No. 18-938

IN THE

Supreme Court of the United States

RITZEN GROUP, INC.,

Petitioner,

v.

JACKSON MASONRY, LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CORRECTED BRIEF FOR PETITIONER

SHANE G. RAMSEY
Counsel of Record
JAMES A. HALTOM
JOHN T. BAXTER
NELSON MULLINS RILEY
& SCARBOROUGH LLP
150 Fourth Avenue, North
Suite 1100
Nashville, TN 37219
(615) 664-5300
shane.ramsey@nelsonmullins.com

Counsel for Petitioner

(For Continuation of Appearances See Inside Cover)

Dated: August 5, 2019

288831

James K. Lehman
A. Mattison Bogan
William C. Wood, Jr.
Nelson Mullins Riley
& Scarborough LLP
Meridian
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

G. Eric Brunstad, Jr.
Dechert, LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

Counsel for Petitioner

QUESTION PRESENTED

Whether an order denying a motion for relief from the automatic stay is a final order under 28 U.S.C. § 158(a)(1).

CORPORATE DISCLOSURE STATEMENT

Petitioner Ritzen Group, Inc., has no parent corporation, and no publicly held company owns 10% or more interest in the company.

Upon information and belief, Respondent Jackson Masonry, LLC, is a limited liability company, has no parent corporation, and no publicly held company owns 10% or more interest in the company.

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

CASES

Cited Authorities

Page

Page

Page

Page

Page

STATUTES AND OTHER AUTHORITIES

Cited Authorities

Page

Page

Page

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a–23a) is reported at 906 F.3d 494. The opinion of the District Court (Pet. App. 24a–47a) is unreported but is available at 2018 WL 558837. The opinion of the Bankruptcy Court is unreported, but is included in Appendices C and D of the Appendix to the Petition (Pet. App. 48a–68a).

JURISDICTION

The judgment of the court of appeals was entered on October 16, 2018. The petition was filed on January 14, 2019 and granted on May 20, 2019. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Pertinent portions of sections 157, 158, 1291, and 1292 of Title 28 of the United States Code and section 362 of Title 11 of the United States Code are reprinted in the appendix to this brief. Brief App., *infra*, 1a–13a.

PRELIMINARY STATEMENT

In 2013, Petitioner Ritzen Group, Inc. ("Ritzen"), and Respondent Jackson Masonry, LLC ("Jackson"), entered into a contract for the sale of certain real property owned by Jackson. After the sale failed to close, Ritzen sued Jackson for breach of contract in state court, where the parties litigated their dispute for over a year. Approximately one week before trial, and seventeen minutes before a scheduled hearing on Ritzen's fourth motion to compel discovery from Jackson (at which the court was to address

a potential second imposition of sanctions), Jackson filed for bankruptcy. This filing triggered the automatic stay, 11 U.S.C. § 362(a), which had the immediate effect of bringing the state-court litigation to a halt.

Contending that Jackson had filed its bankruptcy case in bad faith simply to forestall the state-court litigation, Ritzen filed a motion in the Bankruptcy Court[1] seeking stay relief to enable the suit to continue in state court. After the Bankruptcy Court denied Ritzen's motion, the parties litigated their contract dispute in the bankruptcy forum—the only place where it could be litigated absent stay relief. After the Bankruptcy Court entered judgment for Jackson, Ritzen appealed both the judgment and the court's earlier denial of Ritzen's motion for stay relief, contending that Ritzen had the right to pursue the litigation in state court, its chosen forum, in the first instance.

Both the District Court and Sixth Circuit declined to review the denial of Ritzen's stay-relief motion, concluding that Ritzen had been *required* to take an immediate appeal of that denial, rather than wait until after the Bankruptcy Court resolved the litigation to which the motion related. The Sixth Circuit reasoned that denials of motions for stay relief must be immediately appealed because, in its view, a motion for stay relief commences a discrete proceeding within a bankruptcy case, and the denial of the motion finally concludes that proceeding. Pet. App. 3a ("An order denying stay relief terminates a proceeding, so it is final. In bankruptcy, parties must appeal final orders within fourteen days of the court's ruling.").

---

1. All capitalized, undefined terms utilized in this Preliminary Statement are defined below.

The effect of the decision below is that, even though orders denying motions seeking to litigate a dispute in another forum are not ordinarily final or otherwise immediately appealable, the denial of such a request *is* final—and, therefore, requires immediate appeal—if presented in a motion for stay relief. This holding is fundamentally inconsistent with this Court's 2015 decision in *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686 (2015). It likewise creates an unworkable standard at odds with longstanding practice, the realities of how both stay-relief motions and good-faith determinations are resolved in the bankruptcy setting, and the general policy against piecemeal appeals.

In *Bullard*, this Court concluded that an order denying confirmation of a chapter 13 plan was not a final order subject to immediate appeal as of right. Like Ritzen's motion for stay relief, a motion seeking confirmation of a chapter 13 plan commences a discrete procedural action (generically referred to as a "proceeding") within a bankruptcy case. *See* 11 U.S.C. §§ 362(d), 1324, 1325; Fed. R. Bankr. P. 3015, 4001, 9014. And like the Bankruptcy Court's order denying Ritzen's stay-relief motion here, an order denying confirmation of a plan concludes that discrete procedural action, at least in the sense that it disposes of the motion that commenced it.

As this Court determined in *Bullard*, however, the fact that an order disposes of a particular motion, or concludes a particular procedural action within a case, is not the test for purposes of determining finality. Rather, the standard the Court adopted takes into account the larger bankruptcy process at issue (*e.g.*, the process of plan approval) and examines whether the order in question

"alters the status quo and fixes the rights and obligations of the parties." *Bullard*, 135 S. Ct. at 1692. Applying that standard in *Bullard*, the Court reasoned that an order denying confirmation of a plan is not final (at least where the debtor has an opportunity in the case to file another plan) because such an order "changes little." *Id.* at 1693. In particular, "[t]he automatic stay persists. The parties' rights and obligations remain unsettled. . . . The possibility of discharge lives on." *Id.* As the Court concluded, "'[f]inal' does not describe this state of affairs." *Id.*

The same analysis applies to an order denying a motion for stay relief where, as here, the effect of the order is simply to determine where the parties will litigate their dispute. When a motion seeking stay relief to permit the adjudication of a claim in state court is denied, the only practical effect is that the litigation *must* proceed in the bankruptcy court, if it is to proceed at all. The practical impact of such an order on the relevant substantive bankruptcy processes is narrow. Unless the order denying stay relief is combined with some substantive determination, which is not the case here, such an order "changes little" and neither "alters the status quo" nor "fixes the rights and obligations of the parties," as *Bullard* requires. *Id.* at 1692-93. After all, the status quo once the stay is in place is that all litigation against the debtor must proceed in the bankruptcy court. Accordingly, such an order does not resolve the merits of any substantive right, and is not a final order under *Bullard*.

Beyond being fundamentally irreconcilable with *Bullard*, the decision below does not make sense from the perspective of how motions for stay relief and the issue of good faith are actually litigated and resolved

in practice. The requirement of good faith permeates every aspect of the bankruptcy proceeding: a debtor's bad faith may be raised at any time and the issue is not finally resolvable until the end of the case—either upon confirmation of a plan or dismissal of the case. That is so because bankruptcy petitions must be filed in good faith, stay relief may be granted or a bankruptcy case may be dismissed on grounds of bad faith at any time, and plans must be proposed in good faith. Thus, resolution of the issue during one phase does not necessarily or even ordinarily predetermine its resolution later.

Further, the decision below requiring that an order denying stay relief must be immediately appealed creates an unworkable standard at odds with longstanding practice by forcing a mandatory piecemeal approach to the process of bankruptcy appellate review. Because the only thing the Bankruptcy Court's stay-relief order resolved in this instance was where the parties would litigate Ritzen's breach-of-contract claim, application of the Sixth Circuit's standard required Ritzen to immediately appeal the issue of where to litigate, rather than wait until the outcome of the litigation itself. Because many issues become irrelevant before the end of a case, the approach adopted below forces appeals that may well be needless. In contrast, correct application of the standard articulated in *Bullard* avoids that problem because the order denying stay relief here would not be treated as final, because it neither altered the status quo nor fixed the rights and obligations of the parties in any substantive way.

