. Bauman,* 571 U.S. 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)).

United Church of Christ v. City of Chicago, 502 F.3d 616, 625 (7th Cir. 2007).

Because Sheehan attempts to link personal jurisdiction over the defendants to the bankruptcy court's in rem jurisdiction, we will begin with a brief look at a bankruptcy court's jurisdiction over property. A bankruptcy court has *in rem* jurisdiction over all of the property in a debtor's estate, which includes all property "wherever located and by whomever held." 11 U.S.C. § 541(a); 28 U.S.C. § 1334(e)(1); *Tenn. Student Assistance Corp. v. Hood,* 541 U.S. 440, 448 (2004). The filing of a bankruptcy petition triggers an automatic stay prohibiting any attempts to exercise control over any property of the estate. 11 U.S.C. § 362(a)(3). Prohibitions on such attempts, however, cannot be enforced if a court does not have personal jurisdiction over the party holding the property. *Hood,* 541 U.S. at 448 ("Because the court's jurisdiction is premised on the res, however, a nonparticipating creditor cannot be subjected to personal liability."); *Freeman v. Alderson,* 119 U.S. 185, 188 (1886) ("The state has jurisdiction over property within its limits owned by non-residents, and may therefore subject it to the payment of demands against them of its own citizens. … If the non-resident possesses no property in the state, there is nothing upon which its tribunals can act.").

Sheehan spends many pages of his brief focusing on the *in rem* jurisdictional powers of the bankruptcy court. There is no need to convince this court that the bankruptcy court had jurisdiction over any property in Sheehan's estate, however, as this point was con-

ceded by all parties and recognized by both courts below. In pursuit of his *in rem*-focused argument, Sheehan asserts conclusively that "[t]he Blackrock Shares and the Ballyheigue Property are property of the Debtor's bankruptcy estate." Sheehan Brief at 16. The accuracy of this statement is far from clear given the Irish court's judgment against Sheehan in a suit in Ireland.[6] For purposes of these proceedings, however, the defendants are willing to concede that Sheehan held some kind of interest in the Blackrock Shares and Ballyheigue property at the time he filed his bankruptcy petition, and we will do the same. But the court's ability to assert control over any property in Sheehan's estate located in Ireland depends on

[6] Sheehan asserts that as of the date that he petitioned for bankruptcy, March 12, 2020, he still owned the Blackrock Shares (or as he states, "a 28% equity interest in Blackrock Hospital Limited") and that Breccia had only asserted a security interest in those shares. Sheehan Brief at 3. The defendants explain that on July 31, 2019, the Court of Appeal of Ireland entered judgment in favor of Breccia and against Sheehan and lifted the injunction that had previously prevented Breccia from realizing on its collateral. In 2019, Breccia registered the Blackrock Shares in its own name and ap-pointed a receiver to sell them. The original Irish lending bank acquired legal title to the Ballyheigue property in 2006 when it extended the mortgage to Sheehan, and Breccia acquired that title when it purchased the mortgage in 2014. Although questions certainly remain about what interest Sheehan retained in these assets, we need not resolve this matter because even if Sheehan retained any interest in the Blackrock Shares and Ballyheigue property, and the bankruptcy court had jurisdiction over the disputed assets by means of its power of *in rem* jurisdiction over the property of Sheehan's estate, it did not have personal jurisdiction over any of the defendants holding that property.

whether the court has personal jurisdiction over the Irish citizens and entities holding that property.

Sheehan's *in rem*-linked theory relies on the legal fiction that property of a bankruptcy estate "regardless of actual location—is *legally* located within the jurisdictional boundaries of the district in which the court sits." Sheehan Brief at 22 (quoting *In re Simon,* 153 F.3d 991, 996 (9th Cir. 1998) (emphasis in original)). According to Sheehan's argument, because the Irish property was subject to the legal fiction of being in Illinois, all of the defendants' actions to seize and sell that property must also have occurred (fictionally) in Illinois. And because all of the defendant's actions occurred (fictionally) in Illinois, the defendants must have minimum contacts with Illinois. Sheehan has not asserted any authority for this theory linking personal jurisdiction to *in rem* jurisdiction, and it is no wonder that he has not. If a court could connect any person to estate property in this way there would be no need for an assessment of specific personal jurisdiction in bankruptcy cases. All actions would occur where the *res* was fictionally located, which, by definition, is wherever the bankruptcy court sits. Sheehan cannot bootstrap the personal jurisdiction claim in this circular manner, and we must look further to see whether the court had personal jurisdiction over the defendants.

A court can have either general or specific personal jurisdiction over a party. Neither party asserts that the court has general jurisdiction over the defendant-appellees, as none are "at home" in the jurisdiction either by being incorporated in Illinois or having a principal place of business there. *See Goodyear*

Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 924 (2011). All defendant-appellees are Irish citizens or Irish businesses and conduct their business operations in Ireland.

Thus we turn to the only applicable question of jurisdiction—whether the bankruptcy court had specific personal jurisdiction over the defendants. Specific personal jurisdiction depends on "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co. v. Superior Ct.,* 137 S. Ct. 1773, 1780 (2017) (cleaned up).

This court has enumerated the requirements for specific personal jurisdiction as follows: first, defendants must have purposefully directed their activities at the forum state or purposefully availed themselves of the privilege of conducting business in the forum; second, the alleged injury must arise out of or relate to the defendants' forum-related activities; and third, any exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice. *Rogers v. City of Hobart, Ind.,* 996 F.3d 812, 819 (7th Cir. 2021); *Tamburo v. Dworkin,* 601 F.3d 693, 702 (7th Cir. 2010).

Within the framework of those three requirements, the Supreme Court and this court have given more specific guidance on what it means to have purposefully directed activity at a forum or availed oneself of the privileges of a forum. That guidance informs us that our assessment of personal jurisdiction must focus on the acts and activities of the defendant.

Walden v. Fiore, 571 U.S. 277, 284 (2014); *NBA Properties, Inc. v. HANWJH,* No. 21-2909, 2022 WL 3367823, at *4 (7th Cir. Aug. 16, 2022). The relationship between the defendant and the forum "must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Walden,* 571 U.S. at 284 (quoting *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475 (1985)) (emphasis in both opinions); *see also Asahi Metal Indus. Co. v. Superior Ct. of Cal., Solano Cnty.,* 480 U.S. 102, 109 (1987) ("Jurisdiction is proper ... where the contacts proximately result from actions by the defendant *himself* that create a substantial connection with the forum State.") (emphasis in original) (internal citations omitted); *Rogers,* 996 F.3d at 820 ("[A] defendant's relationship to the forum state must arise out of contacts that the defendant *himself* creates with the forum State.") (internal citations omitted) (emphasis in original).

