

NEWS RELEASES

PUBLISHED: OCTOBER 18, 2018

## Services

Insolvency &  
Commercial  
Bankruptcy  
Litigation &  
Alternative Dispute  
Resolution

## Industry

Financial Services &  
Capital Markets

## Professional

MICHAEL D. FIELDING  
KANSAS CITY:  
816.983.8000  
MICHAEL.FIELDING@  
HUSCHBLACKWELL.COM

# Husch Blackwell Prevails for Tyson in Bankruptcy Litigation

The Tenth Circuit of the U.S. Court of Appeals affirmed a lower-court judgment on behalf of Husch Blackwell client Tyson Prepared Foods, Inc., in its dispute with a Chapter 13 Trustee who sought to overturn established circuit precedent regarding the extent and application of automatic stays in bankruptcy law.

Section 362 of the U.S. Bankruptcy Code contains an array of creditor actions subject to an automatic statutory injunction upon the filing of a bankruptcy case. The Trustee sought to expand the interpretation of Section 362 beyond merely “affirmative conduct” to include non-actions or “the absence of affirmative action.”

In his appeal the Trustee claimed that a lien arising in the aftermath of post-petition worker-compensation payments to the debtor violated the automatic stay and had asked the appellate panel to reconsider how the controlling case law applied to the matter. The Tenth Circuit had recently ruled on such Section 362 matters in a 2017 case— in *WD Equipment LLC v. Cowen (In re Cowen)*—determining that the law considers active, not passive, behavior.

In its ruling the appeals court cited that “both parties concede that Cowen controls the outcome of this case. But the Trustee nonetheless asks this panel to reconsider Cowen, or—at a minimum—to call its reasoning into question.”

Ultimately, the court rejected the Trustee’s argument, writing that “[a]bsent en banc review or intervening Supreme Court precedent, it is well-settled that one panel of the Tenth Circuit cannot overturn the work of another.” The appellate panel summarized its judgment by highlighting this principle: “Since the Trustee argues only that Cowen was wrongly decided, this principle marks both the beginning and the end of our inquiry.”

## HUSCH BLACKWELL

The judgment is subject to subsequent en banc hearing and/or appeal to the U.S. Supreme Court.

The Husch Blackwell team was led by Michael Fielding.