No. 24-___

IN THE
Supreme Court of the United States

AMERICAN WARRIOR, INC., *et al.*,
Petitioners,

v.

FOUNDATION ENERGY FUND IV-A, L.P., *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the Bankruptcy Code, the commencement of a bankruptcy case triggers an "automatic stay"—a statutory injunction proscribing various acts involving property belonging to a debtor's bankruptcy estate. 11 U.S.C. § 362(a). Numerous courts of appeals have long held that actions taken in violation of the automatic stay are void. *See, e.g., Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 976 (1st Cir. 1997); *Fed. Deposit Ins. Corp. v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 137 (2d Cir. 1992); *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 995 (9th Cir. 2001); *Ellis v. Consol. Diesel Elec. Corp.*, 894 F.2d 371, 372 (10th Cir. 1995); *United States v. White*, 466 F.3d 1241, 1244 (11th Cir. 2006). In contrast, other courts of appeals (including the court below) have long held that actions taken in violation of the stay are not void, but merely voidable. *See, e.g.*, *Sikes v. Glob. Marine, Inc.*, 881 F.2d 176, 178 (5th Cir. 1989); *Bronson v. United States*, 46 F.3d 1573, 1581 (Fed. Cir. 1995); *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993). The question presented is:

Should the Court grant certiorari to resolve a longstanding, entrenched, and acknowledged conflict among the courts of appeals over whether actions taken in violation of the automatic stay are void or merely voidable?

PARTIES TO THE PROCEEDING, PETITIONERS' CORPORATE DISCLOSURE STATEMENT, AND RELATED CASES STATEMENT

Petitioners (Appellants in the court of appeals) are American Warrior, Incorporated ("AWI"), Heartland Oil, Incorporated ("Heartland"), and Mid-Continent Resources, Incorporated ("Mid-Continent"). Palmer American Holding, Inc. is the parent corporation of AWI. No publicly held company owns 10% or more of the stock of AWI. Heartland has no parent corporation and no publicly held company owns 10% or more of the stock of Heartland. Mid-Continent has no parent corporation and no publicly held company owns 10% or more of the stock of Mid-Continent.

Respondents (Appellees in the court of appeals) are Foundation Energy Fund IV-A, L.P., Foundation Energy Fund IV-B Holding, L.L.C., Dolores Jo Matson Trust, Roger Melvin Matson Trust, Estate of Willis J. Magathan, Black Stone Minerals Company, L.P., and Entech Enterprises, L.L.C.

The debtors in this matter are Patrick L. McConathy and Patricia Chapman McConathy. The Chapter 7 trustee for the debtors' bankruptcy estate is John W. Luster.

The related cases to this proceeding are:

- *In re McConathy et al.*, No. 90-13449, U.S. Bankruptcy Court for the Western District of Louisiana. Judgment entered October 6, 2022.

- *American Warrior, Inc. et al. v. Foundation Energy Fund IV-A L.P. et al.*, No. 22-05769, U.S. District Court for the Western District of Louisiana. Judgment entered July 11, 2023.

- *American Warrior, Inc. et al. v. Black Stone Minerals Company, L.P. et al.*, No. 22-05771, U.S. District Court for the Western District of Louisiana. Judgment entered July 11, 2023.

- *American Warrior, Inc. et al. v. Black Stone Minerals Company, L.P. et al.*, No. 22-05772, U.S. District Court for the Western District of Louisiana. Judgment entered July 11, 2023.

- *American Warrior, Inc. et al. v. Foundation Energy Fund IV-A, L.P.*, No. 22-05773, U.S. District Court for the Western District of Louisiana. Judgment entered July 11, 2023.

- *American Warrior, Inc. et al. v. Foundation Energy Fund IV-A, L.P. et al.*, No. 23-30529, U.S. Court of Appeals for the Fifth Circuit. Judgment entered August 1, 2024.

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The opinion of the United States Court of Appeals for the Fifth Circuit is published at 111 F.4th 574 and is reproduced at Pet. App. 1a. The opinion of the United States District Court for the Western District of Louisiana is available at 2023 WL 4494372 (W.D. La., July 11, 2023) and is reproduced at Pet. App. 28a. The unpublished decision and order of the United States Bankruptcy Court for the Western District of Louisiana, entered on October 6, 2022, is reproduced at Pet. App. 42a.

JURISDICTION

The court of appeals entered its judgment on August 1, 2024. The court of appeals had jurisdiction under 28 U.S.C. § 158(d). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The following statutory provisions are relevant to this matter and are reproduced in the appendix: 11 U.S.C. §§ 362(a), 501(a), 502(a), 541(a)(1).[1]

PRELIMINARY STATEMENT

Under the Bankruptcy Code, the commencement of a bankruptcy case gives rise to an "automatic stay." *See* 11 U.S.C. § 362(a); *City of Chicago v. Fulton*, 592 U.S. 154, 156-57 (2021) (discussing the stay). For many decades, numerous courts of appeals have held that actions taken in violation of the stay are void.

[1] *See* Pet. App. 47a.

See, e.g., Soares v. Brockton Credit Union (In re Soares), 107 F.3d 969, 976 (1st Cir. 1997); *Fed. Deposit Ins. Corp. v. Hirsch (In re Colonial Realty Co.)*, 980 F.2d 125, 137 (2d Cir. 1992); *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 995 (9th Cir. 2001); *Ellis v. Consol, Diesel Elec. Corp.*, 894 F.2d 371, 372 (10th Cir. 1995); *United States v. White*, 466 F.3d 1241, 1244 (11th Cir. 2006). This Court has likewise determined that actions taken in violation of a statutory bankruptcy stay are void. *Kalb v. Feuerstein*, 308 U.S. 433, 438-40 (1940) (construing a statutory predecessor to the current law).

In its decision below, however, the court of appeals followed its own prior circuit precedent adopting the minority position that actions taken in violation of the automatic stay are not void, but merely voidable. Pet. App. at 21a (actions taken in violation of the automatic stay are not void, but rather "*voidable*") (*quoting Sikes v. Glob. Marine, Inc.*, 881 F.2d 176, 179 (5th Cir. 1989)). Other courts of appeals have likewise so held. *See, e.g., Bronson v. United States*, 46 F.3d 1573, 1581 (Fed. Cir. 1995); *Easley v. Pettibone Mich. Corp.*, 990 F.2d 905, 911 (6th Cir. 1993).

As these decisions illustrate, the courts of appeals are badly split on the question presented—whether actions taken in violation of the automatic stay are void or merely voidable. Further, this disagreement is longstanding, acknowledged, and entrenched, and is thus unlikely to be resolved absent this Court's intervention. In addition, certiorari is warranted because the decision below conflicts with this Court's treatment of the issue in *Kalb*. Further, the question is important and recurring, and this case presents an

excellent vehicle in which to address it. The issue arises here in essentially the same way that it arose in *Kalb*—a state-court action pursued in violation of a bankruptcy stay seeking to enforce rights in property belonging to a debtor's bankruptcy estate, which is a typical fact pattern. Moreover, resolution of the question presented is consequential and outcome-determinative. For these reasons, Petitioners request that the Court grant their petition.

STATEMENT

I. STATUTORY BACKGROUND

By operation of law, when a debtor commences a bankruptcy case, a bankruptcy estate is created consisting of all of the debtor's property "wherever located and by whomever held …." 11 U.S.C. § 541(a); S. REP. NO. 95-989, at 82 (1978); *Fulton*, 592 U.S. at 156 (discussing the creation of the estate); *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 373 (2019) (same). By the statute's plain terms, the estate includes the debtor's interests in real estate, the debtor's causes of actions related to that real estate, and even property of the debtor lawfully in the possession of others. *See, e.g., United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203-05, 209-11 (1983) (when a lienholder, including the IRS, seizes property, it remains property of the debtor pending foreclosure and becomes property of the estate upon the bankruptcy filing); *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 385 (5th Cir. 2008) (causes of action belonging to the debtor are property of the estate).

The creation and integrity of the estate is central to the bankruptcy administrative process, and is also

jurisdictionally foundational. As this Court has explained, property of the bankruptcy estate is constituted *in custodia legis*—in the custody of the bankruptcy court, which exercises exclusive *in rem* jurisdiction over the estate and its assets. *See* 28 U.S.C. § 1334(e) (vesting the district courts with "exclusive jurisdiction" over property of the estate); *id.* § 157(a) (delegating bankruptcy jurisdiction to the bankruptcy courts); *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447-48 (2004) (bankruptcy jurisdiction is fundamentally *in rem* in nature); *Straton v. New*, 283 U.S. 318, 321 (1931) (the jurisdiction of the bankruptcy court "is so far in rem that the estate is regarded as in custodia legis from the filing of the petition"); *Gross v. Irving Tr. Co.*, 289 U.S. 342, 344-45 (1933); *Lazarus, Michel & Lazarus v. Prentice*, 234 U.S. 263, 266 (1914); *U.S. Fid. & Guar. Co. v. Bray*, 225 U.S. 205, 217 (1912); *Acme Harvester Co. v. Beekman Lumber Co.*, 222 U.S. 300, 306-07 (1911); *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 192 (1902); *Shawhan v. Wherritt*, 48 U.S. (7 How.) 627, 643 (1849).

To protect the estate, and likewise vindicate the longstanding principle of non-interference with property in the custody of a federal court, *see, e.g.*, *Straton*, 283 U.S. at 321 (liens cannot be created against property in the custody of the court); *Collie v. Fergusson*, 281 U.S. 52, 55 (1930) (same), the commencement of a bankruptcy case also triggers an "automatic stay"—a statutory injunction that prevents most forms of debt collection and other activity involving estate property. *See* 11 U.S.C. § 362(a); *Fulton*, 592 U.S. at 156-57 (discussing the stay); *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589

U.S. 35, 37 (2020) (same); H.R. REP. NO. 95-595, at 344 (1977) ("the stay is essentially an injunction"). To that end, § 362(a) directs in broad terms that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of … (3) any act to obtain possession of property of 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 …; [and] (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case …." 11 U.S.C. § 362(a).[2]

Collectively, the various prohibitions of the automatic stay protect the interests of debtors by, among other things, providing a "breathing spell from his creditors." S. REP. NO. 95-989, at 54 (1978); *see Fulton*, 592 U.S. at 157. They protect the interests of creditors by, among other things, preventing some creditors from obtaining payment ahead of others, substituting instead an orderly process "under which all creditors are treated equally." S. REP. NO. 95-989 at 49 (1978); *see Fulton*, 592 U.S. at 157.[3] And they protect the integrity of the estate and the bankruptcy court's exclusive jurisdiction over it by preventing the alteration of, or interference with, estate property.

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[2] Section 362(b) enumerates various exceptions to the stay—actions that do not violate its prohibitions. *See* 11 U.S.C. §362(b).

[3] For example, section 362 "stays lien creation against property of the estate" because to "permit lien creation after bankruptcy would give certain creditors preferential treatment by making them secured instead of unsecured." S. REP. NO. 95-989, at 52 (1978).

Among other things, this facilitates the bankruptcy court's ability to supervise the orderly administration of the estate by prohibiting other courts from taking actions that interfere with such administration.[4]

In a Chapter 7 bankruptcy case (such as this one), a trustee is appointed to administer the bankruptcy estate. *See* 11 U.S.C. § 701-703 (providing for the selection of a trustee). The trustee's role includes liquidating estate property to satisfy the debtor's outstanding obligations. *See id.* § 704 (specifying the duties of a trustee). In a Chapter 7 case, the trustee, rather than the debtor, exercises legitimate legal control over the estate and its property. *See, e.g., Kane*, 535 F.3d at 385 ("a [bankruptcy] trustee, as the representative of the bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate ….").

A debtor's outstanding obligations are treated as "claims" against the bankruptcy estate, and a creditor holding a claim is entitled to file a proof of claim with the bankruptcy court. 11 U.S.C. §§ 101(5), 101(10), 501(a), 502; Fed. R. Bankr. P. 3001, 3002; *see Gardner v. New Jersey*, 329 U.S. 565, 574 (1947); *Katchen v.*

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[4] For example, the exclusive jurisdiction of the bankruptcy court over property of the estate extends to the supervision of sales of the estate's assets. *See, e.g.*, 11 U.S.C. § 363(b)(1); *Isaacs v. Hobbs Tie & Timber Co.*, 282 U.S. 734, 737 (1931) (because "the bankruptcy court has exclusive jurisdiction to deal with the property of the bankrupt estate," the court "may order a sale"); *Robertson v. Howard*, 229 U.S. 254, 261 (1913); *Ex Parte Christy*, 44 U.S. (3 How.) 292, 321 (1845). The automatic stay prevents other courts from interfering with bankruptcy sales.