This means that specific personal jurisdiction cannot depend solely on the actions of the plaintiff or third parties. *Walden,* 571 U.S. at 284. Moreover, the defendants' minimum contacts must be with the forum itself and not merely with a person who resides there. *Id.* at 285. Said another way, "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 285. "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Walden,* 571

U.S. at 286 (quoting *Burger King,* 471 U.S. at 475); *see also NBA Properties,* 2022 WL 3367823, at *7 ("The question is not whether the plaintiff purchased enough goods to subject the defendant to personal jurisdiction. The focus is whether [the defendant] purposefully directed its conduct at Illinois.").

This focus on a defendant's activities means that it is not enough that the defendant took some action that ultimately had an effect on the plaintiff in the forum. "The question is not whether the plaintiff experienced a particular injury or effect in the forum state but whether the defendant's conduct connects him with the forum in a meaningful way." *Rogers,* 996 F.3d at 819. A "meaningful way" is one in which defendants "purposefully directed" their actions at the forum. *Id.* This is true even if the defendant could have foreseen the effect on the plaintiff—that is, that the plaintiff would be harmed in the forum. *Burger King Corp.,* 471 U.S. at 474; *Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.,* 230 F.3d 934, 943 (7th Cir. 2000). The Supreme Court's precedents make clear "that it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment." *J. McIntyre Mach., Ltd. v. Nicastro,* 564 U.S. 873, 883 (2011). Thus, for example, "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed to-ward the forum State." *Asahi Metal Indus.,* 480 U.S. at 112. Likewise liquidating property in Ireland after receiving per-mission from an Irish court to do so is not activity directed toward

Illinois merely because it might have an effect on a resident and citizen of Illinois.

We can see the difference between actions that are purposefully directed at a forum and those that are not, by juxta-posing two Supreme Court cases addressing personal juris-diction. In *Calder v. Jones,* 465 U.S. 783 (1984), a reporter and editor, both of whom were based in Florida, published an allegedly libelous magazine article that was widely circulated in California. The Court found that the California court had jurisdiction over the defendants not only because their actions had an effect in California—that is, damage to the plaintiff's reputation—but also because the defendants had created ample contacts with California—they reached into California by telephoning and relying on California sources, they wrote the story about the plaintiff's activities in California, and they published it in a magazine that was widely circulated in that state. *Id.* at 788–89. The Court noted that the defendants engaged in activities that were purposefully "calculated to cause injury to [the] respondent in California." *Id.* at 791. In short, although the Court did comment on the effect the defendants' actions had on the plaintiff in California, its primary assessment was of the various contacts the defendants had with the forum state itself, "focus[ing] on the relationship among the defendant, the forum, and the litigation." *Calder,* 465 U.S. at 788 (internal citation omitted). As the Supreme Court later explained regarding its holding in *Calder,*

> Although we recognized that the defendants' activities "focused" on the plaintiff, our jurisdictional inquiry "focused on 'the relationship

> among the defendant, the forum, and the litigation.'" *Calder,* 465 U.S. at 788. Specifically, we examined the various contacts the defendants had created with California (and not just with the plaintiff) by writing the allegedly libelous story. We found those forum contacts to be ample.

Walden, 571 U.S. at 287 (cleaned up).

The *Walden* court went on to explain that mere injury to a forum resident, even if predictable, is not a sufficient connection to the forum. *Id.* at 290. "The crux of *Calder* was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff." *Id.* at 287.

The *Walden* court distinguished the facts in *Calder* from those in the case before it and held that a Georgia police officer in a Georgia airport who questioned and searched Nevada travelers, seized their cash, and allegedly filed a false probable cause affidavit to support that seizure, could not be successfully haled into a Nevada court as a defendant even if the officer must have known that his actions would cause harm to the Nevada plaintiffs in their home state. The Court compared the two cases and found that, unlike the reporter in *Calder,* the officer in *Walden* never travelled to Nevada, conducted activities therein, contacted anyone in Nevada, sent anything to anyone in Nevada, or otherwise aimed his activity at Nevada. *Walden,* 571 U.S. at 289.

Similarly, this court has concluded that when a plaintiff is injured by acts that a defendant commits entirely within one forum (in this case, Ireland), the

fact that the plaintiff suffers the negative effects of those acts in his home forum (in this case, Illinois) does not confer personal jurisdiction over the defendant in the latter forum. See *Mobile Anesthesiologists Chicago, L.L.C. v. Anesthesia Assocs. of Houston Metroplex,* 623 F.3d 440, 444 (7th Cir. 2010). In *Mobile Anesthesiologists,* a medical anesthesia business in Houston created a website in Houston with a similar name to one registered to Mobile Anesthesiologists Chicago. The Houston defendant continued to use the website even after receiving a cease and desist letter from the plaintiff Chicago company, which the plaintiffs maintained constituted actual knowledge that the plaintiff was suffering a harm in Illinois. Nevertheless, we noted that the Supreme Court in *Calder* made clear "that a defendant's intentional tort creates the requisite minimum contacts with a state only when the defendant expressly aims its actions at the state with the knowledge that they would cause harm to the plaintiff there." *Id.* at 445. In other words, harm to a plaintiff in the forum state is by itself insufficient. *Id.* at 447. The *Mobile Anesthesiologists* opinion emphasized the requirement that the defendants "expressly aim[]" their conduct at the forum state. *Id.* at 445–46. Thus, this court concluded, although the Houston doctor created and maintained a website that was certainly accessible in the forum state of Illinois, he did not aim his services or other actions there. The doctor was not licensed to practice in Illinois, his website had only a Houston-area phone number, and contained an invitation to doctors in the greater Houston area to contract with him for services. *Id.* at 446. We have summed up this case and

the rest of our specific personal jurisdiction cases by noting that our focus is on the deliberate actions of the defendants and whether they target or direct themselves toward the forum state. *Advanced Tactical Ordnance Sys., L.L.C. v. Real Action Paintball, Inc.,* 751 F.3d 796, 803 (7th Cir. 2014).