Similarly, motions for stay relief may be made and remade based on the circumstances. That is why bankruptcy courts are expressly vested with jurisdiction

over "motions to terminate, annul, or modify the automatic stay," implicitly acknowledging a larger process beyond any singular motion or individual disposition. 28 U.S.C. § 157(b)(2)(G). Yet the decision below requires that each stay-relief determination must be appealed separately, because such requests are procedurally complete. This approach ignores the context of the discrete procedural action in question, the purpose of the relief requested, and how the request relates to the overall process within the larger case to which it is directed—in this instance, the ongoing claims-adjudication process concerning Ritzen's breach-of-contract claim. In contrast, proper application of this Court's standard would defer appellate review until the Bankruptcy Court entered an order that altered the status quo and resolved the rights and obligations of the parties, such as upon the final disposition of Ritzen's claim.

None of this is to say that an order denying stay relief may *never* be final. For example, if an order denying stay relief also itself resolves the validity of a claim or a substantive statutory entitlement that Congress intended a party to have during the course of a case (*e.g.*, adequate protection)—thus altering the status quo and fixing the parties' substantive rights and obligations—then the order may well be final and, hence, immediately appealable. That, however, does not describe the Bankruptcy Court's order in this instance. Because the decision below failed to apply this Court's standard adopted in *Bullard* and otherwise reached an erroneous result, its decision should be reversed.

STATEMENT

By operation of law, the commencement of a bankruptcy case creates a bankruptcy estate consisting of all of the debtor's property wherever located. 11 U.S.C. § 541. In turn, creditors holding claims against the debtor are entitled to file proofs of claim against the estate setting forth the basis for what they assert they are owed. 11 U.S.C. § 502. In chapter 11 cases, "allowed" claims are entitled to distributions as provided in a confirmed plan of reorganization. 11 U.S.C. §§ 502 (providing for the allowance of claims), 1123 (requiring chapter 11 plans to specify the treatment of claims), 1129 (providing for the confirmation of plans). In this way, the Bankruptcy Code establishes a process for the resolution of claims, culminating in the allowance or disallowance of claims and the payment thereof in accordance with the Bankruptcy Code's priority scheme. *See generally Katchen* v. *Landy*, 382 U.S. 323, 329 (1966) (discussing the process by which claims are resolved and paid in bankruptcy). Notably, however, the adjudication of claims within this process is not the exclusive province of the bankruptcy courts. Subject to certain restrictions, claims may be litigated and resolved in other courts and, in some instances, *must* be. *See* 28 U.S.C. § 1334(c) (providing for discretionary and mandatory abstention regarding the adjudication of certain claims); *Cadle Co.* v. *Moore (In re Moore)*, 739 F.3d 724, 728–29 (5th Cir. 2014) (reviewing appropriate situations for abstention, including where an "action could be adjudicated timely in state court").

Commencement of a bankruptcy case also triggers the automatic stay—a statutorily imposed measure that proscribes various acts against the debtor, the debtor's

property, and property of the estate, including the commencement or continuation of state-court litigation seeking monetary damages against the debtor. 11 U.S.C. § 362(a). Although far-reaching, the automatic stay is not unyielding. Among other things, section 362(d) provides that stay relief may be granted for "cause." 11 U.S.C. § 362(d). A debtor's bad faith filing of a bankruptcy petition qualifies as "cause" for stay relief, as well as "cause" for dismissal of the debtor's bankruptcy case. *See, e.g.*, 11 U.S.C. § 1112(b) (providing for dismissal of a chapter 11 case for "cause"); *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 373 (2007) (noting with approval that "[b]ankruptcy courts . . . routinely treat dismissal for prepetition bad-faith conduct as implicitly authorized by the words 'for cause'"); *Krueger* v. *Torres (In re Krueger)*, 812 F.3d 365, 374 (5th Cir. 2016) (affirming dismissal of bankruptcy petition filed "not to seek a fresh start as an honest but unfortunate debtor, but to hamper the state court litigation").

In turn, appeals of bankruptcy court orders granting or denying stay relief are governed by section 158 of Title 28 of the United States Code. Section 158(a) vests the district courts with jurisdiction over all "final" orders of a bankruptcy judge entered in a "case[]" or "proceeding[]"; certain interlocutory orders entered under section 1121(d) of the Bankruptcy Code; and, with leave of the district court, the bankruptcy judge's interlocutory orders. 28 U.S.C. § 158(a). In contrast, section 158(d) vests the courts of appeals with jurisdiction over a district court's "final" orders entered in a bankruptcy appeal and, with leave of the court of appeals, over bankruptcy orders certified in accordance with the criteria specified in the statute. 28 U.S.C. § 158(d).

The question presented in this case is whether the Bankruptcy Court's order denying Ritzen's motion for stay relief, which resolved where the parties would litigate their dispute—namely in the Bankruptcy Court—is properly a "final" order that must be immediately appealed, or an interlocutory order that may be appealed at a later time.

I. This Court's Precedent on the Bankruptcy Finality Requirement.

In *Bullard*, this Court addressed the closely analogous question of whether an order denying confirmation of a chapter 13 plan is a final order under section 158(d). 135 S. Ct. 1686. Although the filing of a bankruptcy petition commences a bankruptcy case, everything that happens within a case occurs within a discrete procedural action of some kind, commonly referred to as a "proceeding." *See* 7 *Collier on Bankruptcy* ¶ 1109.04 (Richard Levin & Henry J. Sommer, eds., 16th ed. rev. 2019) (hereinafter *Collier*) ("A 'proceeding[]' . . . is any one of the myriad discrete judicial proceedings within a case that is commenced by a request in a form of pleading, such as a complaint, motion or application for judicial action. . . . [E]very issue in a case may be raised and adjudicated only in the context of a proceeding of some kind[.]"). These proceedings may be initiated by motion (which characteristically commences a "contested matter"), by application (*e.g.*, for the payment of fees), or by summons and complaint (commencing an "adversary proceeding"). *Id.*; *see also* Fed. R. Bankr. 7001 (defining what constitutes an adversary proceeding), 9014 (governing contested matters); 7 *Collier* ¶ 1109.01[3]. As noted, a motion to confirm a particular plan commences a specific kind of bankruptcy action—*i.e.*, a plan-confirmation proceeding. An order denying confirmation

of such plan terminates the discrete proceeding regarding the plan in question, but by itself does not end the case or prevent the presentation or consideration of another plan within the larger plan-confirmation process in the case.

As this Court framed the issue in *Bullard*, the question was whether the relevant "proceeding" for purposes of finality was the discrete procedural action commenced by the debtor's particular motion to confirm a particular plan, or whether the relevant "proceeding" was the larger process of attempting to arrive at an approved plan. 135 S. Ct. at 1692. Selecting the latter, the Court reasoned that "only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties." *Id*. In contrast, denial of confirmation with leave to present a new plan does not have the same effect, and is, thus, not final. *Id*. at 1693.

The Court also prominently considered the general policy against piecemeal appeals and the delay and inefficiency they cause. Reasoning that "[a]voiding such delays and inefficiencies is precisely the reason for a rule of finality," the Court concluded that "[i]t does not make much sense to define the pertinent proceeding so narrowly that the requirement of finality would do little work as a meaningful constraint on the availability of appellate review." *Id.*

II. Statutory Provisions Addressing Finality in Bankruptcy Appeals.

This case—like *Bullard*—concerns the proper construction of the "finality" requirement of section 158. Section 158, however, does not exist in isolation;

it is instead part of a larger collection of appellate jurisdictional provisions applicable in bankruptcy appeals, at least one of which, section 1291, also imposes a finality requirement. *See* 28 U.S.C. § 1291. Review of these provisions sheds further light on the finality of an order denying a motion for stay relief that seeks to resume already-pending litigation in another forum. Although bankruptcy matters are characteristically heard in the first instance by bankruptcy judges, that is not always so. They may also be heard by district judges exercising their original bankruptcy jurisdiction. *See* 28 U.S.C. § 1334(a). That happens where a bankruptcy case or proceeding is not "referred" to a bankruptcy judge in the first instance, *see* 28 U.S.C. § 157(a) (providing that a district court "may" refer a case or proceeding to the bankruptcy judges for the district), or where a case or proceeding, having been referred to a bankruptcy judge, is withdrawn to the district court, *id.* § 157(d); *see, e.g.*, *In re Armstrong World Indus., Inc.*, 348 B.R. 111, 117 (D. Del. 2006) (noting that the district court was sitting as the bankruptcy court because "the district court had withdrawn the reference for all Chapter 11 cases filed in the district"). When a district judge decides a bankruptcy matter in the first instance, appellate review is not governed by section 158(d), but rather by the general appellate provision, section 1291. Thus, when a district judge presides over a bankruptcy case, the district judge's order denying stay relief may be appealed under section 1291.