Landy, 382 U.S. 323, 336 (1966) ("bankruptcy … converts the creditor's legal claim into an equitable claim to a pro rata share of the res."). For the duration of the bankruptcy process, creditors and others seeking to enforce rights to, or interests in, estate property in other courts must typically obtain relief from the stay to do so. *See* 11 U.S.C. § 362(d) (specifying statutory criteria for obtaining relief from the stay); *Ritzen*, 589 U.S. at 42 (discussing procedure for obtaining relief from the stay). The Bankruptcy Code regulates the process for obtaining relief from the stay, directing that, on request of "a party in interest," and "after notice and a hearing," the bankruptcy court is authorized to grant "relief from the stay," such as "by terminating, annulling, modifying, or conditioning such stay," for "cause" or in other enumerated circumstances. 11 U.S.C. § 362(d); *see* H.R. REP. NO. 95-595, at 343-44 (1977) (for cause shown, relief may be granted "to permit an action to proceed to completion in another tribunal ….."). As the statute expressly states, the authorized relief includes "annulling" the stay—*i.e.*, treating the stay as though it had never come into effect in the first place. *In re Siciliano*, 13 F.3d 748, 751 (3rd Cir. 1994) ("We agree … that the inclusion of the word 'annulling' in the statute, indicates a legislative intent to apply certain types of relief retroactively and validate proceedings that would otherwise be void *ab initio*.").

The question presented is what happens when parties in interest violate the stay without obtaining relief in accordance with § 362(d). Specifically, the question is whether actions taken in violation of the stay are void, or merely voidable.

The answer to this question matters because void actions are generally regarded as nullities, which status can only be altered if the stay is retroactively annulled—a form of relief only sparingly granted. *See, e.g., Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 675 (11th Cir. 1984) ("[T]he important congressional policy behind the automatic stay demands that courts be especially hesitant to validate acts committed during the pendency of the stay."); *Soares*, 107 F.3d at 977 ("[R]etroactive relief should be the long-odds exception, not the general rule"; "a rarely dispensed remedy like retroactive relief from the automatic stay must rest on a set of facts that is both unusual and unusually compelling."); *Phoenix Bond & Indemnity Co. v. Shamblin* (*In re Shamblin)*, 890 F.2d 123, 126 (9th Cir. 1989) (retroactive relief is available only in "extreme circumstances."). In contrast, actions that are treated as voidable are not nullities, and require further judicial intervention to set them aside in the discretion of the bankruptcy court, which is the effect recognized in the court below. *See* Pet. App. at 28a; *see also Chapman v. Bituminous Ins. Co. (In re Coho Res., Inc.)*, 345 F.3d 338, 344 (5th Cir. 2003) (bankruptcy court has discretion to determine whether to set aside actions taken in violation of the stay).[5] The different approaches have serious

[5] In order to resolve the question presented, this Court need not address such ancillary matters as the precise circumstances in which a stay may be annulled. The Court need only decide whether actions taken in violation of the stay are void *ab initio* (requiring no further action to set them aside, but requiring affirmative relief in the form of an annulment order to render them valid in an appropriate case), or merely voidable (requiring

practical implications. For example, if an action is void, the burden is generally on the party violating the stay to seek (in an appropriate case) to have it validated through annulment of the stay. If the action is merely voidable, the burden is generally on the debtor or trustee to seek to have it set aside. *See, e.g., Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 571 (9th Cir. 1992) (explaining these differences); *Soares*, 107 F.3d at 976 (same). As noted, the courts of appeals are badly divided on whether actions taken in violation of the automatic stay are void *ab initio* (subject to potential reinstatement by the retroactive annulment of the stay in rare instances) or merely voidable (subject to whatever consequence the bankruptcy court deems appropriate).

II. FACTUAL BACKGROUND

In this case, various parties engaged in state-court litigation in violation of the automatic stay, as discussed below. When presented with this violation, the bankruptcy court refused to annul the stay (*i.e.*, treat the stay as though it had never existed in the first place). Thus, if actions taken in violation of the stay are indeed void (as most courts of appeals have held), the state-court litigation in this case would also be void and no further action would be required to establish its voidness. *See Kalb*, 308 U.S. at 438-40 (treating state-court litigation that violated the bankruptcy stay as void, not only as to the debtor but also non-debtors). In this matter, the bankruptcy court declined to determine that the state-court

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additional action to set them aside as a matter of judicial discretion).

litigation was void, which decision the court of appeals affirmed on the theory that actions taken in violation of the stay are not void, but merely voidable. Quite clearly, if the court of appeals is mistaken (and it is), a different path must be pursued below.

The Debtors' Bankruptcy Filing

In December of 1990, Patrick and Patricia McConathy (the "Debtors") commenced a Chapter 7 bankruptcy case in the United States Bankruptcy Court for the Western District of Louisiana. At the time they commenced their case, the Debtors did not disclose their undivided working interest in certain oil and gas leases covering thousands of acres in Kearney County, Kansas (the "Kansas Property"). They likewise failed to make this disclosure when their bankruptcy case was reopened in 1996 and again in 2006. Notwithstanding the Debtors' failure to disclose their interest in the Kansas Property, the Debtors' interest became property of their bankruptcy estate by operation of law subject to administration by a Chapter 7 trustee, together with any causes of action the Debtors possessed arising in connection with their property interest. *See* Pet. App. at 5a; 11 U.S.C. § 541(a).

The Kansas Litigation

In 2019, Patrick McConathy (joined by other plaintiffs) commenced a single lawsuit against Petitioners, American Warrior, Incorporated, Heartland Oil, Incorporated, and Mid-Continent Resources, Incorporated (collectively, "AWI") and others, asserting interests in the Kansas Property

(the "Kansas Litigation").[6] During the course of this litigation, AWI learned of the Debtors' prior bankruptcy filing—and, hence, that whatever interest the Debtors had in the Kansas Property (as well as any causes of action the Debtors had relating to this property) belonged not to the Debtors but to their bankruptcy estate. Pet. App. at 5a. In January of 2021, AWI moved to reopen the Debtors' bankruptcy case, which motion the bankruptcy court granted, recognizing that "[p]ursuant to 11 U.S.C. § 362, the automatic stay is hereby in effect and all actions involving property of the bankruptcy estate are hereby stayed." *Id.*[7] Notwithstanding this recognition, McConathy *continued* to prosecute the Kansas Litigation "in violation of the automatic stay." *Id.* The Chapter 7 trustee appointed in the Debtors' case moved successfully to stay the entire Kansas

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[6] The plaintiffs who commenced the Kansas Litigation were represented by the same counsel.

[7] Although the automatic stay generally terminates with respect to acts other than those involving property of the estate once a bankruptcy case is closed, *see* 11 U.S.C. § 362(c)(2)(A), the Bankruptcy Code expressly directs that "the stay of an act against property of the state under subsection (a) of this section continues until such property is no longer property of the estate," *id.* § 362(c)(1). Hence, so long as property remains property of the estate, the stay applies even if a bankruptcy case is closed. With respect to property the debtor fails to disclose, such remains property of the estate notwithstanding the closure of the debtor's case. *See* 11 U.S.C. § 554(c) & (d); *Kane*, 535 F.3d at 385 ("'[a]t the close of the bankruptcy case, property of the estate that is not abandoned under § 554 and that is not administered in the bankruptcy proceedings"—including property that was never scheduled, [*i.e.*, was not disclosed]—'remains the property of the estate.'") (citation omitted).

Litigation pending further order of the bankruptcy court. *Id*.

Thereafter, plaintiffs in the Kansas Litigation (other than McConathy and an entity that he represented he controlled) and third-party defendants moved the bankruptcy court to modify the automatic stay to permit them to continue with the litigation. *Id*. at 5a-6a. The bankruptcy court denied this request on the ground that the estate's rights in the Kansas Property were "hopelessly intermingled" with the rights asserted by other parties, and that the outcome of the litigation would undeniably have an impact on the estate's interest in the property. *Id*. at 6a. The bankruptcy court also determined that the moving parties had failed to establish cause to modify the stay. *Id*.

Thereafter, the Chapter 7 trustee commenced an adversary proceeding in the bankruptcy court against parties in the Kansas Litigation, seeking a determination of the nature and extent of the parties' interests in the Kansas Property. *Id*. That adversary proceeding led to a settlement between the trustee and AWI, pursuant to which the trustee sold all of the estate's interest in the Kansas Property to AWI. The bankruptcy court approved this settlement. *Id*.[8]

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[8] Although the trustee sold and transferred the estate's interest in the Kansas Property to AWI, the estate retains an interest owing to the fact that, depending on the outcome of the Kansas Litigation, the estate is entitled to receive a substantial sum from AWI to be administered as part of the bankruptcy estate. *See* ROA.5377, case no. 23-30529 [ECF 319] (motion to approve settlement), ROA.5810 case no. 23-30529 [ECF 332] (order); ROA.9400-01 case no. 23-30529 [ECF 361] (settlement

AWI filed a motion in the bankruptcy court seeking sanctions against McConathy and his attorneys for violating the automatic stay by pursuing the Kansas Litigation. AWI also sought a determination that the Kansas Litigation was void *ab initio* as a violation of the stay. *Id.* at 7a. The non-debtor plaintiffs countered with a request that the bankruptcy court retroactively annul the stay. *Id.* The bankruptcy court declined to annul the stay and likewise denied AWI's request to determine that the Kansas Litigation was void *ab initio*. *Id.* The court did, however, sanction McConathy's attorneys for prosecuting the Kansas Litigation in violation of the stay. *Id.* at 7a n.3.

Following the trustee's sale of the estate's interest in the Kansas Property to AWI, the bankruptcy court entered an order abstaining from further proceedings involving the Kansas Property. The court likewise determined that, as a result of the sale, the automatic stay had terminated with respect to the Kansas Property. *See* 11 U.S.C. §362(c)(1) (providing that "the stay or an act against property of the estate … continues until such property is no longer property of the estate"). The court also determined that the non-debtor plaintiffs were not subject to sanctions for their participation in the Kansas Litigation. Pet. App. at 7a.

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agreement); 11 U.S.C. § 541(a)(7) (property of a bankruptcy estate includes "any interest in property that the estate acquires after the commencement of the case"). (ECF references are to the docket in the bankruptcy case at case no. 90-13449).

Appeal to the District Court

AWI appealed the bankruptcy court's rulings to the district court. The district court affirmed, concluding that the Kansas Litigation was not void *ab initio*, the non-debtors did not engage in sanctionable conduct, and an annulment of the stay was not required. *Id.* at 11a.

Disposition by the Court of Appeals

On further appeal, the court of appeals likewise affirmed. The court began its discussion by observing that "AWI's multiple arguments" criticizing the bankruptcy court's rulings "necessarily flow from its contention that the Kansas Litigation was void *ab initio* because of the Debtors' undisclosed mineral interests." *Id.* Disagreeing with AWI's argument that "only a formal annulment order could 'retroactively validate' the Kansas Litigation," 11a-12a, the court observed that, in the Fifth Circuit, actions taken in violation of the automatic stay are not void, but rather "*voidable*," *id.* at 21a-22a (*quoting Sikes*, 881 F.2d at 179), and that actions taken by debtors and non-debtors in litigation affecting property of the estate are "not subject to the same automatic stay analysis," *id.* at 13a. The court concluded that the bankruptcy court did not err in declining to set aside the Kansas Litigation without retroactively annulling the stay. *Id.* at 24a ("We approve the … decision of the bankruptcy court to allow the Kansas Litigation to go forward without a purely formalistic annulment order."). This Petition followed.

REASONS FOR GRANTING THE PETITION

Certiorari is warranted for five reasons. First, the conclusion below that actions taken in violation of the automatic stay are voidable rather than void conflicts irreconcilably with authoritative decisions of other courts of appeals. Second, the decision below conflicts with this Court's precedents. *See, e.g., Kalb v. Feuerstein*, 308 U.S. 433, 438-40 (1940). In *Kalb*, the Court reasoned that the pursuit of state-court litigation in violation of the bankruptcy stay rendered the relevant proceedings void. The decision below, concluding that state-court litigation pursued in violation of the automatic stay is not void, but merely voidable, conflicts with this Court's prior holding in *Kalb*.

Third, the issue is important and recurring—as the number of decisions addressing the question presented demonstrate. The automatic stay is a ubiquitous and central feature of virtually every bankruptcy case. Resolution of the question presented would help clarify its proper effect.

Fourth, this case presents an excellent vehicle in which to address the question presented. The question is squarely raised, arises in a typical manner, and its resolution is consequential and outcome-determinative.

Finally, the decision below is wrong. Actions taken against property of the estate in violation of the automatic stay are not simply voidable, they are void. That is so for many reasons, including to vindicate the longstanding principle that actions taken against property in the custody of a federal court are nullities.

That conclusion, of course, does not leave the parties without recourse in instances in which treating an action as void may be extreme or excessive. As the statute itself provides, the bankruptcy court has the authority to "annul" the stay—*i.e.*, treat it as having never gone into effect in the first place. But as numerous courts have also explained, such relief is to be applied only sparingly upon a proper showing. *See, e.g., Albany Partners*, 749 F.2d at 675 ("[T]he important congressional policy behind the automatic stay demands that courts be especially hesitant to validate acts committed during the pendency of the stay[,]" and remanding for consideration of whether annulment of the stay was warranted); *Soares*, 107 F.3d at 977 (retroactive annulment "must rest on a set of facts that is both unusual and unusually compelling."); *Shamblin*, 890 F.2d at 126 ("extreme circumstances" required).