In short, "'express aiming' remains the crucial requirement when a plaintiff seeks to establish personal jurisdiction under *Calder*." *Mobile Anesthesiologists Chicago,* 623 F.3d at 445–46. In this case, the defendants' acts in Ireland may in-deed have had an effect upon Sheehan in Illinois, but none of the defendants "intentionally direct[ed]" or "expressly aim[ed]" the alleged wrongdoing (exerting control over and liquidating collateral) at Sheehan, let alone at Illinois. *Walden,* 571 U.S. at 289 ("Petitioner's actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections."); *Mobile Anesthesiologists Chicago,* 623 F.3d at 445 ("[A] defendant's intentional tort creates the requisite minimum contacts with a state only when the defendant expressly aims its actions at the state with the knowledge that they would cause harm to the plaintiff there."). The Irish defendants directed their activity at Irish property located in Ireland and which served as collateral for a loan made by an Irish bank, in accordance with the permission of an Irish court after several years of litigation resolving disputes over ownership of the property. None of the defendants did anything to reach out to the United States and affiliate themselves with the United States or Illinois. The only connection between the defendant's

suit-related conduct and the United States is Sheehan's residence in Illinois and his unilateral act of filing for Chapter 11 bankruptcy in Illinois. Specific personal jurisdiction cannot be based on the plaintiff's mere presence in the forum or on the "unilateral activity" of a plaintiff. *Walden,* 571 U.S. at 285–86. As an aside, it is worth noting that the genesis of this case came from Sheehan's acts when he reached out to Ireland to request financing from an Irish bank to purchase Irish property. The defendants were on the path to liquidating the collateral for that financing when Sheehan filed for bankruptcy in Illinois. Long before Sheehan filed for bankruptcy in Illinois, the defendants had litigated in Irish courts their right to liquidate the collateral, and they had already put into place a receivership to do just that. Had Sheehan never filed for bankruptcy in Illinois (or had he filed in any other state), the defendants would have proceeded just as they did. *See Walden,* 571 U.S. at 290. They cannot, therefore, have been aiming their conduct at Illinois.

Moreover, the fact that the defendants could have foreseen that their conduct would effect Sheehan in Illinois was insufficient to establish personal jurisdiction. *See Walden,* 571 U.S. at 289. Thus Sheehan's unilateral act of sending notice to the defendants of the bankruptcy proceedings in Illinois and the effect of the automatic stay, did not create minimum contacts. "To find express aiming based solely on the defendant's receipt of [a] letter [informing the defendants of the harm in the forum state] would make any defendant accused of an intentional tort subject to personal jurisdiction in the plaintiff's home state as

soon as the defendant learns what that state is. *Calder* requires more." *Mobile Anesthesiologists,* 623 F.3d at 447.

Despite the clear guidance from *Walden, Calder*, and *Mobile Anesthesiologists*, Sheehan cites to three bankruptcy cases from out-of-circuit bankruptcy courts (all pre-dating *Walden*) which Sheehan interprets to require this court to find that the court in this case had personal jurisdiction over the defendants.[7] We need not spend much time differentiating these cases from the one before us or ruling on the propriety of the holdings, as our charge is to follow the dictates of the Supreme Court and this circuit which instruct that the defend-ants' contacts with the bankruptcy court here were insufficient to establish jurisdiction.

We also find that the alleged injury to Sheehan did not arise out of defendants' forum-related activities. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,* 141 S. Ct. 1017, 1025 (2021). All of the acts taken by the defendants to assert control and ownership over the Irish property occurred in Ireland. *See, e.g., Philos Techs., Inc. v. Philos & D, Inc.,* 802 F.3d 905, 915 (7th Cir. 2015) (even an informational business trip to Illinois did not turn a primarily Korean business deal into one with juris-dictional contacts in Illinois). Moreover, the few letters that Breccia sent to Sheehan announcing the receivership and start of the liquidation of Sheehan's collateral for defaulted loans were nothing more than ministerial actions taken in

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[7] *In re Probulk Inc.,* 407 B.R. 56 (Bankr. S.D.N.Y. 2009); *In re Chiles Power Supply Co.,* 264 B.R. 533 (Bankr. W.D. Mo. 2001); *In re Lykes Bros. S.S. Co.,* 207 B.R. 282 (Bankr. M.D. Fla. 1997).

light of the Irish court's disposition of the litigation in Ireland. They do not constitute taking aim at Illinois, and were far from sufficient to create minimum contacts with Illinois.

Given our conclusion that none of the defendants had minimum contacts with the United States, we need not determine whether exercising personal jurisdiction would "violate traditional notions of fair play and substantial justice." *Int'l Shoe,* 326 U.S. at 316; *Rogers,* 996 F.3d at 819.

B. Discovery

As an alternative to a denial of the motion to dismiss, Sheehan asked the bankruptcy court to allow discovery relating to the testimony in the declarations submitted in support of the defendants' motions to dismiss. The bankruptcy court granted the motions to dismiss based on its finding that it lacked personal jurisdiction over the defendants and based on Sheehan's failure of service under the Hague Service Convention. The bankruptcy court did not specifically address Sheehan's alternative request for discovery. Like district courts, bankruptcy courts have wide discretion on matters of discovery. *See, e.g., USA Gymnastics v. Liberty Ins. Underwriters, Inc.,* 27 F.4th 499, 514 (7th Cir. 2022). We therefore review for abuse of discretion only, and grant great deference to, a bankruptcy court's decision to disallow discovery. *Fields v. City of Chicago,* 981 F.3d 534, 551 (7th Cir. 2020). A plaintiff must be able to establish "a colorable or prima facie showing of personal jurisdiction before discovery should be permit-ted." *Cent. States,* 230

F.3d at 946. In addition to the heavy weight of a bankruptcy court's discretion, there is a further thumb on the scale weighing against discovery in this case: "[f]oreign nationals usually should not be subjected to extensive discovery in order to determine whether personal juris-diction over them exists." *GCIU-Emp. Ret. Fund v. Goldfarb Corp.,* 565 F.3d 1018, 1026 (7th Cir. 2009) (quoting *Cent. States,* 230 F.3d at 946).

The district court noted that the bankruptcy court had not abused its discretion as "all of the facts that [Sheehan] wishes to investigate through jurisdictional discovery either do not involve Appellees' suit-related conduct or concern their contacts with Sheehan regarding the Blackrock Shares or the Ballyheigue Property." App. 637, 651. We agree with the district court. Sheehan's requests appear to be unrelated to the adversary proceeding before the bankruptcy court in this case or are so bare and unsupported that to grant discovery would be to allow a fishing expedition. "[A] district court does not abuse its discretion in denying additional discovery where the request was based on nothing more than mere speculation and would amount to a fishing expedition." *Helping Hand Caregivers, Ltd. v. Darden Restaurants, Inc.,* 900 F.3d 884, 890 (7th Cir. 2018) (internal quotations omitted). Nor is a plaintiff entitled to discovery to establish essentially speculative allegations necessary to personal jurisdiction. *Viahart L.L.C. v. Partnerships & Unincorporated Ass'ns Identified on Schedule "A",* No. 19 CV 8181, 2022 WL 1004412, at *3 (N.D. Ill. Apr. 4, 2022) ("[A] court should deny a plaintiff's request [for discovery] if it's