Section 1291 vests the courts of appeals with jurisdiction over "final decisions" of the district courts. Although the text of section 1291 is phrased differently from section 158(d), both make use of the term "final." And there is no reason to believe that Congress intended

the test of finality under section 1291 applicable to orders entered by a district judge sitting in bankruptcy in the first instance, and the test of finality under section 158(d) applicable to orders entered by a district judge affirming an order of a bankruptcy judge to be any different.

That the analysis under sections 1291 (as it applies in bankruptcy) and 158(d) should be the same is further supported by the fact that a companion provision to section 1291—28 U.S.C. § 1292(b), which governs appellate jurisdiction over certain interlocutory orders—applies equally to appeals taken from district-court orders entered in cases in which a district court exercises original bankruptcy jurisdiction and appeals taken from district-court orders entered in cases in which the district court exercises appellate jurisdiction over the decisions of bankruptcy judges. *See Conn. Nat'l Bank* v. *Germain*, 503 U.S. 249 (1992). In *Germain*, the Court observed that sections 1291 and 1292 "overlap" with section 158 and work in concert, rather than presenting an "either-or proposition" for purposes of appellate jurisdiction. *Id.* at 251–54.[2] Because the standards for review of interlocutory orders under section 1292(b) are the same regardless of whether the relevant order is one entered by a district court sitting in bankruptcy in the first instance or is one entered by a district court sitting in review of an order of a

2. Interlocutory review under section 1292(b) is available only if the district court certifies that both (i) the case "involves a controlling question of law" on which "there is substantial ground for difference of opinion" and (ii) an appeal "may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). Upon certification by the district court, the court of appeals may exercise jurisdiction over the interlocutory order in its discretion. *Id.*

bankruptcy judge, this further suggests that Congress did not intend different finality standards in the bankruptcy context under sections 158(d) and 1291.

III. Background and Proceedings Below.

On March 21, 2013, Ritzen and Jackson entered into a contract for the sale of certain real property that Jackson owned for an agreed purchase price of $1.55 million. Thereafter, Ritzen undertook to have the property rezoned from an industrial location to one that could be developed for residential use. *See* App. 24a. Ritzen contends that its efforts helped increase the value of the property, as reflected in the fact that Jackson was subsequently able to sell the property for $5.6 million—over $4 million more than the contract price between Jackson and Ritzen. *See* App. 8a at Bankruptcy Court docket entry 479.

After the sale failed to close, Ritzen filed suit against Jackson in state court for breach of the parties' agreement. *See Ritzen Grp., Inc.* v. *Jackson Masonry, LLC*, Case No. 14-1822-II (Tenn. Davidson Cty. Ch. Ct.); Pet. App. at 26a. In the state-court action, Ritzen contended that Jackson had breached the contract by engaging in a concerted effort to forestall, and ultimately prevent, the sale from closing. *Id.* Jackson denied liability, blaming Ritzen for the parties' failure to close. *Id.*

The state-court litigation was contentious. *Id.* at 27a. Among other things, Ritzen alleged that Jackson had repeatedly failed to respond to discovery requests, forcing Ritzen to file multiple motions to compel. *Id.* On March 24, 2016, seven days before the scheduled trial of Ritzen's breach-of-contract claim, Ritzen appeared for a hearing

in state court on its fourth motion to compel discovery, for which Ritzen sought a second imposition of sanctions against Jackson—having already been awarded attorneys' fees for previous discovery violations. *Id.* At 8:43 a.m. that morning—approximately seventeen minutes prior to the commencement of the sanctions hearing—Jackson filed its chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Middle District of Tennessee (the "Bankruptcy Court"). *Id.* This filing had the effect of staying the state-court action and immediately halted the proceedings on Ritzen's motion to compel and request for sanctions. *Id.* The bankruptcy filing also stayed the scheduled trial, putting the state-court litigation in limbo. *See id.*

Contending that Jackson had improperly filed its bankruptcy petition merely to halt the state-court litigation and otherwise avoid the consequences of its misbehavior, Ritzen filed a motion with the Bankruptcy Court seeking stay relief to continue the pending state-court matter (the "Motion"). *Id.* at 28a–38a. At the evidentiary hearing on its Motion, Ritzen elicited testimony that Jackson's initial bankruptcy schedules grossly undervalued the company and that Jackson was operating at a profit in the years leading up to the bankruptcy filing, with nearly $5 million in gross revenues in 2015. App. 70a–72a. Although the main focus of Ritzen's Motion was on obtaining stay relief, Ritzen also contended that Jackson's bad-faith behavior warranted dismissal of its bankruptcy case. Pet. App. 28a–29a.

Following the evidentiary hearing, the Bankruptcy Court entered an order denying Ritzen's Motion (the "Denial Order"). *Id.* at 48a–68a. Notably, the order did

not in any way resolve the merits of Ritzen's breach-of-contract claim or otherwise fix the substantive rights and obligations of the parties with respect thereto. Rather, it simply maintained the status quo—the statutorily prescribed automatic stay would remain in place.

With the pending state-court litigation held in abeyance, the only place available to litigate Ritzen's breach-of-contract claim was in the Bankruptcy Court. Following applicable bankruptcy procedures, Ritzen filed a proof of claim asserting its breach-of-contract allegations, to which Jackson objected. *See* 11 U.S.C. §§ 501 (those asserting claims against the debtor may file proofs of claim), 502 (governing the allowance of claims and objections to claims); Fed. R. Bankr. P. 3001 (governing proofs of claim), 3003(c)(2) (providing that a creditor holding a disputed claim must file a proof of claim, and that a creditor that fails to do so is not entitled to any distribution on account of its claim), 7001(1) (providing that a proceeding to recover money or property is an adversary proceeding). Thereafter, the parties litigated the breach-of-contract claim to judgment. Pet. App. 14a ("After the stay-relief denial, Ritzen filed a proof of claim, Jackson responded, and the claim was resolved through an adversary proceeding."). Jackson prevailed in the litigation, and Ritzen thereafter appealed to the District Court both the Bankruptcy Court's ruling on the merits of Ritzen's claim and the order denying stay relief that prevented the claim from being litigated in state court.

On appeal, the District Court affirmed. *Id.* at 34a–37a. In doing so, the District Court ruled that Ritzen's appeal of the Denial Order was untimely on the premise that the order was final at the time it was entered and Ritzen had

not taken an appeal within fourteen days thereafter. *Id*. Rather, Ritzen had waited until the Bankruptcy Court adjudicated the merits of its breach-of-contract claim. In reaching its conclusion, the District Court followed the "blanket rule" adopted by the Sixth Circuit Bankruptcy Appellate Panel that all orders adjudicating requests for stay relief—whether granting or denying such requests—are "final." *Id.* at 36a–37a.

On further appeal, the Sixth Circuit affirmed. *Id.* at 2a–23a. In reviewing the appealability of the Denial Order, the court adopted a two-part test: "a bankruptcy court's order may be immediately appealed if it is (1) 'entered in a proceeding' and (2) 'final'—terminating that proceeding." *Id.* at 7a–8a (brackets and ellipsis omitted). Applying that test, the court reasoned that Ritzen's appeal was untimely because "(1) stay-relief motions initiate a proceeding and (2) this proceeding is terminated by an order denying such relief." *Id*. at 8a.

On the question of what constitutes a "proceeding" for purposes of its analysis, the court opined that "a proceeding is a process whereby a court follows some formal procedural steps to adjudicate a moving party's claim for relief." *Id*. Further elaborating its approach, the court explained that "a 'proceeding' under § 158(a) is a discrete dispute within the overall bankruptcy case, resolved through a series of procedural steps." *Id*. at 9a (brackets omitted). Concluding that a bankruptcy court's "stay relief adjudication fits this description," the court reasoned that a proceeding begins with "a motion," as to which the "non-moving party then must be given notice," followed by "a hearing where both parties are present," after which "the court determines whether the relevant

legal standard has been met and grants or denies relief accordingly." *Id.* at 9a–10a. In other words, a "proceeding" encompasses essentially any contested matter—precisely the view this Court rejected in *Bullard*, wherein the Court recognized that the relevant "proceeding" is the larger substantive process to which the motion relates (*e.g.*, the process of the approval of plans). *See Bullard*, 135 S. Ct. at 1692.