The court below characterized the need for an annulment order as "purely formalistic." Pet. App. at 24a. But that is not correct. A retroactive annulment is *required* to overcome the voidness of a stay violation, and the grounds for such relief must by demonstrated. In this case, the bankruptcy court refused to retroactively annul the stay. *Id*. at 7a-8a. The court of appeals' conclusion that this did not matter rests on its mistaken view that actions taken in violation of the stay are not void, but merely voidable—and, hence, that the bankruptcy court may afford a stay violation whatever effect the court sees fit. But that has things backwards. Actions that violate the stay are void as a matter of law, subject to the bankruptcy court evaluating whether an annulment is warranted based upon a proper

showing, *e.g.*, *Albany Partners*, 749 F.2d at 675, *not* voidable, subject to whatever consequence the court deems appropriate, *e.g.*, *Coho Res.,* 345 F.3d at 344 ("[V]iolations are merely 'voidable' and are subject to discretionary 'cure.'"). For these reasons, Petitioners respectfully request that the Court grant certiorari review.

I. THE DECISION BELOW CONFLICTS IRRECONCILABLY WITH AUTHORITATIVE DECISIONS OF OTHER COURTS OF APPEALS.

The decision below conflicts irreconcilably with authoritative decisions of the First, Second, Third, Ninth, Tenth, and Eleventh Circuits. *See, e.g.*, *Soares*, 107 F.3d at 976 (1st Cir.) (treating actions taken in violation of the automatic stay as void "best harmonizes with the nature of the automatic stay and the important purposes that it serves."); *Colonial Realty Co.*, 980 F.2d at 137 (2d Cir.) ("[S]o central is the § 362 stay to an orderly bankruptcy process that actions taken in violation of the stay are void and without effect.") (internal citations omitted); *Picard v. Fairfield Greenwich Ltd.*, 762 F.3d 199, 207 (2d Cir. 2014); *In re Myers*, 491 F.3d 120, 128 (3d Cir. 2007) ("[A]ctions in violation of the stay are void but retroactively ratifiable if the stay is annulled …."); *Mar. Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1206 (3d Cir. 1991) ("Absent relief from the stay, judicial actions and proceedings against the debtor are void *ab initio*."), *reh'g granted and opinion vacated* (Jan. 10, 1992), *opinion reinstated on reh'g* (Mar. 24, 1992) (same) (citing *Kalb*, 308 U.S. at 438-40); *Burton v. Infinity Capital Mgmt.,* 862 F.3d 740, 747 (9th Cir.

2017) (actions taken, including judicial proceedings, in violation of the automatic stay are void); *Schwartz*, 954 F.2d at 571 (9th Cir.) ("[V]iolations of the automatic stay are void, not voidable."); *Gruenbaum v. Bankers Tr. Co. (In re Goldstein)*, 5 Fed. Appx. 757, 759 (9th Cir. 2001) ("All judicial actions taken during the pendency of the stay are void.") (citations omitted); *Far Out Prods.*, 247 F.3d at 995 (9th Cir. 2001) ("[T]he automatic stay provision is so central to the functioning of the bankruptcy system that this circuit regards judgments obtained in violation of the provision as void rather than merely voidable on the motion of the debtor."); *40235 Wash. Street Corp. v. Lusardi*, 329 F.3d 1076, 1084 (9th Cir. 2003) ("[T]ransfers in violation of an automatic stay under section 362(a) are void: The property interests remain the same as they would have been if no transfer had been attempted."); *Bank of New York Mellon v. Enchantment at Sunrise Bay Condo. Assoc.*, 2 F.4th 1229, 1233-34 (9th Cir. 2021) (foreclosure actions in violation of the automatic stay are void); *Ellis*, 894 F.2d at 372 (10th Cir.) ("It is well established that any action taken in violation of the stay is void and without effect.") (citing *Kalb*, 308 U.S. at 438); *Jubber v. Bank of Utah (In re C.W. Min. Co.)*, 749 F.3d 895, 899 (10th Cir. 2014) (holding same); *White*, 466 F.3d at 1244 ("It is the law of this Circuit that actions taken in violation of the automatic stay are void and without effect.") (quotation omitted); *In re Albany Partners, Ltd.*, 749 F.2d at 675 (11th Cir.) ("[A]cts taken in violation of the automatic stay are generally deemed void and without effect") (citing *Kalb*, 308 U.S. at 443).

In *Soares*, the Court of Appeals for the First Circuit reviewed the split of authority between those courts of appeals that view actions taken in violation of the automatic stay as merely voidable and those that view them as void. *Soares*, 107 F.3d at 976. *Soares* dealt with a post-bankruptcy judgment obtained against a debtor in a foreclosure action commenced before the filing of the debtor's bankruptcy case. The court provided a detailed analysis of how violations of the automatic stay should be treated, reviewing the substance and purpose of the automatic stay, the availability of retroactive relief, relevant principals governing the availability of such relief, and the applicability of those standards to the facts at hand. Central to its analysis was the purpose of the automatic stay as "among the most basic of debtor protections under bankruptcy law." *Id*. at 975. The court concluded that the judgment obtained in violation of the stay was properly void. *See id*. at 976.

In *Meyers*, the Court of Appeals for the Third Circuit similarly considered whether orders entered against the debtor in violation of the automatic stay were void, and further the availability of annulment relief to retroactively reinstate them. The district court concluded that such relief was available, and the court of appeals affirmed, clarifying that, in the Third Circuit, violations of the automatic stay are "void (as opposed to voidable), [but] may be revitalized in appropriate circumstances by retroactive annulment of the stay." *Meyers*, 491 F.3d at 127.[9]

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[9] In conducting its analysis, the court of appeals examined the void/voidable distinction in detail, stating that "[t]he term

The Court of Appeals for the Ninth Circuit reached a similar conclusion in *Schwartz*, a case involving an IRS tax assessment issued in violation of the stay. After weighing the merits of each approach, the court of appeals overruled a Bankruptcy Appellate Panel's decision concluding that violations of the stay were merely voidable, rather than void. *In re Schwartz*, 954 F.2d at 570. As the Ninth Circuit explained, the two approaches place distinctly different burdens on the parties. Treating actions that violate the stay as voidable means that "the debtor must affirmatively challenge creditor violations" in order to set them aside, whereas treating them as void achieves that result "without the need for direct challenge[,]" placing the burden on the party that violated the stay to have the action reinstated through retroactive annulment. *Id.* at 571. As the court observed, "[i]f violations of the stay are merely voidable, debtors must spend a considerable amount of time and money policing and litigating creditor actions." *Id.* In contrast, "[i]f violations are void, … debtors are afforded better protection and can focus their attention on reorganization." *Id.* Observing that a "fundamental purpose of the automatic stay" is precisely to protect debtors in order to achieve this objective, the court concluded that "Congress intended violations of the automatic stay to be void rather than

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'voidable' implies that actions taken in violation of the stay are valid unless cancelled by some affirmative action, rather than invalid or dormant unless subsequently ratified." *Id.* In contrast, "the term 'void' implies an absolute bar amenable to no exception." *Id.* Although an action that violates the stay is properly void, the court explained that it may "reinvigorated" through a retroactive annulment order upon a proper showing. *Id.*

voidable," adding that a finding otherwise would "burden a bankruptcy debtor with an obligation to fight off unlawful claims." *Id.* at 571-72.[10]

Other courts of appeals have plainly departed from the majority view, taking the position that violations of the automatic stay are not void, but merely voidable. *See Coho Res.,* 345 F.3d at 344 (5th Cir.) ("violations are merely 'voidable' and are subject to discretionary 'cure.'"); *Matter of Chunn*, 106 F.3d 1239, 1242 n. 6 (5th Cir. 1997) (stating same); *Picco v. Glob. Marine Drilling Co.*, 900 F.2d 846, 851 (5th Cir. 1990) (order in violation of stay was voidable not void); *Sikes*, 881 F.2d at 178 (5th Cir.) (litigation pursued in violation of the stay was voidable, but recognizing "[c]ourts considering whether actions taken in violation of the automatic stay are void or voidable have reached opposite conclusions."); *Bronson*, 46 F.3d at 1578 (Fed. Cir.) (refusing to follow the "majority of the circuits" adopting the rule that actions taken in violation of the stay are void, and concluding that IRS tax assessment that violated the stay was voidable); *Easley*, 990 F.2d at 911 (6th Cir.) (declining to follow the "majority of the circuits" and

[10] Treating actions taken in violation of the stay as void, rather than voidable, serves other important administrative objectives. As the Court of Appeals for the Third Circuit explained in *Maritime Electric Co.*, "[h]olding that judicial acts and proceedings in violation of the automatic stay are void *ab initio* is consistent with the stay's function of enabling the bankruptcy court to decide whether it will exercise its power under section 502(b) of the Bankruptcy Code to establish the validity and amount of claims against the debtor or allow another court to do so, thereby preventing a 'chaotic and uncontrolled scramble for the debtor's assets in a variety of uncoordinated proceedings in different courts.'" 959 F.2d at 1207 (citation omitted).

holding instead "that actions taken in violation of the stay are invalid and voidable").

In *Sikes*, the court of appeals for the Fifth Circuit supported its conclusion that actions taken in violation of the stay are merely voidable by reference to § 362(d) permitting relief from the stay and provisions of the Bankruptcy Code that permit the avoidance of certain transfers, in particular § 549. *See Sikes*, 881 F.2d at 179. Section 549 permits a trustee to "avoid a transfer of property of the estate … that occurs after the commencement of the case" if certain criteria are satisfied. 11 U.S.C. § 549(a)(1). The court also referenced § 542(c), which the court described as "ratify[ing] transfers by parties having no knowledge of the bankruptcy case." *Sikes*, 881 F.2d at 179. The court reasoned that "if everything done post-petition were void in the strictest sense of the word, these provisions would either be meaningless or inconsistent" with the Bankruptcy Code. *Id.* Other courts, however, have rejected such observations as a basis for treating actions that violate the stay as voidable, rather than void. *See, e.g., Schwartz*, 954 F.2d at 572 ("We find this reasoning erroneous."). And properly so. With respect to a litigant's ability to obtain relief under § 362(d), the Ninth Circuit explained that "it is entirely consistent [with the statute] to reason that, absent affirmative relief from the bankruptcy court, violations of the stay are void." *Id.* at 573 ("The power to grant relief, even retroactively, simply does not mean that violations of the stay must be merely voidable rather than void."). As the Ninth Circuit also observed, the avoidance power under § 549 generally applies to recover unauthorized transfers made by the debtor or trustee

(*i.e.*, that are not authorized by statute or court order), whereas stay violations are of a different character. *See id*. ("[A] straightforward analysis of section 549 reveals that it is not intended to cover the same type of actions prohibited by the automatic stay nor rendered moot by section 362's voiding of all automatic stay violations.").

Regardless, what these decisions illustrate is that the courts of appeals are intractably divided on the question presented and that their competing views are well developed, rending the question ripe for resolution by this Court. The split is likewise acknowledged and entrenched.[11] Accordingly, it is unlikely to be resolved absent this Court's intervention. Certiorari is warranted.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS.

Certiorari is also warranted because the decision below conflicts with this Court's decision in *Kalb v. Feuerstein*, 308 U.S. at 438 (holding that a state-court proceeding involving a debtor in violation of a statutory bankruptcy stay was "not merely erroneous but was beyond its power, void, and subject to

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[11] *See, e.g., Mar. Elec. Co., Inc.*, 959 F.2d at 1206-07 (3d Cir.) (collecting cases); *Sikes*, 881 F.2d at 178 (5th Cir.) ("Courts considering whether actions taken in violation of the automatic stay are void or voidable have reached opposite conclusions."); *Schwartz*, 954 F.2d at 572 (9th Cir.) (collecting cases); *Bronson*, 46 F.3d at 1577-78 (Fed. Cir.); *Easley*, 990 F.2d at 909-11 (6th Cir.); *Coho Res.*, 345 F.3d at 344 (5th Cir.); *Soares*, 107 F.3d at 976 (1st Cir.) ("The circuits are split on whether actions taken in derogation of the automatic stay are merely 'voidable' or, more accurately, 'void.'")

collateral attack."). In *Kalb*, the Court considered whether a Wisconsin state court had jurisdiction to confirm a sheriff's sale involving a farm and to order the farmers' eviction while the bankruptcy case of one of the farmers was pending. *See id.* at 436. After the foreclosure, the farmers commenced actions in state court to, among other things, restore possession based on the state court's lack of authority to confirm the sale owing to the bankruptcy stay in place in the bankruptcy case. *Id.* The state court dismissed these actions, reasoning that, in the absence of any appeal or prior showing in the state court, the farmers could not press their challenge to the court's authority after the fact. *Id.* at 437. This Court disagreed, stating:

> If appellants are right in their contention that the Federal [Bankruptcy] Act of itself, from the moment the petition was filed and so long as it remained pending, operated, in the absence of the bankruptcy court's consent, to oust the jurisdiction of the State Court so as to stay its power to proceed with foreclosure, to confirm a sale, and to issue an order ejecting appellants from their farm, the action of the [Wisconsin court] was not merely erroneous but was beyond its power, void, and subject to collateral attack.

