No. 13-14304-FF

In the United States Court of Appeals for the Eleventh Circuit

George Crouser,
Plaintiff-Appellant,

v.

BAC HOME LOANS SERVICING, LP, f.k.a. Countrywide Home Loans, L.P.,
Defendant-Appellee

OFFICE OF THE U.S. TRUSTEE,
HUON LE, Chapter 13 Trustee,
Trustees-Appellees.

On Appeal from the United States District Court
for the Southern District of Georgia

BRIEF FOR PLAINTIFF-APPELLANT GEORGE CROUSER

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February 14, 2014

CERTIFICATE OF INTERESTED PERSONS

C-1 of 1, *Crouser v. BAC Home Loans*, No. 13-14304-FF

The following persons have an interest in the outcome of this appeal:

BAC Home Loans Servicing, LP (defendant-appellee)

Barrett, Susan DuPre (U.S. Bankruptcy Judge)

Conti-Brown, Peter (lead counsel for appellant)

Crouser, George (appellant)

Dinos, Jordan Gillman (counsel for interested-party appellee Huon Le)

Duncan, Matthew James (bankruptcy and trial counsel for appellant)

Epps, Brian K. (U.S. Magistrate Judge)

Gupta Beck, PLCC (counsel for appellant)

Gupta, Deepak (counsel for appellant)

Hall, J. Randal (U.S. District Judge)

Le, Huon (interested-party appellee)

McGuireWoods (counsel for defendant-appellee)

Mills, Matthew E. (counsel for interested-party appellee U.S. Trustee)

Myer, Brent M. (counsel for interested-party appellee Huon Le)

Office of the U.S. Trustee (interested-party appellee)

Walker, Thomas R. (counsel for defendant-appellee)

/s/ Peter Conti-Brown
Peter Conti-Brown

February 14, 2014

STATEMENT REGARDING ORAL ARGUMENT

Oral argument is warranted. Under the Bankruptcy Code, any "individual injured by willful violation" of the automatic stay can recover "damages, including costs and attorneys' fees, and, in appropriate circumstances, . . . punitive damages." 11 U.S.C. § 362(k)(1). The district court held below that damages for violating the automatic stay belong to the bankruptcy estate, not the individual debtor injured by the violation. That decision contradicts the plain language of the Bankruptcy Code, which makes clear that only the "individual injured" may recover automatic-stay damages and that the estate excludes assets that could not have existed at the time of the bankruptcy filing. And the decision runs afoul of longstanding precedent in this Court, which precludes non-natural persons—including a bankruptcy estate—from receiving damages for violations of the automatic stay. *See Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539 (11th Cir. 1996). If allowed to stand, the district court's approach would reward willful violations of the automatic stay, profoundly distorting the incentives of both creditors and debtors under the Bankruptcy Code.

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INTRODUCTION

The bedrock of the Bankruptcy Code is the automatic stay, the mechanism that pushes the pause button on collection efforts against a debtor's rapidly dwindling assets. The entire point of the automatic stay—and the bankruptcy process generally—is to give breathing room to debtors and creditors so that, under the bankruptcy court's supervision, they can assess the state of the debtor's assets and the reasonable claims that all parties can make on those assets. For this reason, Congress showed little patience for creditors unwilling to comply with the automatic stay. Under the Code, any "individual injured by willful violation" of the automatic stay can recover "damages, including costs and attorneys' fees, and, in appropriate circumstances, . . . punitive damages." 11 U.S.C. § 362(k)(1).

In this case, George Crouser was the "individual injured" when BAC Home Loans willfully violated the automatic stay by sending letters threatening to foreclose on his home and then publishing a notice of that foreclosure in his local newspaper. Mr. Crouser had to expend time, effort, and resources to challenge that willful stay violation at a time when he was already under the stress of managing his own bankruptcy.