Turning to the issue of finality, the court below likewise focused its analysis procedurally on "whether the order terminates the stay relief proceeding." Pet. App. 11a. Addressing whether an order denying stay relief "alters the status quo and fixes the rights and obligations of the parties," *id.* at 11a (quoting *Bullard*, 135 S. Ct. at 1692), the Sixth Circuit reasoned that it does because such an order is "procedurally complete" and has the effect of ending the relevant proceeding because "[a] stay-relief motion asks its own discrete question, and this question is finally answered by either a grant or a denial," *id.* at 12a.

In conducting its analysis, the court also attached significance to the fact that the Bankruptcy Court "did not deny Ritzen's motion without prejudice" and that "[t]he consequences of a stay-relief denial are both significant and irreparable." *Id.* at 13a. Notably, the court reasoned that the consequences are irreparable because, once stay relief is denied, "the creditor usually has no choice but to file a proof of claim in bankruptcy, litigating their pre-bankruptcy dispute anew in the bankruptcy court . . . because failure to file a proof of claim could preclude them from collecting anything once the bankruptcy case concludes and the debtor's debts are discharged." *Id.* In this way, the court linked Ritzen's stay-relief request to

the larger claims-adjudication process, establishing how and why Ritzen's stay-relief request unavoidably involved litigating over where to litigate.

Critically, nothing in the Bankruptcy Code or Bankruptcy Rules *requires* that the bankruptcy court must always adjudicate the merits of a claim in order for it to be allowed. Rather, it is commonplace for a creditor to file a proof of claim with the merits of the claim resolved in some other forum. The only impediment to the pursuit of that option is, of course, the automatic stay—hence, the unavoidable conclusion that the Bankruptcy Court's ruling on stay relief necessarily resolved where the claim would be litigated but not, of course, the merits of the claim itself.

Likewise, nothing in the Bankruptcy Code or Bankruptcy Rules prevents an appellate court from undoing a bankruptcy court's adjudication of a breach-of-contract claim on the ground that stay relief should have been granted and the claim determined in state court, where it was already pending and scheduled for trial. *See Olberding* v. *Ill. Cent. R. Co.*, 346 U.S. 338 (1953) (reversing judgment and remanding with instructions to transfer venue); *Gogolin & Stetler* v. *Karn's Auto Imports, Inc.*, 886 F.2d 100, 104–05 (5th Cir. 1989) (reversing a trial court verdict on the merits based on improper denial of venue transfer request, even recognizing that, without opining on the merits, there appeared to be sufficient evidence to support the ruling); *cf.* 11 U.S.C. §§ 363(m) (preventing an appellate court from undoing a good-faith bankruptcy sale once consummated), 364(e) (preventing an appellate court from undoing a good-faith grant of priority or lien in connection with a bankruptcy court's order authorizing a trustee to incur debt).

Addressing Ritzen's argument that "the stay order was not final because it was not a ruling on the merits of its contract claim," the Sixth Circuit reasoned that this "is irrelevant" because the merits of a claim and requests for stay relief are adjudicated in "*different* proceeding[s]." Pet. App. 14a. In reaching this conclusion, the court treated what was decided in the stay-relief context—namely *where* the parties would litigate their dispute—as "fix[ing] the rights and obligations at issue in the stay-relief proceeding." *Id.* Notably, however, orders that determine the appropriate forum where parties will resolve their disputes are not normally regarded as fixing any of the parties' substantive rights or obligations, but rather as simply fixing where the parties will have such rights and obligations decided. *See, e.g.*, *Caterpillar Inc.* v. *Lewis*, 519 U.S. 61, 74 (1996) ("An order denying a motion to remand, 'standing alone,' is 'obviously not final and immediately appealable' as of right." (brackets and ellipsis omitted) (quoting *Chi., R.I. & P.R. Co.* v. *Stude*, 346 U.S. 574, 578 (1954))); *Gogolin & Stetler*, 886 F.2d at 104–05 (reversing a trial court verdict on the merits based on improper denial of venue-transfer request).

Finally, the court below discussed aspects of the relative efficiency of requiring immediate appeals of orders denying stay relief in bankruptcy. The court contended that "Ritzen's proposal would force creditors who lose stay-relief motions to fully litigate their claims in bankruptcy court and then, after the bankruptcy case is over, appeal and seek to redo the litigation all over again in state court," which the court opined "would be a tremendous waste of time and money." Pet. App. 15a. The court, however, did not address the extent to which denials of stay relief may become irrelevant upon adjudication of the merits—for

example, where the creditor's claim is allowed, either through litigation in the bankruptcy court or settlement between the parties—thus obviating the need for appellate review. *Cf. Caldwell-Baker Co.* v. *Parsons*, 392 F.3d 886, 888–89 (7th Cir. 2004) ("Interlocutory decisions often become irrelevant before the case's end; that's a reason to defer rather than accelerate appellate review."). Likewise, the court did not address this Court's different weighing of the relevant costs and benefits in *Bullard*, including the importance this Court assigned to the inevitable cost and delay occasioned by immediate piecemeal appellate review. *See Bullard*, 135 S. Ct. at 1695.

SUMMARY OF THE ARGUMENT

This Court should reverse the decision below for three essential reasons. First, an order denying a motion seeking stay relief to permit the adjudication of a claim in state court is a classic example of an interlocutory order that is not immediately appealable. Such an order is properly treated for bankruptcy appellate purposes as part of the bankruptcy claims-adjudication process. When such a motion is denied, the only practical effect is that the litigation *must* proceed in the bankruptcy court if it is to proceed at all. Unless the order denying stay relief is combined with some substantive determination (such as ruling on the underlying merits of a claim), it does not fix any substantive right. Because the practical effect of such an order is limited to determining the forum in which the parties will litigate, it "changes little" and neither "alters the status quo" nor "fixes the rights and obligations of the parties." *Bullard*, 135 S. Ct. at 1692–93. Accordingly, it is not a final order.

Rather than recognizing that reality, the Sixth Circuit adopted and applied a two-part, procedural test focused on (1) whether the relevant order was litigated in a procedurally defined action of some kind, and (2) whether the order finally resolved that action. This test is contrary to this Court's approach in *Bullard* and "slic[es] the case too thin." *Bullard*, 135 S. Ct. at 1692. The question in this case is not whether the particular order at issue was entered in a procedurally discrete action. Instead, as framed in *Bullard*, the correct inquiry is whether the order had a practical impact on the substantive bankruptcy process that the order implicates. *See Gillespie* v. *U.S. Steel Corp.*, 379 U.S. 148, 152 (1964) (it is appropriate to give the concept of finality a "practical rather than a technical construction").

Here, the relevant process for finality purposes is the bankruptcy claims-adjudication process. Quite clearly, the denial of Ritzen's motion did not terminate that process. On the contrary, it *impelled* it. After the Bankruptcy Court's denial of Ritzen's stay-relief motion, Ritzen had no choice but to litigate its claim in the bankruptcy forum because, absent stay relief, there was no other place where it could be litigated. The relevant *final* order here was the judgment resolving the merits of Ritzen's breach-of-contract claim, not the Denial Order which merely resolved where the parties would litigate such dispute. Because Ritzen timely appealed from the final judgment resolving its claim, the Sixth Circuit should have addressed Ritzen's arguments regarding the merits of the Denial Order.

Critically, this conclusion follows not only from correct application of this Court's standard in *Bullard*, but also

from analysis of the text of section 158, its history, and the larger collection of statutory provisions that govern the review of final and interlocutory orders in bankruptcy. Section 158 is patterned after section 1291, which also vests appellate jurisdiction over final orders. Under the finality standard set forth in section 1291, orders of the kind at issue here—denying motions that resolve where the parties will litigate—are classically interlocutory.

Similarly, under the provisions governing appellate review under the former Bankruptcy Act of 1898 (the predecessor to the current Bankruptcy Code), orders denying stay relief were treated as interlocutory. That long history makes clear that Congress knows how to authorize appellate review of interlocutory orders in the bankruptcy context when it wishes to. With respect to orders that, as a practical matter, simply resolve where the parties will litigate their disputes (*i.e.*, orders concerning transfer of venue, abstention, and remand), Congress has generally taken the opposite approach, not simply treating such orders as interlocutory, but rendering many of them entirely unreviewable. *See* 28 U.S.C. §§ 1334(d), 1452. There is thus no reason to relax the finality requirement of section 158 to require an immediate appeal of orders that simply resolve the forum for pursuing a claim.