Id. at 438. Concluding that such was in fact the case, the Court reasoned that, because the "Constitution grants Congress exclusive power to regulate bankruptcy," it "can limit that jurisdiction which courts, state or Federal, can exercise over the person

and property of a debtor who duly invokes the bankruptcy law." *Id* at 439. As the Court observed, the relevant provision of the Bankruptcy Act provided in unequivocal terms that "'the filing of a petition … shall immediately subject the [debtor] and all his property, wherever located … to the exclusive jurisdiction of the [federal] court,'" and foreclosure actions already commenced "'shall not be maintained, in any court or otherwise, against the farmer and his property ….'" *Id.* at 440 (quoting 11 U.S.C. § 203). Based on these provisions, the Court determined that the state-court foreclosure litigation indeed violated the statutory prohibitions and thus was "without authority of law." *Id* at 443 (emphasis added). Notably, *Kalb* established that that the entirety of the state-court litigation was void, not simply as it pertained to the particular farmer who had filed for bankruptcy relief. *Id*. at 443-44.

Numerous circuit courts have cited *Kalb* for the proposition that actions taken in violation of the stay are void. *See, e.g., Schwartz*, 954 F.2d at 572 (9th Cir.) (citing *Kalb*); *Raymark Indus., Inc. v. Lai*, 973 F.2d 1125, 1132 (3d Cir. 1992) (citing *Kalb* for the rule that "actions taken in violation of the automatic stay are void *ab initio*"); *Mar. Elec. Co.,* 959 F.2d at 1206 (3d Cir.); *Shamblin*, 890 F.2d at 125 (9th Cir.) (declining "to depart from this well established rule" in *Kalb* that tax sales in violation of the automatic stay are void); *Albany Partners, Ltd.*, 749 F.2d at 675 (11th Cir.) (citing *Kalb* for the proposition that "acts taken in violation of the automatic stay are generally deemed void and without effect.").

Even courts of appeals that do not follow *Kalb* have grappled (albeit unpersuasively) with its holding. *See Bronson*, 46 F.3d at 1578 (Fed. Cir.) (explaining that while *Kalb* is "binding on this court" it is distinguishable because the case precedes the enactment of the Bankruptcy Code and § 362(d), which empowers the bankruptcy court to annul the stay); *Easley*, 990 F.2d at 911 (distinguishing *Kalb* on the same grounds); *Sikes*, 881 F.2d at 179 n.2 (same). As noted, these courts have reasoned that, under the current Bankruptcy Code, if actions taken in violation of the stay are treated as void, then a bankruptcy court's authority to retroactively "annul" the stay to reinstate those actions would be rendered meaningless. *See, e.g., Sikes*, 881 F.2d at 179. But as the Ninth Circuit explained in *Schwartz*, that is not correct because annulment is not automatic and the power to annul the stay is properly an exception to the voidness rule. *See Schwartz*, 954 F.2d at 572; *see also Sikes,* 881 F.2d at 180 (Johnson, J., dissenting) (even though violations of the automatic stay are void, "a bankruptcy court may validate an otherwise void filing in violation of the automatic stay").[12]

Nor is *Kalb* an outlier. For example, at the time *Kalb* was decided, it was understood that liens

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[12] The advisory committee note to former Bankruptcy Rule 601(c), the predecessor to the current § 362(d), supports this reasoning of the Ninth Circuit. As the note explained, "'[t]his rule consists with the view that ... an act or proceeding [against property in the bankruptcy court's custody taken in violation of the automatic stay] is void, but subdivision (c) recognizes that in appropriate cases the court may annul the stay so as to validate action taken during the pendency of the stay.'" *Albany Partners,* 749 F.2d at 675 (quoting former Rule 601(c)).

obtained after the commencement of a bankruptcy case that interfered with the orderly administration of the debtor's estate were likewise null and void. *See Straton*, 283 U.S. at 321 (after the filing of a bankruptcy petition "liens cannot thereafter be obtained nor proceedings be had in other courts to reach the property, the district court having acquired the exclusive right to administer all property in the bankrupt's possession."); *see also Collie,* 281 U.S. at 55 (reciting the "general rule" in maritime proceedings, also *in rem*, "that events subsequent to the seizure [of the vessel] do not give rise to liens against a vessel in custodia legis."). When Congress enacted the current Bankruptcy Code in 1978, these principles presumptively endured. *See e.g.*, *Taggart v. Lorenzen,* 587 U.S. 554, 561 (2019) ("[A]s part of the 'old soil' they bring with them, the bankruptcy statutes incorporate the traditional standards[.]"); *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) ("We … 'will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure.'") (citation omitted); *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.,* 474 U.S. 494, 501 (1986). Because the decision below conflicts with this Court's historic precedents, certiorari is warranted.

III. THE QUESTION PRESENTED IS IMPORTANT AND RECURRING, AND THIS CASE PRESENTS AN EXCELLENT VEHICLE FOR ITS RESOLUTION.

Certiorari is further warranted because the question presented involves an important and recurring issue. The automatic stay is essential to the

functioning of the bankruptcy system, *see* H.R. REP. NO. 95-595, at 340-41 (1977), and the resolution of the question presented would help clarify its effect in vitally important ways, as the cases well illustrate. *See, e.g., Schwartz*, 954 F.2d at 571 (explaining how the competing approaches taken by the circuits have very different impacts on the estate and the use of its resources).

This case likewise presents an excellent vehicle for the resolution of the question presented. The issue arises essentially in the same manner as in *Kalb* and involves a common fact-pattern. *See, e.g., Burton,* 862 F.3d at 747 (judicial proceedings in violation of the automatic stay are void); *Goldstein*, 5 Fed. Appx. at 759 ("All judicial actions taken during the pendency of the stay are void.") (citations omitted); *Bank of New York Mellon*, 2 F.4th at 1233-34 (foreclosure actions in violation of the automatic stay are void). Resolution of the question presented is also outcome-determinative. As explained above, if litigation undertaken in violation of the stay is indeed void, then the Court below erred in treating it simply as voidable. Rather, as this Court determined in *Kalb*, the state court was without authority to proceed and the Kansas Litigation was properly a nullity.

IV. THE DECISION BELOW IS WRONG.

Finally, this Court's review is warranted because the decision below is wrong. Actions taken in violation of the automatic stay, including proscribed state-court litigation involving property of the estate, are not simply voidable, they are void. And as the governing statute makes plain, the proper procedure in situations in which a litigant wishes to reinstate a

void action is for the litigant to obtain an annulment order on a proper showing. The Fifth Circuit's conclusion that an annulment order would be "purely formalistic," Pet. App. at 24a, is incorrect. Far from being a mere formality, it is the designated form of relief available under § 362(d) in situations in which a litigant establishes sufficient cause to obtain it. *See, e.g., Albany Partners, Ltd.*, 749 F.2d at 675; *Soares*, 107 F.3d at 976-7. Critically, if actions taken in violation of the stay are not void, there would be no reason for annulment relief to exist—if actions are merely voidable, the bankruptcy court may simply refuse to set them aside. *See Soares*, 107 F.3d at 976-77 ("Congress' grant of a power of annulment is meaningful only if the court may thereby validate actions taken *before* the date on which the court rules."). The concept of stay annulment as an available form of relief only makes sense *because* actions that violate the stay are, indeed, void—exactly as this Court established in *Kalb*.

Contrary to the decision below, actions that violate the stay are void as a matter of law, subject to being reinstated through an annulment order premised on a proper showing, *not* merely voidable, subject to whatever consequence the bankruptcy court deems appropriate under the circumstances. Certiorari is warranted to correct the consequential error of the court below.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant certiorari to address and resolve the question presented.

Respectfully submitted,

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Dated: October 30, 2024

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, FILED AUGUST 1, 2024

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-30529

IN THE MATTER OF PATRICK L. MCCONATHY
AND PATRICIA CHAPMAN MCCONATHY,

Debtor,

AMERICAN WARRIOR, INCORPORATED;
HEARTLAND OIL, INCORPORATED;
MID CONTINENT RESOURCES, INCORPORATED,

Appellants,

versus

FOUNDATION ENERGY FUND IV-A, L.P.;
FOUNDATION ENERGY FUND IV-B HOLDING,
L.L.C.; DOLORES JO MATSON TRUST;
ROGER MELVIN MATSON TRUST;
WILLIS J. MAGATHAN,

Appellees,

Appendix A

AMERICAN WARRIOR, INCORPORATED;
HEARTLAND OIL, INCORPORATED;
MID CONTINENT RESOURCES, INCORPORATED,

Appellants,

versus

BLACK STONE MINERALS COMPANY, L.P.;
ENTECH ENTERPRISES, L.L.C.,

Appellees,

AMERICAN WARRIOR, INCORPORATED;
HEARTLAND OIL, INCORPORATED;
MID CONTINENT RESOURCES, INCORPORATED,

Appellants,

versus

BLACK STONE MINERALS COMPANY, L.P.;
ENTECH ENTERPRISES, L.L.C.,

Appellees,

Appendix A

AMERICAN WARRIOR, INCORPORATED;
HEARTLAND OIL, INCORPORATED;
MID CONTINENT RESOURCES, INCORPORATED,

Appellants,

versus

FOUNDATION ENERGY FUND IV-A, L.P.;
FOUNDATION ENERGY FUND IV-B
HOLDING, L.L.C.; DOLORES JO MATSON TRUST;
ROGER MELVIN MATSON TRUST;
WILLIS J. MAGATHAN ESTATE,

Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
USDC Nos. 5:22-CV-5769, 5:22-CV-5771,
5:22-CV-5772, 5:22-CV-5773

Before JONES, CLEMENT*, and WILSON, *Circuit Judges*.

EDITH H. JONES, *Circuit Judge*:

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* JUDGE CLEMENT concurs in all but Section III.A. She would hold that, regardless of whether the McConathys' co-plaintiffs in the Kansas litigation technically violated the automatic stay by bringing the Kansas suit, AWI has not shown that the bankruptcy court abused its discretion by declining to void the Kansas litigation as to the McConathys' co-plaintiffs, consistent with Section III.C. of this opinion.

Appendix A

In this appeal from a bankruptcy court decision, American Warrior, the defendant in a Kansas oil and gas title suit, seeks to leverage *whom* it may have to pay into *what forum* will decide the parties' dispute. The Debtors, to be sure, lacked integrity in concealing ownership of their interest in the properties thirty years ago. But as the current bankruptcy matter has evolved, AWI settled with the Debtors' trustee, there is no bankruptcy issue remaining between other plaintiffs and AWI, and the bankruptcy court permissively abstained. We find no reversible error in the bankruptcy court or district court decisions and accordingly AFFIRM.

I. BACKGROUND

Patrick and Patricia McConathy ("Debtors") filed a bankruptcy case in Louisiana in 1990 but failed to disclose their undivided working interests and leasehold rights in various tracts of land covering more than 3,000 acres in Kearny County, Kansas. The Debtors' bankruptcy case was re-opened twice over the decades.

The third reopening occurred in 2021 on the initiative of American Warrior ("AWI"), when discovery in a Kansas state court lawsuit revealed previously undisclosed property of the estate. The lawsuit was filed in 2019 by the Debtors (and other plaintiffs including Foundation Energy Appellees) against AWI and other defendants ("Kansas Litigation").[1]

1. The basic facts of the Kansas Litigation are as follows:

AWI had obtained 100% ownership of oil and gas leases and working interests in more than 3,000 acres pursuant to a Kansas

During discovery, AWI learned that the Debtors had declared bankruptcy but did not include the Kansas oil and gas interests in their bankruptcy schedule. AWI was thus aware of the bankruptcy "defect" regarding the Debtor's nondisclosure as early as April 2020, but did not move to re-open the bankruptcy proceeding until January 2021 at an allegedly crucial juncture in the litigation.

On January 24, 2021, the bankruptcy court entered an order granting the motion to reopen, which stated that "[p]ursuant to 11 U.S.C. § 362, the automatic stay is hereby in effect and all actions involving property of the bankruptcy estate are hereby stayed." Despite this order, the Debtors and their lawyers (who are also counsel to other plaintiffs in the Kansas Litigation) continued to prosecute the Kansas Litigation in violation of the automatic stay. The Chapter 7 trustee then successfully moved, under an agreed order, to stay the entire Kansas Litigation pending further order of the bankruptcy court.

In May 2021, non-debtor plaintiffs and third-party defendants in the Kansas Litigation, including the

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state court default judgment against a number of possible owners. As a result, AWI drilled and produced oil and gas worth more than $7 million from the properties. The Debtors and other plaintiffs, some of whom were represented by the Debtors' counsel, sued to recover damages (the Kansas Litigation), asserting that because of notice and service issues, the default judgment was unenforceable. The precise extent of plaintiffs' separate interests, however, were intermingled and conflicting.

Black Stone Appellees in this case became third parties to the Kansas Litigation only when AWI joined them and other parties on a distinct theory of adverse possession in 2020.