based on only unsupported assertions of personal jurisdiction or appears frivolous."); *Rovanco Piping Sys., Inc. v. Perma-Pipe Int'l Holdings, Inc.,* No. 21 C 3522, 2022 WL 683690, at *4 (N.D. Ill. Mar. 8, 2022) ("A plaintiff may not rely on bare, attenuated, or unsupported assertions of jurisdiction to justify discovery.") (internal citations omitted). The bankruptcy judge considered the motion to dismiss and an extensive record with attached exhibits which included declarations from Sheehan, Murran, a representative of Breccia, and an Irish solicitor opining on the extraterritorial effect of a foreign bankruptcy filing in Ireland; extensive correspondence be-tween counsel for the parties; documents pertaining to the bankruptcy and receivership in Ireland; and a multitude of other exhibits. The bankruptcy court was in the best position to assess whether further discovery on the issues raised by Sheehan could reveal facts, which, if true, might alter its decision on the court's personal jurisdiction over the defendants. Given our review of the record below, and the bankruptcy court's holding on personal jurisdiction, we see no signs that the bankruptcy court abused its discretion in denying the requested discovery (or that the district court erred in sustaining the bankruptcy court's decision).

Because we hold that the bankruptcy court had no jurisdiction over the defendants, we need not address the issues of proper service or *forum non conveniens*.

The judgment of the district court is AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSEPH C. SHEEHAN, Appellant, v. BRECCIA UNLIMITED COMPANY, et al., Appellees.	No. 20-cv-05282 Judge Andrea R. Wood On Appeal from the United States Bankruptcy Court for Northern District of Illinois, No. 20 A 146
JOSEPH C. SHEEHAN, Appellant, v. DAMIEN MURRAN, et al., Appellees.	No. 20-cv-05283 Judge Andrea R. Wood On Appeal from the United States Bankruptcy Court for Northern District of Illinois, No. 20 A 146

MEMORANDUM OPINION AND ORDER

Appellant Joseph Sheehan is an Illinois resident with substantial business interests in Ireland. When he defaulted on loans extended by an Irish bank, Ap-

pellee Breccia Unlimited Company ("Breccia") purchased those loans and proceeded to foreclose on the underlying collateral, namely, Sheehan's investments in an Irish company and Irish real estate. Breccia retained Appellee Damien Murran, an employee of Appellee RSM Ireland Business Advisory Limited ("RSM Ireland"), to market and sell the collateral. In the meantime, Sheehan filed a petition for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. Shortly thereafter, Sheehan filed an adversary complaint in those bankruptcy proceedings against Appellees Breccia, Irish Agricultural Development Company Unlimited ("IADC"), Murran, and RSM Ireland, alleging that Appellees improperly exercised control over the property of his bankruptcy estate in violation of the Bankruptcy Code's automatic stay provision. Breccia and IADC together moved to dismiss the adversary proceeding, and Murran and RSM Ireland also jointly moved to dismiss it. Both motions sought to dismiss Sheehan's adversary complaint for lack of personal jurisdiction, improper service of process, or, alternatively, on the grounds of *forum non conveniens*. The Bankruptcy Court granted both motions and Sheehan now appeals. For the reasons that follow, the Bankruptcy Court's orders are affirmed.

BACKGROUND

The following facts taken from the Bankruptcy Court's record of the underlying adversary proceedings are undisputed.

Appellant Joseph Sheehan immigrated to the United States from Ireland several decades ago and

currently resides in Winfield, Illinois. In 2006, Sheehan purchased shares in an Irish company known as Blackrock Hospital Limited ("Blackrock Shares"), which owned and operated a private teaching hospital located in Dublin, Ireland, known as the Blackrock Clinic. Sheehan subsequently took out two loans from an Irish bank—one in 2006 and one in 2008—both of which were secured by the Blackrock Shares. He defaulted on both loans in 2010. Ultimately, Sheehan's defaulted loans were acquired in 2014 by Appellee Breccia, an Irish private unlimited company with its principal place of business in Dublin, Ireland.

After Breccia demanded Sheehan repay the loans, Sheehan filed a lawsuit against Breccia in Irish court. The lawsuit was initiated in 2014 and resulted in a ruling in Breccia's favor in July 2019. Shortly after judgment was entered in its favor, Breccia registered Sheehan's Blackrock Shares in its name. Breccia also appointed Appellee Damien Murran, an Irish citizen and resident, as the receiver of the Blackrock Shares to market and sell those shares. Murran is an Irish citizen and resident, and at all relevant times, he was employed by Appellee RSM Ireland, an Irish limited company with its principal place of business in Dublin, Ireland.[1]

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[1] Sheehan alleges that Murran performed his receivership functions in his capacity as an RSM Ireland employee. However, Murran and RSM Ireland contend that under Irish law, a receiver is appointed as an individual and not through his employer. Thus, they deny that RSM Ireland has acted as a receiver with respect to any property at issue here. The Bankruptcy Court expressly declined to rule on RSM Ireland's relationship

On March 12, 2020, Sheehan filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Illinois. By filing for bankruptcy, an estate was created comprised of "all legal or equitable interests of the debtor [Sheehan] in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). And under the Bankruptcy Code, Sheehan's initiation of bankruptcy proceedings triggered an automatic stay, "applicable to all entities, of . . . 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). The same day he filed for bankruptcy, Sheehan notified the receiver that he had commenced bankruptcy proceedings and that, as a result, there was an automatic stay in place barring any efforts by the receiver to exercise control over the Blackrock Shares. Several days later, Sheehan provided Breccia with a similar notice. Nonetheless, shortly after Sheehan initiated bankruptcy proceedings, the receiver sold the Blackrock Shares to Appellee IADC, an Irish private unlimited company with its principal place of business in Milestown, Ireland.

Separate and independent of the Blackrock Shares, Sheehan owned real estate in the Irish village of Ballyheigue ("Ballyheigue Property"). Sheehan obtained a mortgage for the Ballyheigue Property in 2006 from the same Irish bank that had extended him the two loans secured by the Blackrock Shares. Brec-

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to Murran's receivership duties and the issue does not factor into the present appeal.

cia acquired the Irish bank's interest in the Ballyheigue Property's mortgage in 2014, at the same time it acquired Sheehan's loans secured by the Blackrock Shares. On March 23, 2020, Breccia appointed Murran as the receiver for the Ballyheigue Property following Sheehan's default on his mortgage. Sheehan did not become aware of the Ballyheigue Property receivership until April 7, 2020, when an agent of the receiver informed Sheehan that he had entered the Ballyheigue Property and changed the locks. That same day, the receiver notified Sheehan of the commencement of the Ballyheigue Property receivership and advised that the receivership intended to sell the property and apply the proceeds toward the discharge of Sheehan's debts. In response, Sheehan notified the receiver that the automatic stay applied to the Ballyheigue Property.