These facts are not in dispute. To its credit, after Mr. Crouser sued BAC Home Loans for its willful violation of the automatic stay, the company settled the case. But the trustee intervened and insisted that the damages Mr. Crouser and

Mr. Crouser alone endured—the time, effort, and uncertainty of fending off an aggressive creditor—do not belong to him. Instead, the trustee argued that these damages belong to the bankruptcy estate and, therefore, to Mr. Crouser's creditors. In other words, under the trustee's proposed rule, the very creditors the law seeks to penalize for violating the automatic stay could now recover those penalties through the bankruptcy estate. The district court accepted that theory.

Congress, however, did not intend so illogical and perverse a result. The Bankruptcy Code's plain language makes clear that the estate does not include assets of the kind that could not have existed at the time of the bankruptcy filing—an exception that covers almost exclusively assets that arise from violations of the Code itself. While other new property may belong to the estate, automatic-stay damages do not.

Consistent with this plain reading, this Court has made clear that damages for automatic-stay violations may be recovered only by the "individual injured"—a term that is "limited to natural persons and does not include corporations or *other artificial entities*." *Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539, 1552-53 (11th Cir. 1996) (emphasis added). The bankruptcy estate is exactly such an artificial person, called into being by the Bankruptcy Code itself. The trustee's theory of the case—and with it the district court's opinion—cannot survive in the face of that rule.

STATEMENT OF THE ISSUE

The case raises a single issue. As relevant here, the Bankruptcy Code limits property of the bankruptcy estate in a Chapter 13 case to the "legal and equitable interests of the debtor in property as of the commencement of the case," 11 U.S.C. § 541(a)(1), or property "of the kind specified [in § 541(a)] that the debtor acquires after the commencement of the case," *id.* § 1306(a)(1). At the same time, the Code provides damages, including punitive damages where appropriate, to any "individual injured by any willful violation" of the automatic stay. *Id.* § 362(k)(1). The issue presented is:

Given both that a violation of the automatic stay cannot exist until after the filing of a bankruptcy petition, and that, under circuit law, damages for such a violation cannot belong to artificial persons like a bankruptcy estate, was the district wrong to conclude that only the bankruptcy estate—an artificial entity—can recover such damages?

STATEMENT OF THE CASE AND OF THE FACTS

A. Statutory Background

1. The Automatic Stay. When a debtor files for bankruptcy—whether voluntarily or involuntarily, under any chapter of the Bankruptcy Code—all collection efforts against the debtor must stop. This requirement is the Code's automatic-stay provision in 11 U.S.C. § 362 and it is, in the words of its drafters,

"one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat. Bank v. New Jersey Dept. of Envt'l Protection*, 474 U.S. 494, 503 (1986) (quoting S. Rep. No. 95-989, p. 54 (1978) and H.R. Rep. No. 95-595, p. 340 (1977)). Because the stay is automatic, immediately after the filing of the petition, a creditor cannot continue to press its otherwise legal and valid collection efforts against the debtor. 11 U.S.C. § 362.

The automatic stay serves two purposes. First, it "permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *In re Feingold*, 730 F.3d 1268, 1276 (11th Cir. 2013). And second, "[t]he automatic stay also protects creditors by preventing a race for the debtor's assets," thereby "enabling an orderly liquidation process." *In re Jacks*, 642 F.3d 1323, 1328 (11th Cir. 2011). The stay is therefore both a debtor-protection mechanism and the essential framework for ensuring that *all* creditors can present their claims in an orderly, efficient process. For both of these reasons, "[a]ctions taken in violation of the automatic stay are void and without effect." *United States v. White*, 466 F.3d 1241, 1244 (11th Cir. 2006) (internal quotation omitted).

2. The Automatic-Stay-Damages Provision. The Bankruptcy Code of 1978 codified the automatic stay, but it didn't provide for damages for violating that provision. *Compare* Bankruptcy Reform Act of 1978, Public. L. No. 95-598, §

101, 92 Stat. 2549, 2570–72, *with* Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 304, 98 Stat. 333, 352. Instead, the bankruptcy courts used their contempt power for violations of the automatic stay. *See*, *e.g.*, *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1104 (2d Cir. 1990) ("Prior to the enactment in 1984 of [§ 362(h), now § 362(k)], . . . the standard that governed the imposition of sanctions [for a violation of an automatic stay] was that which governed contempt proceedings . . . .").