Foundation and Black Stone Appellees, moved to modify the stay. The Bankruptcy Court denied the motion in June 2021. In doing so, the bankruptcy court explained that any adjudication of rights and royalties in the Kansas Litigation could have an impact on the property of the estate under Section 362(a)(3) of the Bankruptcy Code because the estate's property rights were hopelessly intermingled with the other plaintiffs' claimed interests. *See* 11 U.S.C. § 362(a)(3); The bankruptcy court also concluded that the moving parties failed to make a showing of "cause" to lift the stay under 11 U.S.C. § 362(d)(1). Foundation Energy and Black Stone Appellees did not appeal the June 2021 Order.[2]

In April 2022, the Chapter 7 trustee filed an adversary proceeding on behalf of the estate against all parties in the Kansas Litigation. The adversary proceeding sought determination of the nature and fractional ownership of the Kansas mineral lease rights at issue in the Kansas Litigation. That proceeding ultimately led to a settlement between the trustee and AWI, under which the trustee (on behalf of the bankruptcy estate) transferred all its rights to AWI. In exchange, AWI paid $175,000 to the trustee, released all its claims against the estate, and agreed to pay an additional $50,000 to the trustee "in the event that the Estate's rights conveyed to AWI by virtue of this compromise are ultimately determined to be free and clear of any Net Profits Interest claim or Net Profits Interest burden as currently being asserted and claimed

2. The automatic stay was modified by agreement in November to allow the deposition of an elderly witness for the purposes of the bankruptcy proceedings and the Kansas Litigation.

in the Kansas Litigation." The bankruptcy court granted the motion to compromise over the limited objections of Black Stone.

Around the same time, AWI had moved for civil contempt sanctions under 11 U.S.C. § 105(a) against the Debtors and two of their lawyers, on the basis that that their filing and continued prosecution of the Kansas Litigation, in spite of their prior knowledge of the bankruptcy case, violated the automatic stay. AWI also sought a discretionary declaration under Section 105(a) that the Kansas Litigation was void *ab initio*. Foundation Energy countered with a motion to annul the stay.

The bankruptcy court ruled on both motions in a single memorandum opinion in May 2022. The court deemed the Debtors and two of their lawyers in contempt of court as alleged and stated its intention to impose monetary sanctions against the lawyers but not the Debtors.[3] The bankruptcy court went on to deny AWI's void *ab initio* claim, concluding that AWI failed to adequately allege a violation of the stay by non-debtor co-plaintiffs in the Kansas Litigation. As to Foundation Energy's motion to retroactively annul the stay, the court rejected it because Foundation should not be afforded a "third bite at the

3. In August 2022, the bankruptcy court imposed sanctions of $67,868.10 on the Debtors' attorneys for fees related to prosecuting the Debtors' claims in violation of the automatic stay. Significantly, the court reiterated that all fees related to the representation of non-debtors should be excluded from the sanctions calculation because "[s]uch services would have been performed regardless of the claims asserted by the Debtor and the Partnership."

apple" for such relief. But the bankruptcy court observed that "the moving parties may no longer care whether the stay is annulled" in light of the "court's ruling that AWI failed to adequately plead a violation of the stay by the non-debtor co-plaintiffs." These rulings also were not appealed by any party.

After approving the AWI-trustee settlement in July 2022, the bankruptcy court asked the non-debtor parties to file an abstention motion in the adversary proceeding and/or a motion to determine whether the automatic stay had been terminated. The Foundation and Black Stone parties filed separate motions asserting the same rights; both motions were opposed by AWI. The motions sought confirmation under 11 U.S.C. § 362(j) of the Bankruptcy Code that the automatic stay had terminated due to the estate's transfer and relinquishment of its Kansas mineral lease interests, as well as both permissive and mandatory abstention pursuant to 28 U.S.C. § 1334(c)(1) and (2). At a hearing on October 5, the bankruptcy court reaffirmed its previous rulings that the non-debtor parties did not violate the automatic stay:

> The non-debtor parties did not violate the automatic stay by filing their claims in the Kansas litigation or pursuing them in the Kansas state court before this bankruptcy case was reopened. *To be absolutely clear, this Court never held or even suggested that the non-debtor parties* [*violated*] *the automatic stay*. Instead, I ruled that the automatic stay prevented the non-debtor parties from

> adjudicating their claims in state court after the bankruptcy case was reopened.

(emphasis added).

The next day, the bankruptcy court signed four orders, which are the subjects of the current consolidated appeal. In explaining the orders, the bankruptcy court concluded that following the estate's settlement with AWI, property of the estate was no longer at issue, and the *adjudication* of non-debtor claims in the Kansas Litigation had only been stayed because those claims "were hopelessly intertwined with the estate's claims." The bankruptcy court emphasized again that "*the non-debtor parties did not violate the automatic stay in any way*," and the Kansas Litigation was not void *ab initio*. The court ordered that no stay "is in effect with respect to any claim, cause of action, or defense asserted by or against any non-debtor party" in the Kansas Litigation, and it granted the motion to terminate the automatic stay or deem the stay terminated under 11 U.S.C. §362(j).

The bankruptcy court further decided to permissively abstain from the Kansas Litigation under 28 U.S.C. § 1334(c)(1), providing the following reasons:

> 1. The issues presented in this adversary proceeding are substantially similar to those presented in a lawsuit pending in the 25th Judicial District Court in Kearny County, Kansas styled *Foundation Energy Fund IV-A, LP, et al. v. American Warrior, Inc., et al.*, Case No. 19-CV-0011 (the "Kansas litigation");

2. The Kansas litigation involves the identical parties or nearly identical parties;

3. The Kansas litigation was filed prior to this adversary proceeding;

4. The Kansas litigation has not been removed or referred to this court and there is no statutory basis to remove or refer that litigation to this court;

5. The parties to the Kansas litigation are not stayed from pursuing their claims and defenses in that litigation and there is no statutory basis for this court to stay the non-debtor parties from pursing their claims in that litigation;

6. This adversary proceeding does not involve any property of the estate, the debtor, the trustee or any creditor of the estate;

7. There will be no effect on the administration of the estate if this court abstains from the adversary proceeding;

8. State law issues will predominate over bankruptcy issues (in fact, there are no bankruptcy issues presented in the adversary complaint);

9. There is a high degree of remoteness to the main bankruptcy case;

> 10. This adversary proceeding is not a "core" proceeding within the meaning of 28 U.S.C. § 157(b)(2); and
>
> 11. Certain parties in this adversary proceeding have asserted the existence of a right to a jury trial.

AWI appealed the orders to the district court, which affirmed in a succinct opinion, concluding that the Kansas Litigation was not void *ab initio*; the non-debtors did not act in violation of the stay; and an official annulment was not required in this case.

II. STANDARD OF REVIEW

This court "appl[ies] the same standard of review as did the district court: the bankruptcy court's factual findings are reviewed for clear error; its legal conclusions and mixed questions of fact and law, de novo." *In re Mercer*, 246 F.3d 391, 402 (5th Cir. 2001) (en banc). This court reviews abstention decisions based on the law and case law applicable at the appropriate time.

III. DISCUSSION

AWI's multiple arguments necessarily flow from its contention that the Kansas Litigation was void *ab initio* because of the Debtors' undisclosed mineral interests. We disagree with AWI's interpretation of the scope of the stay, its *res judicata* theory of the June 2021 bankruptcy court order refusing to lift the stay, and its insistence that only

a formal annulment order could "retroactively validate" the Kansas Litigation. Finally, based on this court's case law and our rule of orderliness, we lack jurisdiction to review the court's permissive abstention in favor of the Kansas Litigation.

A. Scope of the Automatic Stay

The following discussion echoes much of the district court's sensible interpretation of the bankruptcy court's handling of these issues. To summarize, the bankruptcy court did not err in limiting any violation of the automatic stay to the Debtors and their counsel.

First, and most important, the bankruptcy court never held that the Kansas Litigation as it pertains to non-debtor plaintiffs was void *ab initio*. In January 2021, the court was faced with AWI's information about undisclosed assets on a thirty-year-old case. The bankruptcy court imposed a stay prophylactically on the entirety of the Kansas Litigation to prevent an adverse effect on the property of the estate, where the estate's interests were "hopelessly intertwined" with other parties' claims against AWI in the Kansas Litigation.

Second, as the district court put it, the bankruptcy court repeatedly distinguished between "the claims of the Debtor, which were invalid, and the claims of the non-debtors, which were merely put on pause while the property of the estate was properly managed." Certainly, this is correct. As the bankruptcy court explained, "[t]he automatic stay does not last forever . . . In this case,

the stay prohibiting the adjudication of the non-debtor claims in the Kansas litigation lasted until the estate's claims were settled." And in any event, the Black Stone Appellees could not possibly have violated the stay by being impleaded in the Kansas Litigation after AWI brought a third-party action against them.

Proof of the bankruptcy court's discerning approach is that it rejected AWI's motion for sanctions against the non-debtor plaintiffs for violating the automatic stay. The court also found that AWI did not even adequately allege that those parties had violated the stay. Consistently with the distinction the court drew between the Debtors' malfeasance and the innocence of non-debtor plaintiffs, the court's sanction award against counsel was geared to restoring fees charged to the Debtors but not to counsel's fees for representing non-debtors. The court explained that the latter fees would have been incurred in the Kansas Litigation regardless of the Debtors' participation. AWI failed to appeal this award. This again confirms the bankruptcy court's view that the claims asserted by the non-debtor Appellees in the Kansas Litigation did not violate the automatic stay to begin with.

Third, even if the Debtors were similarly situated to the non-debtor Appellees in regard to the Kansas Litigation before the AWI-trustee settlement was finalized, a bankrupt debtor and non-bankrupt parties are not subject to the same automatic stay analysis. This precept is well established, although the analysis usually distinguishes among debtor and non-debtor defendants in litigation. *See Maritime Elec. Co. v. United Jersey Bank*,

959 F.2d 1194, 1204-05 (3d Cir. 1991) ("All proceedings in a single case are not lumped together for purposes of automatic stay analysis."); *Seiko Epson Corp. v. Nu-Kote Int'l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999) ("It is clearly established that the automatic stay does not apply to non-bankrupt co-defendants of a debtor 'even if they are in a similar legal or factual nexus with the debtor.'") (quoting *Maritime Elec Co.*, 959 F.2d at 1205); *Teachers Ins. & Annuity Ass'n v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986) ("It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants."); *Marcus, Stowell & Beye Gov't Sec., Inc. v. Jefferson Inv. Corp.*, 797 F.2d 227, 230 n.4 (5th Cir. 1986) ("The well established rule is that an automatic stay of judicial proceedings against one defendant does not apply to proceedings against co-defendants."). The same principle would appear to apply here, where the debtor is a co-plaintiff with non-debtor parties.

Thus, at least after the settlement occurred, the bankruptcy court correctly surmised that further litigation in Kansas could not impair the Debtors' estate. This analysis is consistent with the Supreme Court's interpretation of Section 362(a)(3) from *City of Chicago, Illinois v. Fulton*, 592 U.S. 154, 158, 141 S. Ct. 585, 590, 208 L. Ed. 2d 384 (2021), which described the "most natural reading" of Section 362(a)(3) as "prohibit[ing] affirmative acts that would disturb the status quo of estate property as of the time when the bankruptcy petition was filed." The Court in *Fulton* also repeatedly defined Section 362(a)(3) as preventing *collection* efforts, noting that Section 362 "prohibits *collection* efforts outside the

bankruptcy proceeding that would change the status quo," *id.* at 160, 141 S. Ct. at 591 (emphasis added), just as the automatic stay was broadly designed to halt "efforts to *collect* from the debtor outside of the bankruptcy forum," *id.* at 156, 141 S. Ct. at 589 (emphasis added). Once the settlement between AWI and the trustee was approved by the bankruptcy court, there was no risk of "collection efforts" against the Debtors that would alter the status quo because the Debtors' interests and those of the non-debtor parties were no longer "hopelessly intertwined." And the amount that might be owed to the trustee from AWI, although contingent, was liquidated and certain.

In addition, AWI's contention that the Kansas Litigation was void *ab initio* is inconsistent with AWI's own behavior, because AWI waited almost eight months from the time it first became aware of the "bankruptcy defect" to bring it up before the bankruptcy court. Moreover, AWI never appealed the bankruptcy court's rulings recognizing the continued validity of the Kansas Litigation—in particular, the May 2022 ruling that denied AWI's motion to have the Kansas Litigation declared void *ab initio*.

For these reasons, the bankruptcy court did not err in holding that the Kansas Litigation was not void *ab initio* simply because the Debtors, one of many parties to the litigation, failed to disclose that their claim was based on illegally hidden assets of their 1990 bankruptcy estate. And the court did not later err when it formally held the automatic stay terminated or in terminating it. The Debtors are no longer a party to the Kansas Litigation,

and AWI is not a creditor of the Debtors. AWI's only interest in maintaining bankruptcy court jurisdiction is to achieve a favorable venue, not to pursue or protect estate assets or the integrity of their disposition according to the Bankruptcy Code. But, as this court has explained, "[t]he Bankruptcy Code's automatic stay is designed to ensure the orderly distribution of assets by temporarily protecting the property of the debtor's estate from the reach of creditors." *In re Chesnut*, 422 F.3d 298, 300 (5th Cir. 2005).

B. Finality for Appealability and Res Judicata

AWI's next major contention is that the bankruptcy court's order refusing to lift the stay in June 2021 is final and *res judicata* as to the Appellees because they did not appeal. But AWI must also necessarily render ineffective the bankruptcy court's October 2022 Order, from which it appeals, that terminates or cancels the automatic stay. To achieve its objectives, AWI relies on two Supreme Court cases, *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2020) and *Travelers Indemnity Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195, 174 L. Ed. 2d 99 (2009). AWI argues that under *Ritzen*, the June 2021 Order refusing to lift the stay became final when the Appellees failed to appeal, and under *Travelers*, it became *res judicata*. AWI insists that consequently, all subsequent efforts by the Appellees to alter, modify, or terminate the stay and proceed with the Kansas Litigation are barred by *Ritzen* and *Travelers*.