Claiming that Appellees' actions taken after his bankruptcy petition with respect to the Blackrock Shares and the Ballyheigue Property violated the automatic stay, Sheehan filed an adversary proceeding in his pending Chapter 11 bankruptcy case. In his adversary complaint, Sheehan requested the return of the Blackrock Shares and the Ballyheigue Property to his bankruptcy estate, an order compelling Appellees' compliance with the automatic stay, and an award of damages for Appellees' willful violations of the automatic stay. Two motions to dismiss the adversary complaint were filed: one by Breccia and IADC and the other by Murran and RSM Ireland. Both motions sought dismissal of the adversary complaint pursuant to Federal Rule of Civil Procedure 12(b)(5) for insufficient service of process and pursuant to Federal Rule

of Civil Procedure 12(b)(2) for lack of personal jurisdiction. In addition, Murran and RSM Ireland's motion raised the doctrine of *forum non conveniens* as an alternative basis for dismissal.

The Bankruptcy Court entered separate orders granting each motion to dismiss. Together, the Bankruptcy Court's orders found that Sheehan's email service on Appellees was improper under the Hague Convention. Further, the Bankruptcy Court found that no Appellee conducted any activity related to the adversary claims in the United States, and the only link between Appellees and the forum was the fact that Sheehan lived in Illinois. Consequently, the Bankruptcy Court held that it did not have specific personal jurisdiction over Appellees. Finally, in its order granting Murran and RSM Ireland's motion to dismiss, the Bankruptcy Court held that the doctrine of *forum non conveniens* was also a proper basis for dismissal. Sheehan now appeals both orders.

DISCUSSION

Under 28 U.S.C. § 158(a), federal district courts have jurisdiction to review bankruptcy court decisions. When considering a bankruptcy appeal, a district court reviews the bankruptcy court's findings of fact for clear error while its conclusions of law are reviewed *de novo*. *Stamat v. Neary*, 635 F.3d 974, 979 (7th Cir. 2011); *In re Brittwood Creek, LLC*, 450 B.R. 769, 773 (N.D. Ill. 2011). Sheehan's appeal raises the following issues: (1) whether the Bankruptcy Court erred by refusing to exercise personal jurisdiction over Appellees; (2) whether the Bankruptcy Court

erred in refusing to allow Sheehan to conduct jurisdictional discovery as an alternative to dismissal; (3) whether the Bankruptcy Court failed to consider fully Sheehan's efforts to serve Appellees consistent with the Hague Convention; and (4) whether the Bankruptcy Court improperly found that *forum non conveniens* also provided a basis to grant Murran and RSM Ireland's motion to dismiss. The Court begins by addressing whether the Bankruptcy Court correctly found that it lacked personal jurisdiction over Appellees.

While Breccia and IADC deny that either the Blackrock Shares or the Ballyheigue Property are, in fact, property of Sheehan's bankruptcy estate, they acknowledge that the issue is not relevant to their personal jurisdiction arguments. Thus, for present purposes, the Court proceeds as if both properties are part of Sheehan's estate.

As discussed above, "under the Bankruptcy Code, the filing of a bankruptcy petition automatically halts efforts to collect prepetition debts from the bankrupt debtor outside the bankruptcy forum. The stay serves to maintain the status quo and prevent dismemberment of the estate during the pendency of the bankruptcy case." *Ritzen Grp., Inc. v. Jackson Masonry, LLC,* 140 S. Ct. 582, 589 (2020) (internal quotation marks and citation omitted). Among other things, the automatic stay "bars the commencement or continuation of lawsuits to recover from the debtor, enforcement of liens or judgments against the debtor, and exercise of control over the debtor's property." *Id.* The automatic stay applies extraterritorially. *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC,* 474

B.R. 76, 82 (S.D.N.Y. 2012); *see also In re Ramsat, Ltd.,* 98 F.3d 956, 961 (7th Cir. 1996) ("The efficacy of the bankruptcy proceeding depends on the court's ability to control and marshal the assets of the debtor wherever located . . . ."). Thus, there is no dispute that the automatic stay applied to both the Blackrock Shares and the Ballyheigue Property (assuming, of course, that both properties were part of Sheehan's estate). Nonetheless, "a bankruptcy court can enforce the automatic stay extraterritorially only against entities over which it has [personal] jurisdiction." *Sec. Inv. Prot. Corp.,* 474 B.R. at 82.

When Sheehan commenced Chapter 11 proceedings, the Bankruptcy Court acquired "exclusive jurisdiction" over "all of the property, wherever located, of [Sheehan] as of the commencement of [the] case, and of property of the estate." 28 U.S.C. § 1334(e)(1). Because this grant of "exclusive jurisdiction" is over the debtor's property, "[b]ankruptcy jurisdiction . . . is principally *in rem* jurisdiction." *Cent. Va. Cmty. Coll. v. Katz,* 546 U.S. 356, 369 (2006); *see also Tenn. Student Assistance Corp. v. Hood,* 541 U.S. 440, 447–48 (2004). "*In rem* proceedings affect the interests of all persons in designated property and don't implicate a court's authority over a defendant's person." *Trs. of Purdue Univ. v. Vintage Brand, LLC,* No. 4:20-cv-076-RLM-APR, 2021 WL 2105371, at *2 (N.D. Ind. May 25, 2021) (citing *Shaffer v. Heitner,* 433 U.S. 186, 199 (1977)). Therefore, § 1334(e)(1) concerns only the Bankruptcy Court's subject-matter jurisdiction. *In re Millenium Seacarriers, Inc.,* 419 F.3d 83, 96 (2d Cir. 2005) (noting that 28 U.S.C. § 1334(e) confers "subject[-]matter jurisdiction over a debtor's property"). It

does not speak to whether the Bankruptcy Court could assert personal jurisdiction over each Appellee.

Federal Rule of Bankruptcy Procedure 7004(f) permits a bankruptcy court to exercise personal jurisdiction over a defendant in an adversary proceeding so long as "the exercise of jurisdiction is consistent with the Constitution." The "constitutional touchstone" of the personal jurisdiction inquiry is "whether the defendant purposefully established 'minimum contacts' in the forum state." *Asahi Metal Indus. Co. v. Superior Ct. of Cal.,* 480 U.S. 102, 108–09 (1987). Because Rule 7004 provides for nationwide service of process, a "federal bankruptcy court's assertion of personal jurisdiction need only satisfy the [Due Process Clause of the] Fifth Amendment to the U.S. Constitution, which in turn requires that the defendant has satisfied the minimum-contacts test with respect to the United States as a whole." *In re Teknek, LLC,* 354 B.R. 181, 191–92 (Bankr. N.D. Ill. 2006).