Second, even if some orders denying stay relief are final orders subject to immediate appeal, an order denying a stay-relief motion premised on bad faith is not. Motions raising a debtor's bad faith, including motions for stay relief, may be filed at any time and may be based upon the circumstances as they evolve during the case. That is because many of the major actions a debtor takes—from the filing of a petition to the proposal and confirmation of

a plan—must each be undertaken in good faith. Likewise, a motion for stay relief may be made and remade as the circumstances warrant. The court below attached significance to the fact that the Bankruptcy Court's Denial Order did not expressly state that it was "without prejudice," but that designation is implicit in such orders generally—there is no need to include the words "without prejudice" because, again, such motions may be made and remade as the circumstances warrant. This is reflected in bankruptcy practice, where designations such as "with prejudice" and "without prejudice" are not customarily included in orders granting or denying stay relief.

Third, the decision below affirmatively *requires* piecemeal appeals—exactly what this Court's jurisprudence on the issue of finality is designed to avoid. As this Court explained in *Bullard*, the concept of finality is a restraint on appellate review. Under the Sixth Circuit's two-part test, however, an order resolving virtually any contested matter, designated procedurally under the Sixth Circuit test, would qualify as final, imposing virtually no restraint at all.

The Sixth Circuit justified its approach, in part, based on its view of the costs and benefits involved in requiring an immediate appeal of an order denying stay relief that merely resolves where a the parties must litigate their dispute. According to the court below, absent an immediate appeal of an order directing the resolution of a claim in the bankruptcy forum, a litigant who then loses on the merits may well have to suffer the expense of having its claim resolved in the wrong place before it may appeal whether the denial of its stay-relief motion was proper. But that is little different from the situation

in *Bullard*. As this Court made clear, the cost of denying an immediate appeal in such circumstances is outweighed by the costs of piecemeal appeals generally. *Bullard*, 135 S. Ct. at 1693–95. In any event, the finality requirement sets the relevant boundary, and orders determining where to litigate are simply not final.

In addition, it would be anomalous to treat motions denying stay relief premised on the debtor's bad faith differently from motions to dismiss a case premised on the same grounds. Just as stay relief under section 362(d) may be granted for "cause," dismissal of a chapter 11 case under section 1112(b) may be granted for "cause." Orders denying motions to dismiss a chapter 11 case on grounds of bad faith are properly treated as interlocutory. *See, e.g.*, *Barben* v. *Donovan (In re Donovan)*, 532 F.3d 1134, 1137 (11th Cir. 2008) (recognizing that denial of motion to dismiss bankruptcy case is not final). There is no reason why the same issue should be treated differently for appellate purposes based on whether it is presented in a motion for stay relief or in a motion to dismiss. If anything, there is less reason to treat it as interlocutory in the former instance. At best, this would set a trap for the unwary; at worst, it would allow a party to manipulate the appellate process by using different labels on motions.

In sum, diluting the finality requirement to mandate the immediate appellate review of orders denying stay relief that have the practical effect of merely determining where the parties will litigate their dispute would contravene the purpose of the finality doctrine and the policies that undergird it. Because the relevant order in this case is nothing more than a garden-variety interlocutory determination of the forum in which the

parties would resolve their dispute, it was not a final order that required immediate appeal.

ARGUMENT

I. An Order Denying Stay Relief to Litigate A Claim in State Court Is an Interlocutory Order That Is Not Subject to Immediate Appellate Review.

Section 158(a) of Title 28 provides that "[t]he district courts . . . shall have jurisdiction to hear appeals (1) from final judgments, order and decrees . . . of bankruptcy judges entered in cases and proceedings." 28 U.S.C. § 158(a). In turn, section 158(d) provides that the "courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsection[] (a) . . . of this section." 28 U.S.C. § 158(d). Because the practical effect of the Bankruptcy Court's Denial Order was merely to resolve where the parties would litigate their dispute, it was not a "final" determination subject to immediate appellate review within the meaning of these provisions. *See Gillespie*, 379 U.S. at 152 (treating the concept of finality practically, rather than technically).

Although the concept of "finality" is not defined in section 158, it has a long history. Most recently, in *Bullard*, this Court considered the meaning of the concept in the closely analogous context of an order denying confirmation of a chapter 13 plan. 135 S. Ct. 1686. Concluding that such an order was not final, the Court explained that "only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties." *Id.* at 1692. The Sixth Circuit's opinion, while citing *Bullard*,

failed to follow its reasoning. Instead, the court below applied a two-part test of its own making that focused on whether the order was entered in a procedurally defined bankruptcy action and whether the order finally concluded that procedural action. *See* Pet. App. 7a–8a.

In conducting its analysis, the court below overlooked meaningful consideration of whether the order here "alters the status quo." The court further compounded its error by transforming the analysis of whether the order "fixes the rights and obligations of the parties" into consideration of the procedural requisites involved in adjudicating motions for stay relief, as opposed to consideration of the effect of the grant or denial of such motions on the larger substantive bankruptcy process that the stay-relief request implicated. *See id.* at 11a–12a. Because the effect of the Denial Order was to compel the parties to litigate their dispute in the bankruptcy forum, the order unavoidably implicated the bankruptcy claims-adjudication process. Inasmuch as the Denial Order did not in any way resolve or conclude that process, the order was not final until litigation over the merits of Ritzen's claim concluded.

All of this follows from this Court's analysis in *Bullard*, which the court below misapprehended. It likewise follows from the general rule that orders denying requests to litigate disputes in some other forum are quintessentially interlocutory. Because there is no compelling reason to depart from that general rule—on the contrary, there are compelling reasons to follow it—the general rule should be applied here.

In addition, the conclusion that the Denial Order is properly interlocutory finds support in the history of the treatment of orders denying stay relief in the bankruptcy context. Under the predecessor to the current Bankruptcy Code, such orders were treated as non-final.

The conclusion is likewise supported by reference to the larger panoply of provisions governing appellate jurisdiction in bankruptcy. Among other things, these illustrate that Congress knows how to authorize appellate review of interlocutory orders as of right, but generally has not done so with respect to orders addressing where parties are to resolve their dispute. Rather, in some instances, it has proscribed appellate review of such orders altogether. There is thus no reason to conclude that Congress intended an order denying stay relief that has the same practical effect to be immediately appealable.

A. Under the Standard Adopted in *Bullard*, an Order Denying Stay Relief to Litigate a Claim in State Court Is Interlocutory, Not Final.

As noted, the Court in *Bullard* addressed the question of whether an order denying confirmation of a chapter 13 plan is a final order for purposes of section 158(d). 135 S. Ct. at 1690. Concluding that it is not—at least when the debtor may file another plan—the Court reasoned that denial of confirmation "changes little," in that it does not "alter[] the status quo and fix[] the rights and obligations of the parties." *Id.* at 1692–93. In particular, "[t]he automatic stay persists. The parties' rights and obligations remain unsettled. . . . The possibility of discharge lives on." *Id.* at 1693. Of course, the same is true of an order denying a motion for stay relief when the effect of the order is

simply to determine where the parties will litigate their dispute. As the Court concluded in *Bullard*, "'[f]inal' does not describe this state of affairs." *Id.*

In *Bullard*, the Court viewed an order denying confirmation of a plan as merely an intermediate step in the overall confirmation process, which the Court considered the relevant judicial unit for purposes of finality. Only an order that concludes that overall process—as opposed to one that ends a discrete procedural action within that process—is final. The same is true here. In this case, the order in question merely resolved where the parties would litigate their dispute—in the Bankruptcy Court—thus triggering the bankruptcy claims-adjudication process. The relevant final order is the order that concluded the overall process by resolving the parties' dispute.