We disagree. AWI's position elides the distinction between "finality" for the purposes of appealability and

"finality" for the purposes of *res judicata*. These are related, but separate concepts. Thus, "finality for purposes of appeal is not the same as finality for purposes of preclusion." *Bell v. Taylor*, 827 F.3d 699, 707 (7th Cir. 2016) (citing 18A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 4432, Westlaw (databased updated Apr. 2023) [hereinafter Wright & Miller]); *see also Fresenius USA, Inc. v. Baxter Intern., Inc.*, 721 F.3d 1330, 1340-41 (Fed. Cir. 2013) ("Definitions of finality cannot automatically be carried over from appeals cases to preclusion problems.").

Read more narrowly, as it should be, *Ritzen* stands only for the proposition that bankruptcy lift-stay motions are discrete proceedings within core bankruptcy jurisdiction and that denials of such motions are "final" for purposes of appealability. Indeed, the Supreme Court in *Ritzen* affirmed a Sixth Circuit decision that considered only whether the denial of a stay relief motion was final pursuant to 28 U.S.C. § 158(a). *In re Jackson Masonry, LLC*, 906 F.3d 494, 501-03 (6th Cir. 2018). The Supreme Court in *Ritzen* also noted that this court was among the "majority of circuits and [] leading treatises regard[ing] orders denying such motions as final, immediately appealable decisions." 589 U.S. at 42, 140 S. Ct. at 589 (citing *In re Lieb*, 915 F.2d 180,185 n.3 (5th Cir. 1990)). *Ritzen's* discussion of finality for appealability purposes in bankruptcy cases did not reach implications for *res judicata*. Accordingly, that decision does not hold that orders concerning the automatic stay are "final" for all future lift-stay motions involving the same property between the same parties, regardless of changes that

befall the bankruptcy estate. Moreover, if AWI's argument is taken at face value, then Section 362(d), which allows parties to petition for a modification of a stay "for cause," would become a nullity, as a bankruptcy court's initial decision to impose a stay would be unalterable.

AWI's argument also misreads *Travelers*. The Supreme Court's "narrow" holding in that opinion, although also arising from a bankruptcy case, had nothing to do with the scope of the automatic stay or appealability. 557 U.S. at 155, 129 S. Ct. at 2207. Rather, *Travelers* stands for the straightforward proposition that parties who were in privity with the original litigants cannot collaterally attack a bankruptcy court's subject-matter jurisdiction decades after the orders were entered, so long as the parties originally before the bankruptcy court "were given a fair chance" to advance these arguments at the earlier proceeding. *Id.* at 153, 129 S. Ct. at 2206.

AWI's argument would fundamentally misapply the automatic stay, which "is not intended to stay forever." *In re Duwaik*, No. 17-CV-00142-MSK, 2017 U.S. Dist. LEXIS 174684, 2017 WL 4772819, at *4 (D. Colo. Oct. 20, 2017), *aff'd*, 730 F. App'x 715 (10th Cir. 2018). As the Second Circuit put it, "bankruptcy courts have the plastic powers to modify or condition an automatic stay so as to fashion the appropriate scope of relief." *E. Refractories Co. v. Forty Eight Insulations Inc.*, 157 F.3d 169, 172 (2d Cir. 1998). "This flexibility derives from bankruptcy's equitable roots," and is consistent with equity jurisprudence from this court and the U.S. Supreme Court. *In re Cypress Fin. Trading Co., L.P.*, 620 F. App'x 287, 289 (5th Cir. 2015).

"Modification of an injunction is appropriate when the legal or factual circumstances justifying the injunction have changed." *Bear Ranch, L.L.C. v. Heartbrand Beef, Inc.*, 885 F.3d 794, 803 (5th Cir. 2018) (quoting *ICEE Distributors Inc. v. J&J Snack Foods Corp.*, 445 F.3d 841, 850 (5th Cir. 2006)); *see also United States v. Swift & Co.*, 286 U.S. 106, 114, 52 S. Ct. 460, 462, 76 L. Ed. 999 (1932) ("A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.").

Just as new facts or circumstances may warrant the modification of an injunction on behalf of a party that previously failed to obtain relief or modification, new facts or circumstances may also warrant an order modifying or lifting a bankruptcy automatic stay for a party previously denied relief. *Res judicata* does not tie a bankruptcy court's hands to prevent the protection, disposition, or sale of estate property by lifting or modifying the automatic stay as changed conditions warrant. Similarly, although the filing of a bankruptcy case automatically stays litigation outside of bankruptcy court that involves the debtor and other parties, the stays are frequently superseded by further orders allowing its continuation. Here, for instance, new facts emerged because AWI and the trustee resolved the Debtors' interests and settled their dispute after the trustee commenced litigation in bankruptcy court. Notably, at that point in July 2022, the bankruptcy court invited Appellees to file motions concerning modification or termination of the stay. AWI's argument thus necessarily would limit not only the parties to the bankruptcy but even the court itself

from considering modifications of an order concerning the automatic stay.

By the same token, the un-appealed orders in this case are completely distinct from the final Chapter 11 orders that were collaterally attacked over a quarter-century later in *Travelers*. While the collateral attack advanced by the respondents in *Travelers* could not "be squared with *res judicata* and the practical necessity served by that rule," nothing about the arguments of non-debtor Appellees in this case would undermine the value and "practical necessity" of *res judicata*. 557 U.S. at 154, 129 S. Ct. at 2206.

The Bankruptcy Code is not a straitjacket. Although *Ritzen* clarified that parties may appeal the denial of a lift-stay motion, their failure to do so immediately does not prejudice their ability to obtain stay relief later, when the legal and factual landscape of the bankruptcy case changes.

At oral argument, AWI emphasized that because the bankruptcy court's earlier orders through June 2021 declining to lift the automatic stay as to the non-debtor Appellees were not entered "without prejudice," they became "final" and unmodifiable for all time because they were never appealed by the Appellees. *See Ritzen*, 589 U.S. at 47 n.4, 140 S. Ct. at 592 n.4 (declining to decide whether finality for appellate purposes attaches to orders denying stay relief "without prejudice"). We decline AWI's invitation to transform the phrase "without prejudice" into magic words that bankruptcy courts must include in all

orders fully or partially denying lift-stay requests, lest the courts lose the ability to later modify the scope of an automatic stay in response to changes in the bankruptcy case's legal and factual landscape. As briefing before the Supreme Court in *Ritzen* noted, "in bankruptcy practice . . . designations such as 'with prejudice' and 'without prejudice' are not customarily included in orders granting or denying relief." Corrected Brief for Petitioner at 23, *Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 140 S. Ct. 582, 205 L. Ed. 2d 419 (2019), 2019 WL 5095813, at *23. The reality of bankruptcy practice, in which legal and factual circumstances change rapidly, and the roots of the automatic stay in equity's rules for injunctions, require preserving a bankruptcy court's ability to use its "plastic powers to modify or condition an automatic stay." *E. Refractories*, 157 F.3d at 172. We reject AWI's overbroad reading of *Ritzen* and its attempt to narrow the ambit of bankruptcy court authority.

C. Annulment Order

Even if we were to accept AWI's next argument, contrary to fact and the bankruptcy court's repeated conclusions, that the Foundation Appellees violated the automatic stay when they filed the Kansas Litigation, this court has expressly refused to hold that all actions taken in violation of the automatic stay are automatically void. Instead, the court has held that they are merely *voidable*:

> If everything done post-petition were void in the strict sense of the word, these provisions would either be meaningless or inconsistent

> with the specific mandate of section 362(a). We reject both alternatives in concluding that filing a complaint in an unknowing violation of the automatic stay is voidable, not void.

Sikes v. Global Marine, Inc., 881 F.2d 176, 179 (5th Cir. 1989). Thus, under *Sikes*, an act taken in violation of the automatic stay has not been "voided" until it has been pronounced "void" by a court of competent jurisdiction. No such declaration was made in this case, despite AWI's motion seeking to accomplish that result. Because the bankruptcy court never affirmatively declared the non-debtor Appellee's voidable act of filing the Kansas Litigation "void," the bankruptcy court did not need to retroactively bless the litigation *ab initio*.

AWI cites several cases for the proposition that the bankruptcy court was required to formally annul the automatic stay. *See Sikes*, 881 F.2d at 178-79, *In re Cueva*, 371 F.3d 232, 236-38 (5th Cir. 2004), and *In re Chesnut*, 422 F.3d at 303-07. AWI further notes that when the court refused to retroactively annul the automatic stay as the Appellees requested, the order was not appealed. But the bankruptcy court expressly observed that the Appellees may "no longer care" that such relief was being denied. The only possible explanation for this comment is the bankruptcy court's belief that the Appellees had been provided with all the relief they needed with its ruling that AWI failed to allege, much less prove, that the non-debtor parties violated the stay. In other words, as we have explained above, a favorable ruling on the annulment motion would be unnecessary because there had been no

finding that the non-debtor parties violated the stay in the first place.

Instead, the decision in *Sikes* affords bankruptcy courts discretion to enable the continuation of litigation outside bankruptcy:

> Having concluded that the initial filing of the Sikes complaint was merely voidable, *we must determine whether the bankruptcy court intended to validate the filing of the original complaint.* We conclude that it did . . . *The court specifically allowed actions to commence and allowed pending actions to proceed.* We are bound to assume, absent clear demonstration to the contrary, that the bankruptcy court was aware of the filing date of the respective complaints. *Aware of the filing date of the Sikes complaint, the bankruptcy court permitted it to proceed.* . . . The order authorized the identified claims to "go forward," "commence," "proceed."
>
> When the Sikes[s] filed their complaint they were unaware of the bankruptcy petitions. Upon learning of the automatic stay they moved the court for relief from the stay. The bankruptcy court granted that relief. *We find the court's intent clear—it was permitting these claims to proceed to judgment.* We decline to accept Global's argument that the order merely allowed the Sikes permission to refile their complaint.

> *We perceive no valid purpose to be served by requiring that the Sikes file more papers with an already burdened court. . . .*

Sikes, 881 F.2d at 179-80 (emphases added). Hence, *Sikes* recognizes that a bankruptcy court has the power to retroactively validate actions taken in violation of the automatic stay and approves of a bankruptcy court order that has that exact effect without the use of the magic word "annulment." *Id.* This is consistent with the black letter principle that "Congress . . . has *granted broad discretion to bankruptcy courts to lift the automatic stay to permit enforcement of rights*." *Claughton v. Mixson*, 33 F.3d 4, 5 (4th Cir. 1994) (emphasis added). *See also In re Cueva*, 371 F.3d at 236 (noting the "broad discretion granted bankruptcy courts" under Section 362(d)); *In re Chesnut*, 422 F.3d at 303 ("by providing bankruptcy courts broad discretion to lift stays . . . Congress has evinced an intent to constitute the bankruptcy courts as the proper forum for the vindication of creditor rights.").

For the *Sikes* court, the bankruptcy court's manifestly clear intent to lift the automatic stay and allow the plaintiffs' suit to go forward was sufficient. So, it is here.[4] We approve the manifestly reasonable decision of the bankruptcy court to allow the Kansas Litigation to go forward without a purely formalistic annulment order.

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4. The same principle applies to this court's decision in *In re Jones*, 63 F.3d 411, 412-13 (5th Cir. 1995), which affirmed the bankruptcy court's order that merely modified, but did not annul, an automatic stay, to retrospectively bless an eviction that violated the automatic stay.

AWI's citation to *Chesnut* is beside the point. *Chesnut* is limited to cases where the creditor *knowingly* sought to acquire "arguable" property of the estate, 422 F.3d at 300-04. In this case, the non-debtor Appellees had *no knowledge* of the bankruptcy defect at the date of filing, and the degree to which non-debtor Appellees' claims were adverse to the debtor's was unclear at the time of filing. As such, this case may well fall into the carveout described by *Chesnut*: "[n]ot every bankruptcy petition, with an attendant claim of a right in property, will transform what is obviously not property of the estate into arguable property" and thus violate the automatic stay. 422 F.3d at 306.

D. Abstention

The relevant abstention statute, which was in place when the Debtor filed for bankruptcy in 1990, states:

> (c)(1) 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 jurisdiction 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. *Any decision to abstain made under this subsection is not reviewable by appeal or otherwise.* 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.

28 U.S.C. § 1334 (1990) (emphasis added). This version of the provision governs despite a significant amendment in 1994, because Congress decreed that the amendment would act prospectively only. Bankruptcy Reform Act of 1994, PL 103-394, § 702, 108 Stat. 4106, 4150 (1994).

The parties dispute whether the language in (c)(2) that limits appellate review of mandatory abstention decisions "under this subsection" also extends to permissive abstention decisions under § 1334(c)(1)—or on a more granular level, whether "subsection" refers to all of § 1334(c) or just to § 1334(c)(2).

In re Adams, 809 F.2d 1187, 1188 (5th Cir. 1987), held that this court had no jurisdiction to review a permissive abstention decision under § 1334(c)(1). That holding binds us pursuant to the court's rule of orderliness. AWI, however, contends that *Adams* did not specifically address AWI's statutory interpretation argument, identified above.