Personal jurisdiction can be general or specific. Sheehan, however, does not contend that the Bankruptcy Court could assert general jurisdiction over any Appellee, so the present inquiry will be limited to whether the Bankruptcy Court properly found that it did not have specific jurisdiction over Appellees. That inquiry "focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore,* 571 U.S. 277, 284 (2014). Specifically, "the defendant's contacts with the forum state must directly relate to the challenged conduct or transaction." *Tamburo v. Dworkin,* 601 F.3d 693, 702 (7th Cir. 2010). There is specific jurisdiction where "(1) the defendant has purposefully directed [its] activities at the forum

state or purposefully availed [itself] of the privilege of conducting business in that state, and (2) the alleged injury arises out of the defendant's forum-related activities." *Id.* In addition, the exercise of jurisdiction "must also comport with traditional notions of fair play and substantial justice." *Id.*

There is no dispute among the parties that Appellees are all Irish residents, the Blackrock Shares and Ballyheigue Property are both located in Ireland, and all Appellees' alleged conduct in violation of the automatic stay occurred in Ireland. As the Bankruptcy Court found, the only connection between Appellees and the United States was Sheehan's residence in the United States. Yet, the Supreme Court has held that "the plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden,* 571 U.S. at 285. Indeed, "[d]ue process requires that a defendant be haled into a court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Id.* at 286 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Sheehan contends that because Appellees' actions in Ireland were purposefully directed at the property of an Illinois resident and caused injury to him there, they should have foreseen that their conduct could result in them being haled into a United States court. In particular, he emphasizes that he warned Appellees prior to filing his adversary complaint that both

the Blackrock Shares and the Ballyheigue Property were property of his bankruptcy estate and subject to the automatic stay. Thus, Sheehan asserts that Appellees were on notice that their subsequent acts in contravention of the automatic stay were purposefully directed toward and caused injury in the United States.

In *Calder v. Jones,* 465 U.S. 783 (1984), the Supreme Court held that California had personal jurisdiction over a plaintiff's libel claims even though they were brought against Florida-based defendants who had written and edited the allegedly libelous article in Florida because of the "'effects' of their Florida conduct in California." *Id.* at 789. Specifically, it explained that the defendants should have reasonably anticipated being subject to jurisdiction in California where "their intentional, and allegedly tortious, actions were expressly aimed" at California and "they knew that the brunt of that injury would be felt" by the plaintiff in California. *Id.* at 789–90. Later, in *Walden*, the Supreme Court observed that the *Calder* defendants had ample contacts with the forum state itself, as the defendants

> relied on phone calls to 'California sources' for the information in their article; they wrote the story about the plaintiff's activities in California; they caused reputational injury in California by writing an allegedly libelous article that was widely circulated in the State; and the 'brunt' of that injury was suffered by the plaintiff in that State.

Walden, 571 U.S. at 287. Thus, "[t]he crux of Calder was that the reputation-based 'effects' of the alleged libel connected the defendants to California, not just to the plaintiff. ***The strength of that connection was largely a function of the nature of the libel tort***." *Id*. at 287 (emphasis added). Indeed, the Supreme Court went on to note that given that the article in question appeared in a magazine that was sold in California and "publication to third persons is a necessary element of libel, the defendants' intentional tort actually occurred in California." *Id.* at 288. In short, *Walden* elaborated that the Supreme Court's holding in "*Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum." *Id.* at 290.

Applying the principles set forth in *Walden* here, the Bankruptcy Court correctly rejected Sheehan's contention that it could assert specific personal jurisdiction based on the fact that Appellees' actions in Ireland caused injuries in the United States. Sheehan fails to show that any Appellee did anything to "purposefully reach out beyond" Ireland and affirmatively affiliate themselves with the United States in their dealings with the Blackrock Shares and the Ballyheigue Property. *Walden*, 571 U.S. at 285 (internal quotation marks and alteration omitted). Rather, all Appellees are Irish residents whose actions occurred entirely in Ireland and were directed toward property located in Ireland. The only connection between Appellees' suit-related conduct and the United States is Sheehan's residence in Illinois and his unilateral act of filing for Chapter 11 bankruptcy, thereby giving

rise to the automatic stay that Appellees allegedly violated. But specific personal jurisdiction cannot be based "on the 'unilateral activity' of a plaintiff." *Id.* at 286 (quoting *Burger King*, 471 U.S. at 475). Therefore, the Court finds that Appellees lacked sufficient minimum contacts with the United States for the Bankruptcy Court to assert personal jurisdiction over them in this case. Accordingly, the Bankruptcy Court's conclusion that it lacked personal jurisdiction over Appellees is affirmed. And because the Bankruptcy Court correctly found that it lacked personal jurisdiction, this Court does not need to address whether insufficient service of process and *forum non conveniens* were also proper bases for dismissal.

Next, the Court addresses Sheehan's assertion that the Bankruptcy Court should have allowed him to engage in discovery regarding Appellees' minimum contacts as an alternative to dismissal. It was within the Bankruptcy Court's discretion to permit jurisdictional discovery and its denial of Sheehan's request for such discovery is reviewed for an abuse of discretion. *See Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express Enters. Ltd.*, 230 F.3d 934, 946 (7th Cir. 2000) (reviewing the district court's denial of jurisdictional discovery for abuse of discretion). "At minimum, the plaintiff must establish a colorable or prima facie showing of personal jurisdiction before discovery should be permitted." *Id.*

For the reasons discussed above, Sheehan falls far short of making a colorable showing of personal jurisdiction. Further, all of the facts that he wishes to investigate through jurisdictional discovery either do not involve Appellees' suit-related conduct or concern

their contacts with Sheehan regarding the Blackrock Shares or the Ballyheigue Property. *See Walden*, 571 U.S. at 284 ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State."); *id*. at 286 ("[A] defendant's relationship with a plaintiff . . ., standing alone, is an insufficient basis for jurisdiction."). The Bankruptcy Court's decision is reinforced by the fact that "[f]oreign nationals usually should not be subjected to extensive discovery in order to determine whether personal jurisdiction over them exists." *Cent. States, Se. & Sw. Areas Pension Fund*, 230 F.3d at 946. Thus, this Court finds that the Bankruptcy Court did not abuse its discretion in denying Sheehan's request for jurisdictional discovery.

CONCLUSION

For the foregoing reasons, the Bankruptcy Court's orders granting Appellees' motions to dismiss the adversary complaints for lack of personal jurisdiction are affirmed.