In 1984, Congress deemed the bankruptcy court's contempt power insufficient to protect individual debtors from abuses of the automatic stay. As part of the "Consumer Credit Amendments" included in the Bankruptcy Amendments and Federal Judgeship Act of 1984, Congress added section 362(h), now codified at 11 U.S.C. § 362(k). *See* Pub. L. No. 98-353, 98 Stat. 333, 352 (Title III, Subtitle A § 304). That section now provides that:

> an individual injured by any willful violation of [the automatic stay] shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

11 U.S.C. § 362(k)(1). This provision was reenacted in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8 § 305(1)(B), (C), 119 Stat. 23 (2005), and recodified as 11 U.S.C. § 362(k)(1).

The Bankruptcy Code does not define the term "individual," a key term in the automatic-stay-damages provision found in section 362(k)(1). *See* 11 U.S.C. § 101 (general definitions section). But Congress did use the term throughout the Code, and always in distinction from non-natural persons and other artificial entities. For example, the Code defines "person" to "include[] individual, partnership, and corporation." 11 U.S.C. § 101(41). A "corporation" is defined, in part, as an "association having a power or privilege that a private corporation, but not an individual or a partnership, possesses." *Id.* § 101(9). And a "railroad" is defined as a "common carrier by railroad engaged in the transportation of individuals or property." *Id.* § 101(44). As this court held, "throughout the code, rights and duties are allocated in some instances to 'individuals' and in others to 'persons' and the test of the bankruptcy code sections demonstrates that Congress used the word 'individual' rather than 'person' to mean a natural person." *Jove Engineering*, 92 F.3d at 1551 (citing *In re Chateaugay*, 920 F.2d 183, 184 (2d Cir. 1990) (internal alterations omitted)).

3. The General-Estate-Property Provision. The Bankruptcy Code has other features to facilitate the aims of the bankruptcy process, including the creation of the "legal fiction" of the "bankruptcy estate." *In re Davis*, 899 F.2d 1136, 1144 n.18 (11th Cir. 1990). The bankruptcy estate is "merely a locus of property and monetary value against which the creditors have claims." *Id.* The Bankruptcy

Code therefore transfers property from the debtor to the bankruptcy estate. Indeed, the estate itself is simply "comprised of" the property identified in the Bankruptcy Code; it has no separate identity. Section 541(a) defines the property that composes the bankruptcy estate:

> The commencement of a case . . . of this title creates an estate. Such estate is comprised of . . . , wherever located and by whomever held, . . . all legal or equitable interests of the debtor in property *as of the commencement of the case*.

11 U.S.C. § 541(a)(1).

This general-estate-property provision applies to all cases filed under Chapter 7 (an individual or corporate liquidation), Chapter 11 (a corporate reorganization), or Chapter 13 (an individual reorganization). *Id.*

4. The Chapter-13-Estate-Property Provision. In the case of the Chapter 13 bankruptcy, however, the Bankruptcy Code modifies the general-estate-property provision by extending the reach of the estate's property:

> Property of the estate includes, in addition to the property specified in [the general estate property provision], all property of the kind specified [in the general estate property provision] that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted.

11 U.S.C. § 1306(a)(1). Thus, property the debtor acquires after the commencement of the Chapter 13 bankruptcy becomes property of the bankruptcy estate *only if* that property is "of the kind" that could have existed "as of the commencement of the [Chapter 13] case." 11 U.S.C. § 541(a)(1).