Although Ritzen's request to lift the automatic stay was, in a narrow sense, a "proceeding," since it was initiated by a motion, the Denial Order did not "alter the status quo," as in *Bullard*. *Id.* The automatic stay, imposed at the time Jackson filed for bankruptcy, remained in place. *Id.* at 1693. Nor did the Denial Order "fix[] the rights and obligations of the parties." Ritzen had been pursuing its breach-of-contract claim in state court, but the Bankruptcy Court denied its request to lift the stay so that the state-court litigation could resume. Ritzen was denied that change in forum, and the case proceeded in the Bankruptcy Court via the claims-adjudication process. Nothing in the Denial Order ruled on the validity of Ritzen's claim. It merely determined the forum in which the claim would be resolved. Thus, upon entry of the Denial Order, "the parties rights and obligations remain[ed] unsettled." *Id.*

Instead of conducting its finality analysis in a manner consistent with *Bullard*—*i.e.*, by looking to whether the order altered the status quo and its impact on the larger substantive bankruptcy process to which it related—the Sixth Circuit focused formalistically on the particular procedural requirements involved in pursuing a stay-relief request. *See* Pet. App. 8a (noting that "[t]he first step is to identify the appropriate 'judicial unit' for finality analysis"); *id.* at 9a–10a (reasoning that the stay-relief proceeding by itself was the relevant judicial unit because the proceeding begins with "a motion," as to which the "non-moving party then must be given notice," followed by "a hearing where both parties are present," after which "the court determines whether the relevant legal standard has been met and grants or denies relief accordingly"). Consistent with this approach, the court defined "proceeding" as "a discrete dispute within the overall bankruptcy case, resolved through a series of procedural steps." *Id.* at 9a. Because the relevant procedural steps for resolving Ritzen's motion had been followed to a concluding result, the Sixth Circuit determined that the Denial Order was final. This approach, however, was in error.

Importantly, the Sixth Circuit eliminated altogether the first prong of the *Bullard* test—whether the order in question "alters the status quo." As this Court's analysis in *Bullard* illustrates, the relevant "status quo" is the state of affairs established at the commencement of the bankruptcy case, not some other benchmark. That state of affairs includes the imposition of the automatic stay by operation of law at the outset of the case. Indeed, when the Court remarked that an order denying confirmation of a plan is not final because it "changes little," the Court illustrated that fact prominently by pointing out how "[t]he

automatic stay persists." *Bullard*, 135 S. Ct. at 1693. That, of course, is equally true here. Because the Bankruptcy Court denied Ritzen's request for stay relief, the automatic stay obviously persisted. Hence, the status quo was not changed. The court below erred by omitting this critical part of the *Bullard* standard.

The fact that the Denial Order left the status quo unchanged is of critical importance for yet another reason. That Ritzen sought stay relief invites the inquiry: for what purpose? The answer is to litigate its breach-of-contract claim in its chosen state-court forum, where the case was ready for trial, rather than in the bankruptcy forum. Because there was no other reason for Ritzen's motion and because the effect of the Denial Order was to compel the litigation of Ritzen's claim in the Bankruptcy Court (as the Sixth Circuit itself observed), the Denial Order necessarily and directly implicated the bankruptcy claims-adjudication process. But, critically, the order did not conclude that process—the Bankruptcy Court's ultimate judgment on the merits of Ritzen's claim did. From the perspective of the practical impact of the Denial Order on the larger substantive bankruptcy process to which it relates, the order clearly was not final.

In support of its contrary analysis, the Sixth Circuit looked to the list of "core proceedings" set forth in section 157(b)(2)—the provision establishing the jurisdiction of the bankruptcy courts to finally resolve various matters. Observing that core proceedings include motions for stay relief, the court reasoned that this observation supported its procedurally focused analysis. *See* Pet. App. 10a. But that observation misapprehended the import of the provision and, more importantly, the role of stay-relief

proceedings within the larger processes of bankruptcy as a whole. The relevant provision of section 157(b)(2) provides that bankruptcy courts have jurisdiction over not simply *a* motion for stay relief as a distinct procedural unit, but rather "motions to terminate, annul, or modify the automatic stay." 28 U.S.C. § 157(b)(2)(G). What this language acknowledges is that the consideration of stay relief is not tied to any specific Archimedean point in time within the bankruptcy process, but rather involves a larger process beyond any singular motion or individual disposition. More important, motions for stay relief universally implicate some other larger bankruptcy process—such motions are never granted for their own sake, but rather as they relate to and impact some other bankruptcy function.[3]

---

3. For example, a secured creditor may seek stay relief to foreclose on its collateral on the ground that the property in question is not necessary to an effective reorganization and the debtor has no equity in it, implicating the property-disposition process in bankruptcy. *See* 11 U.S.C. § 362(d)(2) (directing stay relief where the property in question is not necessary to an effective reorganization and the debtor has no equity in it); *United Sav. Ass'n of Tex.* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375 (1988) ("[Section] 362(d)(2) . . . provides that the court shall grant relief 'if (A) the debtor does not have an equity in such property [*i.e.*, the creditor is undersecured]; *and* (B) such property is not necessary to an effective reorganization." (ellipsis omitted)). Alternatively, a secured creditor may seek stay relief because the debtor is diminishing the value of its collateral in a way that imperils the secured creditor's claim, implicating the adequate-protection lien-preservation process. *See* 11 U.S.C. § 362(d)(1) (directing stay relief where the lien holder is not adequately protected); *Timbers*, 484 U.S. at 369.

In this instance, Ritzen sought stay relief to litigate its claim in state court, implicating the claims-adjudication process. If Ritzen's motion had been granted, the state-court action would have proceeded to conclusion, establishing the basis for Ritzen's claim. Because the motion was denied, Ritzen's claim was resolved through the bankruptcy claims-adjudication process in the Bankruptcy Court. The point is that it is the impact of the Denial Order on this larger process, rather than whether that order concluded a discrete stay-relief proceeding, that matters. From that perspective, the Denial Order is clearly interlocutory.

The Sixth Circuit suggested that, if an order was entered "with leave to amend" or "without prejudice," then it would not be "procedurally complete." Pet. App. 12a. But this overlooks the fact that there are many types of bankruptcy motions that may be renewed as a bankruptcy case progresses, even if the words "without prejudice" do not appear in the order denying the first such motion. Notably, a motion for stay relief premised on the debtor's bad faith is one of them. *See, e.g.*, *Green* v. *DeGiacomo (In re Inofin Inc.)*, 466 B.R. 170, 173–75 (B.A.P. 1st Cir. 2012) (noting that stay-relief denial was not final where moving party failed to make necessary showing).

Lower courts, in analyzing whether stay-relief-denial orders are immediately appealable, have found that such orders are not appealable when they do not fully resolve the creditor's claim. For example, in *In re Inofin Inc.*, the First Circuit Bankruptcy Appellate Panel reasoned that because the hearing on a motion for stay relief is meant to be a summary proceeding and does not involve a full adjudication on the merits, "it follows that when relief

from stay is denied because a moving party has failed to make the necessary showing of a colorable claim in a non-evidentiary hearing, the order denying relief would not be a final order." *Id.* at 174. This is particularly true when there is a "pending adversary proceeding encompassing the same issues." *Id.* The court concluded that, because the bankruptcy court's denial of stay relief was "inextricably intertwined with the unresolved issues in the adversary proceeding, entertaining an appeal at this time would set 'the stage for the fragmentation of appellate review.'" *Id.* at 175. Quoting this Court, the *Inofin* court noted that, "so long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal." *Id.* (brackets omitted) (quoting *Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949)).[4]

---

4. Other courts have also refused to treat an order regarding stay relief as final when, as is the case here, the merits underlying the dispute between the parties were central to the stay relief requested and were not resolved by the stay-relief order. *See Parker* v. *CSFB 2005-C3 Payson Homes, LLC (In re Parker)*, No. CV-15-02106-PHX-NVW, 2016 WL 1535176, at *4 (D. Ariz. Apr. 15, 2016) (citing *Bullard* in determining that a conditional order regarding stay relief was not "final" for purposes of appealability); *Rodriguez-Borges* v. *Lugo-Mender*, 938 F. Supp. 2d 202, 212 (D.P.R. 2013) (dismissing an appeal of an order denying stay relief for lack of appellate jurisdiction because the order "did not address, much less dispose of, the discrete dispute within the larger case," and was thus an "interlocutory order not reviewable under Section 158(a)"); *WB Family LLC* v. *Krys (In re China Med. Techs., Inc.)*, Nos. 12-13736(REG), 13 Civ. 6222(AT), 2013 WL 6667789, at *5 (S.D.N.Y. Dec. 17, 2013) (dismissing an appeal from the denial of stay relief when the bankruptcy court's order "did not completely resolve all of the matters pertaining to the discrete stay issue"); *Congress Fin. Corp.* v. *Shepard Clothing Co., Inc. (In re Shepard Clothing Co., Inc.)*, 280 B.R. 786, 789–91 (D. Mass. 2002) (finding that denial of stay relief was not inherently or automatically