ENTERED:

Dated: September 24, 2021

/s/ Andrea R. Wood
Andrea R. Wood
United States
District Judge

APPENDIX C

United State Bankruptcy Court
Northern District of Illinois
Eastern Division

In re: Joseph C. Sheehan, Debtor.	)	Chapter 11 Case No. 20 B 07130
Joseph C. Sheehan, Plaintiff, v. Damien Murran, et al., Defendants.	)	Adv. No. 20 A 00146 Judge Jacqueline P. Cox

Amended Order Granting Motion to Dismiss (Adv. Dkt. 6)

Defendants Damien Murran, in his capacity as receiver of shares of Blackrock Hospital Limited and the Ballyheigue Property, and RSM Ireland Business Advisory Limited, the Defendants not consenting to the jurisdiction of this court, appeared and filed this Motion to Dismiss.

They argue that this court does not have personal jurisdiction and that serving the summons via email was improper. Pursuant to Rule of Civil Procedure

12(b)(5) this court finds that email service was improper; for that reason this adversary proceeding is dismissed. Pursuant to Rule of Civil Procedure 12(b)(2) this court finds that it does not have personal jurisdiction of the Defendants; for that reason, too, this adversary proceeding is dismissed as to Defendants Damien Murran and RSM Ireland Business Advisory Limited, t/a RSM Ireland. Counts 1, 2, 4, 8, 9 and 10 are dismissed.

The movants also allege that the court does not have personal jurisdiction and ask that the matter be dismissed on the equitable ground of forum non conveniens. RSM Ireland alleges that it is not a proper party because it has not been appointed Receiver in the underlying litigation. The court will not rule on that disputed factual issue.

The Plaintiff initially relied on service via email to serve the summons in this adversary proceeding. The Plaintiff, after the Motion to Dismiss was filed, served via the Hague Convention. Email service is not sufficient. Federal Rule of Civil Procedure 4(f) requires generally that individuals in foreign countries be served consistent with the Hague Convention. The parties did not specifically address the Plaintiffs later efforts made under the Hague convention.

This court gained *in rem* jurisdiction over the Debtor's property and interests, including his interests located in Ireland, when he filed for bankruptcy relief. "The commencement of a case ... creates an estate. Such estate is comprised of all the .. property, wherever located and by whomever held." 11 U.S.C. § 541(a). "The district court in which a case under title

11 is commenced or is pending shall have exclusive jurisdiction (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." 28 U.S.C. § 1334(e)(l).

The bankruptcy court's *in rem* jurisdiction is broad. However, it cannot be enforced extraterritorially without *in personam* jurisdiction over the Defendants. Bankruptcy courts cannot exercise control over property of the estate located in a foreign country without the assistance of the foreign courts. *In re Int'l Admin. Servs., Inc,* 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997).

The Plaintiff wrongly argues that the court has personal jurisdiction over the Defendants because they are alleged to have violated the automatic stay by continuing to prosecute claims in Ireland. Those cases have been proceeding for five years. This court will not find personal jurisdiction on this basis.

Personal Jurisdiction

Federal Rule of Bankruptcy Procedure 7004(k) provides that for a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if the defendant is not subject to jurisdiction in any states's courts of general jurisdiction and exercising personal jurisdiction is consistent with the United States Constitution and laws. Would the exercise of personal jurisdiction be consistent with the laws of the United States? No.

Personal General Jurisdiction

There are two types of personal jurisdiction: general and specific. General personal jurisdiction permits a court to adjudicate all claims against a defendant regardless of whether a suit relates to the defendant's contacts within the state. A court may maintain general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims where the corporation is at home in the forum state. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). The Defendants have conducted no business in Illinois or the United States other than notifying the Plaintiff of the progress of the litigation in Ireland. There is no general personal jurisdiction over the Defendants.

Specific Personal Jurisdiction

Specific personal jurisdiction is the exercise of jurisdiction over a person or entity based on suit-related activities within a forum. A plaintiff has to show that the controversey between the parties arises out of the forum-related activity. *See Advanced Tactical Ordnance Sys. LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 800 (7th Cir. 2014). In that case, the Seventh Circuit noted that the Supreme Court in *Daimler*:

> confirmed its adherence to the distinction between 'general jurisdiction' and 'specific jurisdiction.' The former is proper only in the limited number of fora in which the defendant can be said to be 'at home.' For a corporation, such places include the state of incorporation and the state of the principal place of business.

> Specific jurisdiction is available for a suit that arises out of the forum-related activity.

Id. at 800.

The Defendants have conducted no activities in either Illinois or the United States of America that are related to the Plaintiffs claims. Specific personal jurisdiction does not lie.

The Defendants do not have the minium contacts with Illinois or the United States sufficient to justify having them answer here for the Plaintiffs claims. The only connection to Illinois is that the Plaintiff lives in Winfield, Illinois. The Plaintiff cannot be the only link between the defendant and the forum. *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

***Forum Non Conveniens* Doctrine**

When an action is commenced before a federal court and a foreign country is a better forum for the suit because the oppression of the defendant far outweighs the convenience of the plaintiff, the defendant may move for dismissal under the doctrine of forum non conveniens, even if both personal and subject matter jurisdiction exist. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 248-49 (1981).

Factors to be considered in assessing applicability of the forum non conveniens doctrine include the availability of an adequate alternative forum. This court is persuaded to dismiss this matter because the Irish courts have been resolving the Plaintiffs claims and duties for five years on issues of Irish collection law as well as ownership of the hospital. This court has weighed the availability of compulsory process to

obtain the presence of unwilling witnesses, the costs of obtaining the attendance of willing witnesses, the ease of access to sources of proof and the ability to view the relevant premises as well as whether the sale and disposition of collateral were valid. These factors favor dismissing this adversary proceeding. *Levey v. Hamilton, et al. (In re Teknek LLC)*, 354 B.R. 181, 205-09 (Bankr. N.D. Ill. 2006).

Conclusion

Counts 1, 2, 4, 8, 9 and 10 of Adversary Proceeding 20-00146 are dismissed as to Defendants Damien Murran and RSM Ireland Business Advisory Limited t/a RSM Ireland. The court finds that personal jurisdiction is lacking as to those Defendants.