See, *e.g.*, *Ochoa-Salgado v. Garland*, 5 F.4th 615, 619 (5th Cir. 2021) ("[T]he rule of orderliness applies where (1) a party raises an issue and (2) a panel gives that issue reasoned consideration."). Further, AWI points out that this court issued later decisions reviewing permissive abstention orders from bankruptcy courts. *See Matter of Gober*, 100 F.3d 1195, 1206-07 (5th Cir. 1996); *In re Barone*, 96 F.3d 1444 (5th Cir. 1996) (unpublished). Not only do these decisions impermissibly conflict with *Adams*, but they also failed to cite or acknowledge *Adams*. Last, AWI notes that two other circuits have adopted AWI's interpretation of the scope of appellate review for this 1990 provision. *See In re Ben Cooper, Inc.*, 924 F.2d 36, 38 (2d Cir. 1991); *In re China Peak Resort*, 847 F.2d 570, 572 (9th Cir. 1988) (*vacated on other grounds sub nom. Calif. State Bd. of Equalization v. Sierra Summit, Inc.*, 490 U.S. 844, 109 S. Ct. 2228, 104 L. Ed. 2d 910 (1989)).

We are unpersuaded. *Adams* had to implicitly determine that Subsection (c)(2)'s limit on appellate review must encompass Subsection (c)(1). Whether *Adams* made that determination according to AWI's principles of interpretation and, in fact, whether *Adams* wrongly construed the provision are of no moment. *Adams* is the earliest on-point decision by this court holding that appellate review of a bankruptcy court's permissive abstention decisions is proscribed under the 1990 iteration. This court is bound by that first-in-time decision.

For the foregoing reasons, the judgments of the bankruptcy court and district court are AFFIRMED.

APPENDIX B — MEMORANDUM RULING OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION, FILED JULY 11, 2023

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

AMERICAN WARRIOR, INC., *et al.*

versus

FOUNDATION ENERGY FUND IV-A, LP, *et al.*

CIVIL ACTION NOS. 22-5769 (LEAD), 22-5771 (MEMBER), 22-5772 (MEMBER), 22-5773 (MEMBER)

MEMORANDUM RULING

S. MAURICE HICKS, JR., District Judge.

Before the Court is a consolidated[1] bankruptcy appeal by Appellants, American Warrior, Inc., Heartland Oil, Inc., and Mid-Continent Resources, Inc. (collectively, "AWI"), from the Bankruptcy Court's October 2022 Stay and Abstention Orders. *See* Record Document 17. AWI requests that the October 2022 Orders be reversed. *See id.* Foundation Energy Fund IV-A, LP, Foundation Energy Fund IV-B Holding, LLC, Dolores Jo Matson Trust, Roger Melvin Matson Trust, and Willis J. Magathan (collectively,

1. *See* Record Document 12 (Order granting Motion to Consolidate Cases).

"the Foundation Parties") filed an Appellee Brief (Record Document 18), as did Black Stone Minerals Company, LP and Entech Enterprises, LLC (collectively, "the Black Stone Parties" and, together with the Foundation Parties, "Appellees") (Record Document 20). For the reasons contained in the instant Memorandum Ruling, the Bankruptcy Court's rulings are **AFFIRMED**.

I. BACKGROUND

This proceeding arises out of a Chapter 7 bankruptcy case originally filed on December 31, 1990 by Patrick and Patricia McConathy (collectively, "the Debtor"). *See* Record Document 17 at 2. The case was closed in 1994 but was subsequently reopened several times over the years. *See id.* The most recent reopening of the bankruptcy case occurred pursuant to a motion filed by AWI on January 20, 2021. *See id.* at 5.

AWI filed its motion to reopen the bankruptcy case after the discovery of previously undisclosed property of the bankruptcy estate. *See id.* In 2019, a group of plaintiffs filed a lawsuit in a Kansas state court against AWI and others to determine the ownership of certain interests and rights in land ("the Kansas Litigation"). *See id.* at 4. In sworn discovery in the Kansas Litigation, the Debtor revealed that he acquired an ownership interest in certain Kansas mineral rights before the original bankruptcy petition date, yet these rights were not accounted for in the Chapter 7 case. *See id.* Thus, AWI filed its motion to reopen the bankruptcy case so as to properly administer the newly discovered assets of the bankruptcy estate.

See id. at 5. The Bankruptcy Court granted the motion on January 24, 2021, stating "[p]ursuant to 11 U.S.C. § 362, the automatic stay is hereby in effect and all actions involving property of the bankruptcy estate are hereby stayed." Record Document 18 at 4 (quoting Record Document 3-3 at 43).

Importantly, the Debtor is not the only plaintiff in the Kansas Litigation. Various plaintiffs sued AWI and others to determine the validity of an earlier partition action; included in the Kansas Litigation are also separate third-party claims between AWI and the Appellees here. *See* Record Document 20 at 3. Thus, on May 13, 2021, several third parties filed a Motion to Lift Stay in the Bankruptcy Court so they could proceed with their adjudication of the Kansas Litigation. *See id.* at 4. The Bankruptcy Court denied this motion, finding that "further adjudication of the Kansas Litigation would violate the automatic stay under 362(a)(3) because, given the claims in the Petition, the state court's adjudication of non-estate claims could potentially impact the claims of the estate." *Id.*

On April 6, 2022, the Chapter 7 Trustee filed an adversary proceeding against all parties to the Kansas Litigation, seeking "a determination of the nature and fractional ownership of the Kansas Mineral Lease Rights at issue in the Kansas Litigation." *See* Record Document 18 at 5. This proceeding resulted in a Compromise Motion by the Trustee, explaining that they had reached an agreement with AWI to release the Debtor's claims relating to the Kansas property. *See* Record Document 20 at 5-6.

Around the same time, the Bankruptcy Court considered a Motion to Annul Stay filed by the Foundation Parties. *See* Record Document 18 at 6. The Bankruptcy Court rejected the request to annul the stay, leaving the stay in place but finding that their request may be moot because "AWI failed to adequately plead a violation of the stay by the non-debtor co-plaintiffs" in the first instance. *See id.* at 7 (quoting Record Document 3-10 at 626). Notably, no party appealed this order.

Relatedly, in May of 2022, AWI filed an Amended and Restated Motion and Incorporated Memorandum for Determination that the Kansas Litigation is Void Ab Initio, For Civil Contempt, For Sanctions, and All Other Appropriate Relief ("the Contempt Motion"). *See* Record Document 20 at 4-5. In essence, AWI sought an order from the Bankruptcy Court that the entire Kansas Litigation was *void ab initio*. *See id.* at 5. In May of 2022, the Bankruptcy Court granted in part and denied in part the Contempt Motion ("the May 2022 Ruling"). *See* Record Document 18 at 6. First, the Bankruptcy Court held that all claims asserted by the Debtor in the Kansas Litigation were "invalid and without effect." *See id.* (quoting Record Document 3-10 at 630, 634). Second, the Bankruptcy Court denied the requested relief as to the non-debtors, finding that "AWI did not adequately allege a violation of the stay by the non-debtors." *Id.* Further, and important to this appeal, the Bankruptcy Court rejected AWI's argument that "all claims asserted in the Kansas lawsuit are invalid"; in other words, the Bankruptcy Court did not make a finding that the entire Kansas Litigation was *void ab initio*. *See id.*

Appendix B

Subsequent to the May 2022 Ruling, the Bankruptcy Court heard argument on the Compromise Motion on July 13, 2022. *See* Record Document 20 at 6. The Bankruptcy Court granted the Compromise Motion, and later approved the settlement of the estate's claims on July 15, 2022. *See id.* at 7.

Thereafter, the Bankruptcy Court asked the non-debtor parties to file an Abstention Motion in the adversary proceeding and/or a motion to determine whether the automatic stay had been terminated. *See* Record Document 18 at 8. The Appellees each filed Abstention and Stay Determination Motions, asserting essentially the same arguments. *See id.*; Record Document 20 at 7. As the Foundation Parties put it, "[t]he Stay Determination Motion sought confirmation pursuant to Bankruptcy Code section 362(j) that the automatic stay had terminated due to the estate's transfer and relinquishment of its interest in the Kansas Mineral Lease Rights, so that the non-debtors could pursue claims and defenses in the Kansas Litigation." *Id.* at 8. As for the Abstention Motion, "the Foundation Parties sought mandatory abstention pursuant to 28 U.S.C. § 1334(c)(2), and permissive abstention under 28 U.S.C. § 1334(c)(1)." *Id.*

Before the hearing on the above motions, the Bankruptcy Court issued its order regarding the partially granted Contempt Motion ("the August 2022 Ruling"). *See id.* In the August 2022 Ruling, the Bankruptcy Court "reiterated its May 2022 ruling and refused to award sanctions based upon behavior that did not violate the stay," as it relates to the non-debtors. *See id.*

Appendix B

On October 5, 2022, the Bankruptcy Court held a hearing on the Abstention and Stay Determination Motions. *See id.* At the hearing, the Bankruptcy Court stated that "it would not entertain arguments that the entire Kansas Litigation was void because it had already ruled in several unappealed orders that the actions involving the non-debtor parties—even those brought by shared counsel for [the Debtor]—did not violate the stay." *Id.* at 8-9.

In October of 2022, the Bankruptcy Court issued its Orders on both the Abstention and the Stay Determination Motions; these Orders form the basis of AWI's appeal. *See* Record Document 17 at 11. In its ruling on the Stay Determination Motion, the Bankruptcy Court held that the Kansas Litigation is still valid and that the stay is no longer in effect, leaving the non-debtors free to pursue their claims. *See id.* at 10. In its ruling on the Abstention Motion, the Bankruptcy Court denied mandatory abstention but granted permissive abstention in favor of the Kansas Litigation. *See id.* AWI timely appealed the October 2022 Stay and Abstention Orders. *See id.* at 11.

II. LAW AND ANALYSIS

A. Jurisdiction and Standard of Review

This Court has jurisdiction over AWI's appeal from the Bankruptcy Court's Orders pursuant to 28 U.S.C. § 158(a). In reviewing a decision of the bankruptcy court, this Court functions as an appellate court and applies the standards of review generally applied in a federal court

of appeals. *See Matter of Webb*, 954 F.2d 1102, 1103-04 (5th Cir. 1992). Conclusions of law are reviewed *de novo*. *See Matter of Herby's Foods, Inc.*, 2 F.3d 128, 131 (5th Cir. 1993). Findings of fact are not to be set aside unless clearly erroneous. *See id.* at 130-31. "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with a firm and definite conviction that a mistake has been committed." *Matter of Missionary Baptist Foundation of America*, 712 F.2d 206, 209 (5th Cir. 1983). Thus, appellate courts will sustain a bankruptcy court's factual findings "absent a firm and definite conviction that the bankruptcy court made a mistake." *In re Ragos*, 700 F.3d 220, 222 (5th Cir. 2012) (citation omitted).

B. The Parties' Arguments

In its appeal, AWI contends that the Bankruptcy Court erred in granting the Abstention and the Stay Determination Motions by "failing to recognize that the Kansas Litigation, including Appellees' claims in the Kansas Litigation, is permanently invalid and without any effect based on the legal effect of the Bankruptcy Court's prior, final nonappealable orders and rulings." Record Document 17 at 12-13. AWI argues that, under Fifth Circuit precedent, "actions, including lawsuits, that are described in one of the subparts of 11 U.S.C. § 362 that occur while the stay is in effect are invalid." *Id.* at 51. Because the Bankruptcy Court denied the non-debtors' motions to annul the stay, any action in violation of the stay—which, according to AWI, includes the initial filing of the Kansas Litigation—"becomes permanently invalid

and without any effect by operation of law." *See id.* AWI argues that the only way to retroactively approve the filing of the Kansas Litigation was an annulment, and thus, the Bankruptcy Court's refusal to annul the stay is *res judicata* as to any further argument that the Kansas Litigation was or is valid. *See id.* As a result, under AWI's interpretation of the Bankruptcy Court's early rulings, the nondebtors may not proceed with their claims in the Kansas Litigation. *See id.*

In response, the Appellees argue that AWI's argument is "based solely on the flawed premise that the non-debtor parties violated the automatic stay by filing the Kansas Litigation." *See* Record Document 18 at 11. According to the Foundation Parties, "[t]he Bankruptcy Court has repeatedly rejected this premise, both in open court and in written decisions which were never appealed." *Id.* Thus, the appellees assert that the *res judicata* effect here actually pertains to the Bankruptcy Court's multiple holdings that the nondebtor parties did not violate the automatic stay. *See id.* The Black Stone Parties also argue that "the manner AWI, an unrelated non-debtor/non-creditor, is seeking to invoke the automatic stay to block the bankruptcy court's abstention order and require the continuation in this Court of an adversary that no longer includes any property of the estate is inconsistent with the intent and purpose of the stay." Record Document 20 at 23. Thus, the Appellees urge the Court to affirm the Bankruptcy Court's Orders and allow the Kansas Litigation to proceed.