B. Factual Background

The facts of the case are not in dispute. Plaintiff-appellate George Crouser filed a voluntary petition under Chapter 13 of the Bankruptcy Code on March 27, 2010. DN 1-3 ¶ 7.[1] After filing, and on the same day, the bankruptcy court issued an order of relief, thus triggering the automatic-stay provision. *Id.* ¶ 8. The defendant-appellee, BAC Home Loans (then known as Countrywide Home Loans, L.P.), was listed in Mr. Crouser's petition as mortgagee with a security interest in his residence, with a claim of $74,616.69 and arrearages of $2,358.81. *Id.* ¶ 11.

Without first seeking relief from the automatic stay, BAC Home Loans sent Mr. Crouser the first of two collection letters on April 4, 2011, seeking to collect on the first mortgage on Mr. Crouser's home. *Id.* ¶ 15. In the second letter, BAC threatened to hold an auction—on the first Tuesday of May 2011—if Mr. Crouser did not pay his debt in full. *Id.* ¶ 16. BAC then published the "Notice of Sale" on Mr. Crouser's home in *The Augusta Chronicle*, the major newspaper in Mr. Crouser's community. *Id.* at exh. B, p 11.

C. Procedural Background

Mr. Crouser sued BAC Home Loans in the bankruptcy court, alleging post-confirmation violations of the automatic stay. *Id.* BAC Home Loans soon settled the claim for $25,000. DN 1-4. The trustee's attorney consented to the settlement

[1] "DN" refers to the district court docket number.

submission to the bankruptcy court, reserving the question of ownership for further review. *Id.* at 18-19.

Soon thereafter, however, the trustee objected to the settlement and argued that the settlement funds in fact belonged to the bankruptcy estate. DN 1-5. The bankruptcy court sustained the trustee's objections, holding that any property paid as a result of the automatic-stay-damages provision in section 362(k)(1) became property of the estate, and not the debtor. DN 1-9. The bankruptcy court reasoned that the Chapter-13-estate-property provision "expands the scope" of the general-estate-property provision in section 541(a) such that *any* "property that a chapter 13 debtor acquires after the commencement of the bankruptcy case" becomes property of the estate. *Id.* at 4.

The district court affirmed the bankruptcy court's opinion. The district court reasoned that the Chapter-13-estate-property provision in section 1306(a)(1) meant that the limitation imposed by the general-estate-property provision in section 541(a)(1)—property only belonged to the estate if it existed "as of the commencement of the case"—is eliminated by the Chapter-13-estate-property provision in section 1306(a)(1). The district court did not attempt to reconcile its interpretation of the statute with this Court's precedent holding that non-natural persons—like the bankruptcy estate—are ineligible as beneficiaries of property acquired under the automatic-stay-damages provision. DN 9. Nor did the district

court address whether an artificial entity like a bankruptcy estate can even recover damages intended for "individual[s] injured" by willful violations of the automatic stay.

Mr. Crouser filed a notice of appeal, DN 11, and then moved to proceed pro se and *in forma pauperis*, DN 12. The district court granted his motion. DN 15.[2]

SUMMARY OF THE ARGUMENT

Neither the trustee nor the district court denies that, for debtors in Chapter 7, money paid under the Bankruptcy Code's automatic-stay-damages provision belong to the debtor alone. The argument is only that Chapter 13 debtors, like Mr. Crouser, are treated differently because Chapter 13 changes the reach of the automatic-stay-damages provision for Chapter 13 debtors.

1. The trustee's argument fails as a matter of statutory construction, which, under Supreme Court precedent, may not deviate from the plainest interpretation available. Section 541(a)(1) provides that "all legal or equitable interests of the debtor in property *as of the commencement of the case*" is property of the estate. 11 U.S.C. § 541(a)(1). For petitions filed under Chapter 13, estate property also includes "all property *of the kind specified* [in section 541(a)(1)] that the debtor acquires after the commencement of the case," but before the case's conclusion. 11 U.S.C. § 1306(a)(1). Chapter 13 therefore only clarifies that, under Chapter 13,

[2] Present counsel agreed to represent Mr. Crouser *pro bono* on appeal.

property of the kind that would otherwise belong to the estate under the general-estate-property provision in section 541 but that is acquired "after the commencement of the case" is also property of the estate. But the general-estate-property section does not and cannot include property earned from violations of the Bankruptcy Code: such property is excluded by a plain reading of the statute.