In the Denial Order, the Bankruptcy Court made no determinations on the merits of Ritzen's state-law breach-of-contract claim or Ritzen's assertion of bad faith. Rather, the Bankruptcy Court withheld any final ruling on both issues, simply determining that there was not a sufficient showing of bad faith at that juncture to warrant stay relief. Critically, the court did not make a final determination regarding bad faith until its final judgment following a bench trial. *See, e.g.*, *United Phosphorus Ltd.* v. *Fox (In re Fox)*, 241 B.R. 224, 230–31 (B.A.P. 10th Cir. 1999) (holding that an order denying a motion to dismiss a case for "cause" because the case was filed in bad faith was not a final order, explaining: "Nothing in the current Order is the final word on the Debtor's good faith. The Debtor's good faith is inextricably intertwined with the merits of the case as a whole. The bankruptcy court may or may not revisit the issue of the Debtor's good faith at any time during the pending proceedings." (internal citations omitted)). Thus, the court's judgment on the merits, not the Denial Order, carried the traditional hallmarks of "finality," as that order terminated the court's association with the action, "alter[ed] the status quo[,] and fix[ed] the rights and obligations of the parties." *See Bullard*, 135 S. Ct. at 1692. Only at that point was Ritzen required to seek review in the appellate courts—which it timely did.

"final" where the bankruptcy court never made a final determination on the merits question (the value of the debtor's business)). As these decisions indicate, the proper way to analyze the relevant proceeding for finality—and therefore appealability—should be the adjudication of the merits of the claim or assertion of bad faith and whether such adjudication effectively "alters the status quo and fixes the rights and obligations of the parties." *See Bullard*, 135 S. Ct. at 1692.

B. The History of Section 158 Demonstrates That Congress Did Not Intend Orders Denying Stay Relief That Determine Where the Parties Would Litigate Their Dispute To Be Final and Immediately Appealable.

When Congress enacted section 158, it patterned its provisions after the general appellate statute: section 1291. Under the finality requirement of section 1291, an order denying relief is characteristically treated as interlocutory if the order's effect is simply to resolve where the parties will litigate a dispute. *See, e.g.*, *Caterpillar*, 519 U.S. at 74; *Gogolin & Stetler*, 886 F.2d at 104. Because nothing in the text, history, or purpose of section 158 suggests that Congress intended it to apply differently to these kinds of orders, the general rule should apply here as well.[5]

Congress first enacted section 158 as part of the Bankruptcy Amendments and Federal Judgeship Act of 1984, incorporating into section 158 the finality requirement in section 1291. Congress's election to borrow this concept properly brings with it more than 200 years of jurisprudence, and the Court's construction of section 158 in this matter is thus properly informed by reference to how finality under section 1291 has been construed. *See Taggart* v. *Lorenzen*, __ U.S. __, 139 S. Ct. 1795, 1801

5. Section 1291 by itself has a role to play in the bankruptcy appellate context in cases in which the district court exercises its original bankruptcy jurisdiction and appeals are taken from the court's orders as such. *See* 28 U.S.C. § 1334. This further supports the conclusion that the treatment of orders denying stay relief that have the effect of determining where the parties may litigate their dispute should be treated as interlocutory.

(2019) ("When a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'") (quoting *Hall* v. *Hall*, 584 U.S. __, 138 S. Ct. 1118, 1128 (2018)). Critically, the general finality concept does not traditionally encompass orders denying motions that simply resolve a dispute over where to litigate.

Although the finality analysis in bankruptcy is "different" from the analysis in ordinary civil litigation, *Bullard*, 135 S. Ct. at 1692, the relevant difference pertains to discerning the boundaries of discrete proceedings within a bankruptcy case for purposes of determining whether orders concluding such proceedings are immediately appealable. *See Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, 547 U.S. 651, 656 n.3 (2006) ("[U]nder section 158, litigants in bankruptcy court do not have to wait until the final order resolving the entire bankruptcy case is entered, but may appeal from the order that "finally dispose[s] of [the] discrete dispute" between the parties within the larger umbrella of the bankruptcy case." (quoting *In re Saco Local Dev. Corp.*, 711 F.2d 441, 444 (1st Cir. 1983) (Breyer, J.))). The critical point is that an order denying relief that merely determines where the parties will litigate is not an order that conclusively terminates anything.

Under the former Bankruptcy Act of 1898, replaced in 1979 with the current Bankruptcy Code, bankruptcy appeals were governed by sections 24a, 24b, and 25a. *See* Act of July 1, 1898, ch. IV, §§ 24–25, 30 Stat. 544, 553 (as amended) (repealed 1979) (the "Bankruptcy Act"). Under these provisions, the ability to take an immediate appeal rested on whether the particular order had been entered in either a bankruptcy "proceeding" or a

"controvers[y] arising in bankruptcy proceedings." *See Taylor* v. *Voss*, 271 U.S. 176, 180–81 (1926).[6] In turn, appeals of "proceedings" were governed by section 24b.[7] "Proceedings" encompassed "those matters of an administrative character, including questions between the bankrupt and his creditors, which are presented in the ordinary course of the administration of the bankrupt's estate." *Id.* at 181.

Parties to a bankruptcy action had an immediate right to appeal interlocutory or final orders entered in "controversies," but leave to appeal was required for an order entered in a "proceeding," other than with respect to three discrete categories of orders delineated in section 25a, for which an immediate right of appeal was provided. *See Meyer* v. *Kenmore Granville Hotel Co.*, 297 U.S. 160, 163–65 (1936).[8] Under these provisions, orders regarding

---

6. Section 24a vested "appellate jurisdiction of *controversies* arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases." Bankruptcy Act§ 24a (emphasis added) (as codified at 11 U.S.C. § 47(a) (1934)).

7. Section 24b vested in the courts of appeals "jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 48 of this title) the *proceedings* of the several inferior courts of bankruptcy within their jurisdiction," providing further that "[s]uch power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 48 of this title to be allowed in the discretion of the appellate court." Bankruptcy Act § 24b (emphasis added) (as codified at 11 U.S.C. § 47(b) (1934)).

8. Section 25a directed that "[a]ppeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of

plan confirmation and the automatic stay were treated as orders in "proceedings" for which no immediate appellate right existed. *See id.* at 165–66.

In 1978, Congress enacted the current Bankruptcy Code, and with it a new provision governing bankruptcy appeals, 28 U.S.C. § 1293(b). In 1984, Congress replaced section 1293(b)[9] with section 158. Section 158(a) vests the districts courts with jurisdiction over appeals from "final judgments, orders, and decrees and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges" and section 158(d) vests the courts of appeals with jurisdiction over "all final decisions, judgments, orders, and decrees entered" by district courts sitting in review of the decisions of bankruptcy judges.[10]

---

bankruptcy to the circuit courts of appeal of the United States and the United States Court of Appeals for the District of Columbia and to the supreme courts of the Territories in the following cases, to wit: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of $500 or over." Bankruptcy Act § 25a (as codified at 11 U.S.C. § 48(a) (1934)).

9. Section 1293(b) generally vested appellate jurisdiction over a bankruptcy judge's final orders and, with leave, interlocutory orders. *See* Laura B. Bartell, *The Appeal of Direct Appeal—Use of the New 28 U.S.C. § 158(d)(2)*, 84 Am. Bankr. L.J. 145, 150–51 (2010). As adopted, the wording of section 1293 was "nearly incomprehensible." *Moxley* v. *Comer (In re Comer)*, 716 F.2d 168, 173 n.9 (3d Cir. 1983) (citing 16 C. Wright et al., *Federal Practice and Procedure* § 3926, at 39 (1982 Supp.)).

10. Section 158 also vested the courts of appeals with jurisdiction over the final orders of bankruptcy appellate panels established in certain circuits to review the decisions of bankruptcy judges in lieu of the district courts.

See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, sec. 104(a), § 158, 98 Stat. 333, 341.

In 2005, section 158 was amended to add a mechanism for direct review in the courts of appeal of certain certified orders of bankruptcy judges.[11] *See* Bankruptcy Abuse Prevention and Consumer Protection Act, Pub. L. No. 109-8, sec. 1233(a), § 158, 119 Stat. 23, 202–04 (2005). This amendment was added after this Court's decision in *Connecticut National Bank* v. *Germain*, 503 U.S. 249 (1992). In *Germain*, this Court held that, although Congress had failed to include in section 158(d) explicit appellate jurisdiction of the courts of appeal over interlocutory orders of the district courts in bankruptcy matters, the circuit courts still possess jurisdiction over such orders under section 1292. *Id.* at 251–54. The *Germain* decision illustrates that section 158 is not the exclusive statute governing bankruptcy appeals, but that it works in concert with sections 1291 and 1292. *Id.* at 253 (recognizing that sections 158, 1291, and 1292 "overlap" and that "each section confers jurisdiction over cases that the other section does not reach").