In its reply brief, AWI argues that the automatic stay was in effect when the Kansas Litigation was filed, thus making the litigation invalid from its inception. *See* Record Document 21 at 2. AWI asserts that no action taken by the Bankruptcy Court after-thefact could cure this invalidity, except for an annulment of the stay. *See id.* Because the Bankruptcy Court declined to annul the stay in the May 2022 Ruling, the Kansas Litigation was rendered permanently invalid, according to AWI. *See id.*

C. Analysis

The core issue to be determined in resolving this appeal is whether the non-debtor parties violated the automatic stay by filing the Kansas Litigation. If the non-debtor parties did not violate the stay, then AWI's argument fails from the start, because there would then be no legal basis to find that the entire Kansas Litigation was *void ab initio*. Because this Court agrees with Appellees and finds that the initial filing of the Kansas Litigation by the non-debtor parties was not a violation of the stay, the Bankruptcy Court's Orders must be affirmed.

First, the Court agrees with the Appellees that the specific language in the Bankruptcy Court's order reopening the bankruptcy case tends to contradict AWI's argument. In that order, the Bankruptcy Court used the word "hereby" repeatedly to describe the stay coming into effect. *See* Record Document 20 at 12 (citing Record Document 3-3, p. 40). The use of "hereby" implies that the stay was not put into effect until the Bankruptcy Court made the determination that property of the estate may

be affected by the continuation of the Kansas Litigation and issued its order. *See* Record Document 18 at 18 (citing "Hereby," Merriam Webster's Dictionary).

Additionally, the Bankruptcy Court's October 6, 2022 Order explains that the automatic stay was meant to apply to the Kansas Litigation in two ways: (1) to prevent the Debtor "from asserting any causes of action"; and (2) to prevent "the *adjudication* of the non-debtor claims by the state court as they were hopelessly intertwined with the estate's claims." *See* Record Document 20 at 13 (quoting Record Document 3-18 at 12) (emphasis in original). The Bankruptcy Court thus imposed the stay to prevent an adverse effect on the property of the estate, which was "hopelessly intertwined" with third-party claims in the Kansas Litigation. Thus, this Court is not convinced the act of filing itself was a violation of the automatic stay under the Bankruptcy Court's orders; rather, any additional act taken in the Kansas Litigation would constitute a violation.

Further, the Bankruptcy Court made clear many times that the non-debtors were not acting in violation of the stay. In fact, the Bankruptcy Court refused to issue sanctions against the non-debtors because "AWI did not adequately allege a violation of the stay by the non-debtors." *See* Record Document 18 at 6. This makes sense, because it was not until discovery commenced in the Kansas Litigation that any non-debtor party was put on notice that the Debtor may have excluded his Kansas property interests from a previous bankruptcy case. Considering these circumstances, together with the clear

language of the Bankruptcy Court's orders, the Court finds that the Bankruptcy Court did not commit clear error by holding that the non-debtor parties did not violate the stay by filing their claims in the Kansas Litigation.

However, even if the initial act of filing the Kansas Litigation was a violation of the stay, the Court finds that there is no basis to rule that the entire litigation is *void ab initio*, permanently preventing the non-debtors from proceeding with their claims. The Bankruptcy Court emphasized several times that it had *not* held that the Kansas Litigation was *void ab initio* in any of its rulings or orders. Rather, the Bankruptcy Court made sure to distinguish between the claims of the Debtor, which were invalid, and the claims of the non-debtors, which were merely put on pause while the property of the estate was properly managed. *See, for e.g., Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) ("All proceedings in a single case are not lumped together for purposes of automatic stay analysis."). And to the extent any of the Bankruptcy Court's later orders contradict an earlier order stating otherwise, the later decision controls. *See Weaver v. Tex. Capital Bank N.A.*, 660 F.3d 900, 906 n.5 (5th Cir. 2011) (citing *Reimer v. Smith*, 663 F.2d 1316, 1327 (5th Cir. 1981) (where "there are two prior inconsistent judgments, only the last judgment has estoppel effect"); *see also Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co.*, 121 F.3d 1332, 1335 (9th Cir. 1997) ("When a court is faced with inconsistent judgments, it should give *res judicata* effect to the *last* previous judgment entered.") (internal quotation omitted) (emphasis in original).

Further, as the Appellees point out, AWI never appealed the denial of its Contempt Motion or the Bankruptcy Court's many other findings that the Kansas Litigation was not *void ab initio*. *See* Record Document 18 at 17. These rulings are final and non-appealable, and they become *res judicata* to AWI's repeated argument that the Kansas Litigation is invalid from inception. *See Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009) (holding that once a bankruptcy court's orders "become final on direct review," they become *res judicata* to the same parties and same issues).

The Court is also not persuaded by the case law cited by AWI for the proposition that only an official annulment can validate actions taken in violation of the automatic stay. As the Black Stone Parties point out, *In re Cueva*, 371 F.3d 232 (5th Cir. 2004), *In re Pierce*, 272 B.R. 198 (Bankr. S.D. Tex. 2001), *In re Chesnut*, 422 F.3d 298 (5th Cir. 2005), and *In re Jones*, 63 F.3d 411 (5th Cir. 1995), "all concern foreclosures [sic] actions—some of which involved property seized and sold while the bankruptcy was pending." Record Document 20 at 15. The present case is clearly factually distinguishable: "Unlike the cases cited by AWI, no order regarding any ownership was rendered in the Kansas Litigation prior to the application of the Stay pursuant to the order in March of 2021," and "[n]o property of the debtor was seized by anyone other than AWI's seizure in 2015." *Id.* The cases cited by AWI also focus primarily on the distinction between the terms "void" and "voidable," a distinction that does not factor into the Court's analysis here because "the Bankruptcy Court expressly declined to hold the non-debtors in violation of

the stay." Record Document 18 at 15. There is simply no need for this Court to parse out the various meanings of the word "void" where the Bankruptcy Court has already found that the nondebtors' actions were not void and where this Court finds no clear error in such a finding.

Further, the Court is concerned with the practical effect should AWI succeed on its arguments here. As the Black Stone Parties aptly stated, "the manner AWI, an unrelated non-debtor/non-creditor, is seeking to invoke the automatic stay to block the bankruptcy court's abstention order and require the continuation in this Court of an adversary that no longer includes any property of the estate is inconsistent with the intent and purpose of the stay." Record Document 20 at 23. This Court agrees—the bankruptcy case, the debtor, and the property of the estate would not be affected by the continuation of the Kansas Litigation at this point in time. After the Bankruptcy Court adopted the Compromise Motion, there was no longer any reason to stay the Kansas Litigation for the benefit of the bankruptcy estate. Thus, it would not now be appropriate to prevent the third-party non-debtors from ever pursuing their claims, simply because at one time, a previous debtor in bankruptcy was involved in the litigation. This would run contrary to the actual purpose of the automatic stay and would not further any legitimate purpose of the Bankruptcy Code. *See In re HSM Kennewick, L.P.*, 347 B.R. 569, 572 (Bankr. N.D. Tex. 2006) (holding that the "automatic stay provisions of section 362(a) may not be construed more expansively than is necessary to effectuate legislative purpose") (citations omitted). As the Bankruptcy Court itself declared, "Why

would I exercise jurisdiction over an adversary in this court which does not involve the debtor, the trustee, or any property of the estate[?]" Record Document 20 at 24 (quoting Record Document 5, p. 120, lines 19-21).

Thus, this Court concurs with the Bankruptcy Court that the Kansas Litigation is not *void ab initio* as to the non-debtor parties and finds that the October 2022 Stay and Abstention Orders were properly decided.

III. CONCLUSION

Based on the foregoing analysis,

IT IS ORDERED that the Bankruptcy Court's October 2022 Stay and Abstention Orders are hereby **AFFIRMED**.

A judgment consistent with the terms of this ruling shall issue herewith.

THUS DONE AND SIGNED, in Shreveport, Louisiana, this 11th day of July, 2023.

/s/ S. Maurice Hicks, Jr.
S. MAURICE HICKS, JR.,
DISTRICT JUDGE
UNITED STATES DISTRICT COURT

APPENDIX C — ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF LOUISIANA, SHREVEPORT DIVISION, FILED OCTOBER 6, 2022

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

Case Number: 90-13449
Chapter 7

IN RE: PATRICK L. MCCONATHY
PATRICIA CHAPMAN MCCONATHY

Debtors

Order

On October 5, 2022, this court held a hearing to consider the following:

1. Motion for Order Terminating Automatic Stay Under Section 362(d) or Alternatively Deeming the Stay Terminated Under Section 362(j) filed as Docket no. 344 by Foundation Energy Fund IV-A, LP, Foundation Energy Fund IV-B Holdings, LLC, Willis J. Magathan, Dolores Jo Matson Trust, and Roger Melvin Matson Trust; and

2. Motion To Confirm Termination of Automatic Stay Pursuant to Bankruptcy Code Section 362(j) filed as Docket no. 348 by Black Stone Minerals Company, LP and Entech Enterprises, LLC.

Appendix C

The facts of this case are recited in several rulings of this court, including Docket nos. 224, 321 and 352. They will not be repeated here. For the reasons that follow, the motions should be granted.

In this case, Debtor[1] and other parties filed a lawsuit[2] in Kansas seeking over $7 million from certain oil companies. In that litigation, Debtor asserted ownership to undivided working interests and leasehold rights covering over 3,000 acres. Debtor claimed to have owned the mineral rights continually since 1987. He also claimed that he is the successor to a partnership which is listed in the chain of title as the owner of the mineral rights.

Section 362(a)(3) of the Bankruptcy Code provides that the filing of a bankruptcy petition "operates as a stay" of "any act . . . to exercise control over property of the [bankruptcy] estate." 11 U.S.C. § 362(a)(3). When the property at issue is a claim or cause of action, the phrase "exercise control over" includes adjudication of the claim.

This court previously entered an order (Docket no. 224) finding that the automatic stay applied to the Kansas litigation in two ways. First, the stay prevented Debtor from asserting any causes of action because such claims are property of the estate and he is not the

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1. Patrick L. McConathy is referred to as "**Debtor**", or with his wife, Patricia Chapman McConathy, "**Debtors**."

2. *Foundation Energy Fund IV-A, LP, et al. v. American Warrior, Inc., et al.*, 25th Judicial District Court in Kearny County, Kansas, Case No. 19-CV-0011 (the "**Kansas litigation**").

estate's representative. Second, the stay prevented the *adjudication* of the non-debtor claims by the state court as they were hopelessly intertwined with the estate's claims (i.e. the property of the estate).

The automatic stay does not last forever. With respect to the automatic stay of an act against property of the estate, it "continues until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1). In this case, the stay prohibiting the adjudication of the non-debtor claims in the Kansas litigation lasted until the estate's claims were settled.[3] Once the estate's claims were settled, they no longer constituted property of the estate. Thus, the stay no longer prevents the adjudication of the non-debtor claims.

Considering the cessation of the automatic stay by operation of law, 11 U.S.C. § 362(c)(1), the non-debtor parties are now free to pursue their claims in the Kansas litigation.

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3. Eventually, the bankruptcy trustee filed an adversary proceeding in this court against AWI and the other non-debtor parties seeking declaratory relief. Following the filing of the adversary proceeding, this court authorized the trustee to enter into a compromise agreement with AWI resulting in the bankruptcy estate settling all claims against AWI by relinquishing and transferring to AWI all rights in any oil, gas, or mineral lease interests in any of the Kansas lands located within what the parties have described as the "Partition Lands." These are the same lands that are at issue in the Kansas litigation.

AWI argues that the non-debtor parties can not pursue their claims in the Kansas litigation because those claims are invalid as they were filed in violation of the automatic stay. Essentially, AWI argues that the Kansas litigation no longer exists. The court disagrees. *The non-debtor parties did not violate the automatic stay in any way*. Such finding is consistent with this court's Memorandum Ruling (Docket no. 321) and Order (Docket no. 322, ¶ 9) which expressly denied AWI's request to declare the Kansas litigation to be invalid with respect to the claims asserted by the non-debtor parties. AWI did not appeal these rulings which are now final and non-appealable.

Finally, AWI argues that this court's denial of the non-debtor parties' motion to annul the stay resulted in the invalidity of the entire Kansas litigation. The court disagrees. As noted in the court's Memorandum Ruling (Docket no. 224), the automatic stay prevented the non-debtor parties from *adjudicating* their claims in state court *after* this bankruptcy case was reopened. It did not prevent the non-debtor parties from *filing* their claims in state court *before* this bankruptcy case was reopened. This issue was put to rest in this court's Memorandum Ruling (Docket no. 321) and Order (Docket no. 322, ¶ 9), which were not appealed by any party.

Accordingly,

IT IS ORDERED that:

1. This court confirms that no stay is in effect with respect to any claim, cause of action or defense

asserted by or against any non-debtor party in the Kansas litigation;

2. The Motion for Order Terminating Automatic Stay Under Section 362(d) or Alternatively Deeming the Stay Terminated Under Section 362(j) filed as Docket no. 344 is hereby **GRANTED**; and

3. The Motion To Confirm Termination of Automatic Stay Pursuant to Bankruptcy Code Section 362(j) filed as Docket no. 348 is hereby **GRANTED.**

APPENDIX D — RELEVANT STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 362

(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.

. . .

11 U.S.C. § 501

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest.

. . .

11 U.S.C. § 502

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

Appendix D

. . .

11 U.S.C. § 541

(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.

. . .