Congress's exclusion here is not simply for the benefit of debtors, but to protect the integrity of the bankruptcy process itself. The district court's decision to ignore that distinction—between damages, including punitive damages, paid under the Bankruptcy Code itself and any other newly acquired property of the debtor—would eviscerate Chapter 13: Not only would debtors have decreased incentive to file for Chapter 13 over Chapter 7, but creditors would have much less incentive—and in some cases, no incentive—to respect the automatic stay in the first place.

2. The district court's decision is also foreclosed by clear precedent from this Court. In *Jove Engineering, Inc. v. I.R.S.*, 92 F.3d 1539 (11th Cir. 1996), the Court identified a circuit split on the question whether the money from the automatic-stay-damages provision in section 362(k)(1) could ever by paid to non-natural persons, rather than the natural "individuals" identified by statute. *Jove Engineering* analyzed the conflicting opinions in other circuits and held that, in the Eleventh Circuit, non-natural persons cannot be the beneficiaries of such property. The bankruptcy estate—as represented by the trustee—is not a natural person. *Jove*

Engineering not only supports Mr. Crouser's interpretation of the Bankruptcy Code but compels it. The district court's opinion would grant damages to a non-natural person; it cannot survive in the face of *Jove Engineering*.

STANDARD OF REVIEW

This Court reviews *de novo* the legal conclusions of the bankruptcy court. *Asbestos Settlement Trust v. City of New York*, 487 F.3d 1320, 1328 (11th Cir. 2007).

ARGUMENT

The Bankruptcy Code's plain language makes automatic-stay damages the property of the debtor, not of the bankruptcy estate.

A. The Bankruptcy Code does not treat automatic-stay damages differently in Chapter 13.

In *United States v. Ron Pair Enterprises, Inc.*, the Supreme Court explained that "[t]he plain meaning" of the Bankruptcy Code "should be conclusive, except in the rare cases in which [its] literal application … will produce a result demonstrably at odds with the intention of its drafters." 489 U.S. 235, 242 (1989). That plain-language approach is particularly appropriate in the bankruptcy context because "Congress worked on the formulation of the [Bankruptcy Code of 1978] for nearly a decade" in an attempt to "modernize the bankruptcy laws" and, in the process, "made significant changes in both the substantive and procedural laws of bankruptcy." *Id.* at 240. Given the extent of this overhaul, "it is not appropriate or

realistic to expect Congress to have explained with particularity each step it took." *Id.*

The district court's interpretation of the Bankruptcy Code breaks this cardinal rule. The general-estate-property provision makes clear that only the "legal and equitable interests" that belong to the debtor "at the time of the commencement of the petition" belong to the bankruptcy estate. 11 U.S.C. § 541(a)(1). If the general-estate-property provision were the entire statutory ballgame, this issue would not arise: damages paid under the automatic-stay-damages provision do not exist "at the time of the commencement of the petition."

But because Mr. Crouser filed for bankruptcy under Chapter 13, the Chapter-13-estate-property provision also applies. *See* 11 U.S.C. § 1306(a)(1). This provision does not make the result different. The Chapter-13-estate-property provision makes clear that only property "of the kind referenced" in the general-estate-property provision in section 541(a)(1) that is acquired after the commencement of the Chapter 13 petition is incorporated into the property of the estate. Thus, the property in the general-estate-property provision is not *any* legal or equitable interest of the debtor, but only those legal or equitable interests that could exist at the time of the commencement of the petition. Money in a savings account is a legal interest of the debtor; that money will therefore become property of the bankruptcy estate, in Chapter 13, whether it is in the bank at the time of the

petition or comes to the bank any time thereafter. So too for an inheritance, *Carroll v. Logan*, 735 F.3d 147, 150 (4th Cir. 2013); retirement benefit distributions, *In re Seafort*, 669 F.3d 662, 673 (6th Cir. 2012); and even the proceeds of a personal injury case, *In re Waldron*, 536 F.3d 1239, 1241-42 (11th Cir. 2008).