ENTERED:

Dated: August 25, 2020

/s/ Jacqueline P. Cox
Jacqueline P. Cox
United States
Bankruptcy Judge

APPENDIX D

United State Bankruptcy Court
Northern District of Illinois
Eastern Division

In re:	)	Chapter 11
Joseph C. Sheehan,	)	Case No. 20 B 07130
Debtor.	)	
Joseph C. Sheehan,	)	
Plaintiff,	)	Adv.No. 20 A 00146
v.	)	
Damien Murran, et al.,	)	
Defendants.	)	Judge Jacqueline P. Cox

Order Granting Motion to Dismiss (Adv. Dkt. 4)

Defendants Breccia Unlimited Company and the Irish Agricultural Development Company Unlimited (the "Defendants") seek dismissal of this adversary proceeding under Rule l2(b)(2) for lack of personal jurisdiction. They argue that this court does not have personal jurisdiction. They also argue that service of process was improper. Pursuant to Rule of Civil Procedure 12(b)(2) this court finds that it does not have personal jurisdiction. Pursuant to Rule of Civil Procedure 12(b)(5) the court finds that email service was not sufficient. The Motion to Dismiss is granted.

The Plaintiff initially relied on service via email to serve the summons in this adversary proceeding. The Plaintiff, after the Motion to Dismiss was filed, served via the Hague Convention. Email service is not sufficient. Federal Rule of Civil Procedure 4(f) requires generally that individuals in foreign countries be served consistent with the Hague Convention. The parties did not specifically address the Plaintiffs later efforts made under the Hague convention.

This court gained *in rem* jurisdiction over the Debtor's property and interests, including his interests located in Ireland, when he filed for bankruptcy relief. "The commencement of a case ... creates an estate. Such estate is comprised of all the ... property, wherever located and by whomever held." 11 U.S.C. § 541(a). "The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate." 28 U.S.C. § 1334(e)(l).

The bankruptcy court's *in rem* jurisdiction is broad. However, it cannot be enforced extraterritorially without *in personam* jurisdiction over the Defendants. Bankruptcy courts cannot exercise control over property of the estate located in a foreign country without the assistance of the foreign courts. *In re Int'l Admin. Servs., Inc,* 211 B.R. 88, 93 (Bankr. M.D. Fla. 1997).

The Plaintiff wrongly argues that the court has personal jurisdiction over the Defendants because they are alleged to have violated the automatic stay by continuing to prosecute claims in Ireland. Those

cases have been proceeding for five years. This court will not find personal jurisdiction on this basis.

Personal Jurisdiction

Federal Rule of Bankruptcy Procedure 7004(k) provides that for a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if the defendant is not subject to jurisdiction in any states's courts of general jurisdiction and exercising personal jurisdiction is consistent with the United States Constitution and laws. Would the exercise of personal jurisdiction be consistent with the laws of the United States? No.

Personal General Jurisdiction

There are two types of personal jurisdiction: general and specific. General personal jurisdiction permits a court to adjudicate all claims against a defendant regardless of whether a suit relates to the defendant's contacts within the state. A court may maintain general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claim where the corporation is at home in the forum state. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). The Defendants have conducted no business in Illinois or the United States other than notifying the Plaintiff of the progress of the litigation in Ireland. There is no general personal jurisdiction over the Defendants.

Specific General Jurisdiction

Specific personal jurisdiction is the exercise of jurisdiction over a person or entity based on suit-related activities within a forum. A plaintiff has to show that

the controversey between the parties arises out of the forum-related activity. *See Advanced Tactical Ordnance Sys. LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 800 (7th Cir. 2014). In that case, the Seventh Circuit noted that the Supreme Court in *Daimler*:

> confirmed its adherence to the distinction between 'general jurisdiction' and 'specific jurisdiction.' The former is proper only in the limited number of fora in which the defendant can be said to be 'at home. For a corporation, such places include the state of incorporation and the state of the principal place of business. Specific jurisdiction is available for a suit that arises out of the forum-related activity.

Id. at 800.

The Defendants have conducted no activities in either Illinois or the United States of America that are related to the Plaintiffs claims. Specific personal jurisdiction does not lie.

The Defendants do not have the minium contacts with Illinois or the United States sufficient to justify having them answer here for the Plaintiffs claims. The only connection to Illinois is that the Plaintiff lives in Winfield, Illinois. The Plaintiff cannot be the only link between the defendant and the forum. *Walden v. Fiore*, 571 U.S. 277,284 (2014).

Adversary Proceeding 20-00146 is dismissed as to the Defendants Breccia Unlimited Company and the Irish Agricultural Development Company Unlimited.

ENTERED:

Dated: August 25, 2020

/s/ Jacqueline P. Cox
Jacqueline P. Cox
United States
Bankruptcy Judge

APPENDIX E

RELEVANT STATUTORY PROVISIONS

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11 U.S.C. § 105. Power of court.

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest--

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that--

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title--

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

11 U.S.C. § 362. Automatic stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) 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;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;

(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;

[**(5) Repealed.** Pub.L. 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-886]

(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant

of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;

(9) under subsection (a), of—

(A) an audit by a governmental unit to determine tax liability;

(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;

(C) a demand for tax returns; or

(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are

transferred out of the estate to, or otherwise revested in, the debtor).

(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;

(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;

(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;

(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section

31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;

(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;

(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;

(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;

(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property

tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property

following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor,

a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable

nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue;

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act); and

(29) under subsection (a)(1) of this section, of any action by—

(A) an amateur sports organization, as defined in section 220501(b) of title 36, to replace a national governing body, as defined in that section, under section 220528 of that title; or

(B) the corporation, as defined in section 220501(b) of title 36, to revoke the certification of a national governing body, as defined in that section, under section 220521 of that title.

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but

was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed,

other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents

as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay con-

tinued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the

kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

(k)(1) Except as provided in paragraph (2), 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.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the

debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be

required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the

lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

(A) is a debtor in a small business case pending at the time the petition is filed;

(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or

(B) to the filing of a petition if—

(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

11 U.S.C. § 541. Property of the estate.

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

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

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

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

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

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

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

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

(A) by bequest, devise, or inheritance;

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

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

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

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

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

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

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

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

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

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

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

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

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

(B) only to the extent that such funds—

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

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

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$5,000", adjusted effective April 1, 2022][1] ;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

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

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest

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[1] See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.

tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$5,000", adjusted effective April 1, 2022][1];

(7) any amount—

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

(i) to—

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

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

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

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

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

(B) received by an employer from employees for payment as contributions—

(i) to—

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

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

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

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

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

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

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

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

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

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

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

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition; or

(10) funds placed in an account of a qualified ABLE program (as defined in section 529A(b) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

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

(B) only to the extent that such funds—

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

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

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $7,575 [originally "$6,225", adjusted effective April 1, 2022][1].

[**(11) Repealed**. Pub.L. 116-260, Div. FF, Title X, § 1001(a)(2)(C), Dec. 27, 2020, 134 Stat. 3217]

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

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

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

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

modification, or termination of the debtor's interest in property.

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

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

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as

the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section

501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

28 U.S.C. § 1334. Bankruptcy cases and proceedings.

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

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

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

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent juris-

diction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

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

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

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

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