But damages under the Bankruptcy Code's automatic-stay-damages provision are different. 11 U.S.C. § 362(k)(1). When the debtor files for bankruptcy, there cannot be any legal or equitable interest in the creditors' attempt to legally enforce the terms of credit extended to the debtor. Sending collection letters, foreclosing on a home, repossessing furniture, or sending a repo man to the front door are all, without more, legal parts of the debt collection process. There is no legal or equitable interest in a lawsuit for such behavior, because there is no cause of action that a debtor could pursue outside of bankruptcy (again, assuming that the creditor otherwise follows the law). This is true even if the collection efforts cause the debtor discomfort, financial cost, or confusion.

The kinds of activities committed by BAC Home Loan in this case—threatening letters and the publication of a notice of foreclosure in the local paper—only become illegal, and therefore become subject to damages, after the filing of a bankruptcy petition. As a result, the modification made by the Chapter-13-estate-property provision doesn't touch the damages that flow from this kind of violation: that provision only affects those "legal or equitable interests" that the

debtor might have listed on its bankruptcy petition. Money collected *in the bankruptcy court* itself, due to the automatic-stay-damages provision in section 362(k)(1), could not be included.

In the proceedings below, the trustee relied on *In re Waldron*, 536 F.3d 1239 (11th Cir. 2008), to push its contention that proceeds of this sort belong to the bankruptcy estate, rather than the debtor. In *Waldron*, the debtor was in a car accident while his Chapter 13 petition was pending. The bankruptcy court approved the settlement against the at-fault driver for $25,000 and "and the disbursement of that amount to the [debtor] as part of their exempt property." *Id.* at 1241. But the debtor also sought payment from an underinsured-motorist benefit from the debtor's insurance company. The Court concluded that the property acquired under the insurance policy was property of the estate under the Chapter-13-estate-property provision. *Id.* at 1243.

Two facts demonstrate that the rule in *Waldron* is fully consistent with the statute's plain language, the purposes of the Bankruptcy Code, and Mr. Crouser's position here. *First*, proceeds from an underinsured motorist insurance policy is "a legal or equitable interest of the debtor" that could have existed at the time the Chapter 13 petition was filed. The filing of bankruptcy has nothing to do with the recovery from a personal tort, or pay out from an insurance policy, or anything

similar. The Chapter-13-estate-property provision therefore speaks directly to the incorporation of such property.

Second, the motorist who caused the debtor's injury in *Waldron* had nothing to do with the bankruptcy process. If that motorist paid promptly or not at all, drove recklessly or carefully, the bankruptcy process would continue the same. Because the motorist has no connection at all to the bankruptcy process, any rule about the inclusion or not of the damages that flow from his tort are wholly divorced from the bankruptcy process.

Automatic-stay violations are different in both respects. No one can show up to file a bankruptcy petition with a legal or equitable interest in a claim for violations of the automatic stay for that bankruptcy. Such damages do not yet and cannot exist until after the petition has been filed. Unlike damages from a personal tort, then, it is not a "legal or equitable interest of the debtor as of the commencement of the petition," nor is it a legal or equitable interest of the debtor "of the kind specified" in that provision that arose later. And second, the creditor causing the damage under the automatic-stay damages provision is intimately involved in the bankruptcy process. As argued below, the rule adopted by the district court would dramatically change the incentives of such a participant, and significantly undermine the Chapter 13 bankruptcy process.

B. The district court's rule would gut the automatic stay in Chapter 13 of any meaning.

The district court's decision would effectively render the Chapter 13 a dead letter, making it much less viable an option for debtors contemplating bankruptcy, pushing them toward Chapter 7 liquidation. A debtor facing potential bankruptcy in a jurisdiction under the district court's interpretation of the Bankruptcy Code would recognize that creditors would have sharply diminished incentive to comply with the automatic stay. The costs of bankruptcy would therefore be higher for the Chapter 13 debtor under this rule. This is contrary to congressional intent. The entire structure of the Bankruptcy Code expresses "Congress's preference for individual debtors to use Chapter 13 instead of Chapter 7." *In re Woolsey*, 696 F.3d 1266, 1275 (10th Cir. 2012) (citing H.R. Rep. No. 95-595 at 118 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6079). But the district court's rule points toward the opposite conclusion. A bankruptcy lawyer in any jurisdiction where the district court's opinion is the law would be well advised to point a debtor toward Chapter 7 over Chapter 13, especially where the creditors have been aggressive in their debt collection.

To understand why, consider how the rule affects creditor incentives to comply with the automatic stay in the general Chapter 13 bankruptcy case. To be eligible for bankruptcy under Chapter 13, a debtor can have no more than $385,175 in unsecured debt and $1,149,525 in secured debt. 11 U.S.C. § 109(e). In

these cases, even a secured creditor—like a home mortgage company—could be a secured interest beyond the value of the estate, and—because Chapter 13 is not a liquidation—unlikely to take ownership of that security interest. Under the district court's theory of estate property under the Bankruptcy Code, the damages (including punitive damages) that would arise from a willful violation of the automatic stay would be no disincentive. The damages would instead go back to the unsecured creditors, including the very party to have broken the law. The damages would flow from one of the creditor's pockets to the other.

Consider a numerical illustration of this bizarre rule. Suppose Mr, Jones owes Acme Home Loan Company $100,000, secured against a home whose value has fallen to $75,000. Acme is therefore a secured creditor for $100,000 against an asset worth only $75,000. Suppose further that Mr. Jones has no other debts, but a single adverse event—the loss of his job, or a major medical emergency—renders him insolvent and unable to make his mortgage payments to Acme. He then files for bankruptcy protection under Chapter 13, and immediately notifies Acme.

Suppose now the district court's opinion is the law in the circuit where Mr. Jones has filed for Chapter 13 protection. Acme can now violate the automatic stay as though the automatic-stay-damages provision did not exist. If Acme is assessed damages for a willful violation—publishing a foreclosure notice in the local paper, for example, or making harassing phone calls to Mr. Jones—then that money gets

paid out of one of the company's pockets and, through the bankruptcy estate, back into the other. So long as the damages don't exceed the amount of Acme's claim against Mr. Jones—$25,000, in this example—Acme will lose only whatever legal costs are associated with the settlement of the case.

But then there is significant potential upside if Acme engages in this illegality: Mr. Jones may also be overwhelmed by the situation, or unfamiliar with the operation of the automatic stay and the consequences for violating it, and may simply allow Acme to seize, illegally, what the company could not get through the bankruptcy process. While the presence of additional creditors may change the rational calculation of any creditor, secured or unsecured, the calculation will still consider the significant upside to be gained for jockeying around the automatic stay, with diminished downside if caught, since the "damages" under the automatic-stay-damages provision in section 362(k)(1) will go, in part, right back to the creditor.

C. Only natural persons—not bankruptcy estates—can recover damages for violations of the automatic stay.

While the district court focused on the definition of the bankruptcy estate, the correctness of Mr. Crouser's position—that the proceeds from a violation of the automatic stay belong to the individual debtor alone—is clear from the automatic-stay-damages provision itself. That provision grants damages only to "[a]n *individual injured* by any willful violation of [the automatic stay]." 11 U.S.C. § 362(k)(1). For

the district court's opinion to stand, then, the bankruptcy estate, not Mr. Crouser, must be the "individual injured" by BAC's attempts to foreclose on his house.

Circuit precedent makes clear that the bankruptcy estate is no such thing. In *Jove Engineering v. I.R.S.*, this Court held that damages that arise under the automatic-stay-damages provision can only apply to "individuals," a term "limited to natural persons and does not include corporations or other artificial entities." 92 F.2d 1539, 1552-53 (11th Cir. 1996). In *Jove Engineering*, the Court identified a circuit split on the question whether a non-natural person—in that case, a corporation; in this case, the bankruptcy estate—can be such an injured individual. The Third and Fourth Circuits had held that the term "individuals" did include non-natural persons. *See Budget Service Co. v. Better Homes of Virginia, Inc.*, 804 F.2d 289, 292 (4th Cir. 1986); *In re Atlantic Business and Community Corp.*, 901 F.2d 325, 329 (3d Cir. 1990). The Second Circuit (followed later by the Ninth Circuit) disagreed. *See In re Chateaugay Corp*., 920 F.2d 183 (2d Cir. 1990); *In re Goodman*, 991 F.2d 613, 619 (9th Cir. 1993).

Although these cases addressed the question whether a corporate debtor could recover under the automatic-stay-damages provision—not a question broached by Mr. Crouser's appeal—the approach taken even by the Fourth and Third Circuits is instructive for two reasons. *First*, both sides of the split agree that the purpose behind the automatic stay generally and the automatic-stay-damages

provision specifically is to protect the integrity of the bankruptcy process and give sufficient incentive to creditors to allow debtors the space to organize their affairs for the bankruptcy process. The Fourth Circuit, for example, cited the legislative history of the automatic stay. That history makes clear that the stay "is one of the fundamental debtor protections provided by the bankruptcy laws" and is designed to "permit[] the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *Budget Service Co.*, 804 F.2d at 292 (citing H. Rep. No. 95-595, 95th Cong., 1st sess. 340-2 (1977); S. Rep. No. 95-989, 95th Cong. 2d sess. 54, 55 (1978) (other internal citations omitted)). The Fourth Circuit then reasoned that, given the debtor-orientation of the automatic stay, it made little sense to exclude corporate debtors from the benefits associated with the automatic-stay-damages provision in section 362(k)(1).

Thus, even those circuits that construed the term "individual" from the automatic-stay-damages provision in section 362(k)(1) to include non-natural persons agreed that Congress created the provision to protect the interests of the debtor, not the creditors through the bankruptcy estate. The district court's theory, that the "individual" in the automatic-stay-damages provision includes the bankruptcy estate, has nothing to do with this debtor-focused purpose of the automatic stay, a purpose that all courts to have considered the question readily acknowledge.

Second, and by far the more important, is that there is simply no way to reconcile the district court's opinion with this Court's conclusion, in *Jove Engineering*, that only a natural individual can recover damages under the automatic-stay-damages provision in section 362(k)(1). The bankruptcy estate is a legal fiction, an artificial entity that exists "merely [as] a locus of property and monetary value against which the creditors have claims." *Davis*, 899 F.2d at 1144 n.18. The Bankruptcy Code therefore transfers property from the debtor to the bankruptcy estate. Indeed, the estate itself is simply "comprised of" the property identified in the Bankruptcy Code; it has no separate identity. It cannot, therefore, recover damages under this section of the Bankruptcy Code.

* * *

The district court's decision cannot be reconciled with the plain language and policies of the Bankruptcy Code. Because it profoundly distorts the incentives for both creditors and debtors, renders the automatic stay a dead letter in Chapter 13 cases, and conflicts with this Court's precedent, the rule proposed by the district court should not be allowed to stand.

CONCLUSION

The district court's decision should be reversed.

Respectfully submitted,

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February 14, 2014

CERTIFICATE OF SERVICE

I certify that on February 14, 2014, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit by using the CM/ECF system. All participants are registered CM/ECF users, and will be served by the appellate CM/ECF system.

Dated: February 14, 2014

/s/ Peter Conti-Brown
Peter Conti-Brown

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 6,132 words.

Dated: February 14, 2014

/s/ Peter Conti-Brown
Peter Conti-Brown