Nothing in this history supports the conclusion that Congress intended orders denying motions for stay relief that resolve where the parties will litigate a dispute to be

11. Congress previously amended section 158 in 1994, adding to subsection (a) a right of appeal in the district court from a bankruptcy judge's "interlocutory" orders increasing or decreasing the exclusive period a debtor has to file a chapter 11 plan under section 1121(d) of the Bankruptcy Code. *See* Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, sec. 102, § 158(a), 108 Stat. 4106, 4108.

treated as final and immediately appealable. If anything, the history supports the opposite conclusion and, thus, aligns with the general practice under section 1291 and the treatment of orders determining the forum in which parties will resolve their dispute.

C. Analogous Orders Denying Motions Involving Litigation Over Where To Litigate Are Not Typically Final.

A district court may consider various types of motions that seek to change the forum of a dispute. For example, under 28 U.S.C. § 157(d), a "district court may withdraw, in whole or in part, any case or proceeding referred [to the bankruptcy court] under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d). When a district judge exercising bankruptcy jurisdiction is faced with a request to withdraw the reference of a case or proceeding from a bankruptcy judge, the judge's order denying such a request is interlocutory and not subject to immediate appeal. As the Fifth Circuit has explained,

> A district court's decision whether or not to withdraw a proceeding from the bankruptcy court does not end the litigation, but rather involves the selection or designation of the forum in which the merits will be finally determined. Such a decision is analogous to an order granting or refusing transfer of venue from one district court to another or an order granting or refusing referral of a matter to a magistrate. None of these orders is "final" for purposes of 28 U.S.C § 1291.

In re Lieb, 915 F.2d 180, 184 (5th Cir. 1990); *see also Parsons*, 392 F.3d at 888 ("No court of appeals has engaged in appellate review of an order either granting or denying withdrawal of a reference.") (collecting cases).[12] There is no reason to conclude that an order denying stay relief which has the same effect should be treated any differently.

Similarly, under 28 U.S.C. § 1334(c)(2), the district court is required to abstain from hearing a state-law cause of action in favor of its adjudication in state court if the claim may be timely adjudicated in the state forum and the action could not have been commenced in federal court absent bankruptcy jurisdiction. 28 U.S.C. § 1334(c)(2). If a district judge faced with an abstention request under this provision denies the request, there is no doubt that such order would be interlocutory. *See, e.g.*, *Beightol* v. *UBS Painewebber Inc.*, 354 F.3d 187, 189 (2d Cir. 2004) (Sotomayor, J.) ("[T]he challenged [abstention denial] order merely determined where the case would be adjudicated; it did not resolve any of the substantive issues

12. A motion to withdraw the reference is, in essence, a motion to transfer the "case or proceeding" from the bankruptcy court to the district court. It does not resolve the dispute; it merely asks that the dispute be resolved in a different forum. *See Hialeah Hosp., Inc.* v. *Dep't of Health & Rehab. Servs, (In re King Mem'l Hosp., Inc.)*, 767 F.2d 1508, 1510 (11th Cir. 1985) ("Motions to withdraw reference from the bankruptcy court under § 157(d) essentially only determine the forum in which final decisions will be reached," and thus are not final); *Dalton* v. *United States (In re Dalton)*, 733 F.2d 710, 714 (10th Cir. 1984) ("It is plain that the withdrawal of reference and transfer of venue orders merely involve the selection or designation of the forum in which final decisions will be ultimately reached. They do not finally end the litigation.").

raised in the lawsuit . . . . [D]ecisions not to abstain are not so conclusive of the litigation or effectively unreviewable as part of an eventual final judgment as to be appealable as collateral orders . . . ."). Once again, there is no reason to conclude that an order denying stay relief which has the same effect should be treated any differently.

Likewise, when a federal court denies a motion to remand a matter which has been removed from state court, such orders are interlocutory. Absent unusual circumstances, they are not immediately appealable. *See* 11 U.S.C. § 1452(b) (providing that order denying remand of case removed from state court in bankruptcy matter is not reviewable); *Caterpillar*, 519 U.S. at 74 ("An order denying a motion to remand, standing alone, is obviously not final and immediately appealable as of right . . . ." (marks, brackets, and ellipsis omitted)); 15A Charles Wright et al., *Federal Practice and Procedure* § 3914.11, at 697 (3d ed. 1992) ("One aspect of appealing orders as to removal and remand remains blessedly simple. An order denying remand is not final."). Once again, the reason is because such orders merely resolve litigation over where to litigate, not the litigation itself. There is no reason to conclude that an order denying stay relief which has the same effect should be treated as final.[13]

13. In contrast, an order denying stay relief that has the effect of settling where the parties will litigate their dispute is not helpfully analogous to an order denying an injunction. Although some courts have done so, *see*, *e.g.*, *Di Pierro v. Taddeo (In re Taddeo)*, 685 F.2d 24, 26 n.4 (2d Cir. 1982), the analogy is not particularly probative for several reasons. First, the automatic stay is imposed by statute, not by judicial order. Accordingly, there are no case-specific criteria for its imposition—it arises by operation of law upon the commencement of every bankruptcy

II. Even If Some Orders Denying Stay Relief Could Be Immediately Appealable, Denial of a Stay-Relief Motion Premised on Bad Faith is Not.

The successful administration of bankruptcy relief rests on the debtor's good faith. *See, e.g., Cohen v. de la Cruz*, 523 U.S. 213, 217 (1998) ("The Bankruptcy Code has long prohibited debtors from discharging liabilities

---

case. Second, Congress has long treated appellate jurisdiction over orders granting or denying injunctive relief specially and particularly. Because of both the importance and sensitivity of injunctive relief, Congress has taken the unusual step of vesting appellate jurisdiction in the courts of appeals over "[i]nterlocutory orders of the district courts . . . granting, continuing, modifying, refusing or dissolving junctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1). Notably, however, Congress has not expressly done so with orders granting or denying stay relief, and it should not be presumed that Congress intended the general provisions governing bankruptcy appeals to operate *sub silentio* to vest the courts of appeals with jurisdiction over a category of orders that it otherwise has expressly treated elsewhere. *Whitman* v. *Am, Trucking Ass'ns., Inc.*, 531 U.S. 457, 468 (2001) ("Congress . . . does not, one might say, hide elephants in mouseholes."). The best analysis of this issue is that of the First Circuit in *Pinpoint IT Servs., LLC v. Rivera (In re Atlas IT Export Corp.)*, 761 F.3d 177 (1st Cir. 2014). There the court of appeals recognized that, while injunctions and the automatic stay both have the effect of enjoining parties from taking certain actions, the automatic stay is distinct because it is the "default position." *Id.* at 184. By making the automatic stay the default, the injunction analysis is altered because "Congress has already decided the balance of equities." *Id.* at 185. As such, "the *automatic* stay's continued operation—thanks to the denial of stay relief—should not be treated for finality purposes like an injunction entered at a case's start after a judge has sifted [all] the familiar injunction factors." *Id.*

incurred on account of their fraud, embodying a basic policy animating the Code of affording relief only to an 'honest but unfortunate debtor.'") (internal citations omitted). Hence, the obligation of good faith permeates the entire process. To begin with, a debtor must file its bankruptcy petition in good faith. *Albany Partners, Ltd. v. Westbrook (In re Albany Partners, Ltd.)*, 749 F.2d 670, 674 (11th Cir. 1984); 2 *Collier* ¶ 303.06 ("There are court-imposed requirements of debtor good faith when a voluntary petition is filed."). Likewise, a debtor's request to convert a case from one chapter to another must be made in good faith. *See* 11 U.S.C. § 348(f)(2). A plan of reorganization must also be presented in good faith. *See* 11 U.S.C. §§ 1129(a)(3), 1325(a)(3).

So important are these considerations that a bankruptcy court may consider, *sua sponte*, both the issue of whether a case was filed in good faith and whether, on grounds of bad faith, the court should lift the automatic stay or dismiss the case, both of which may be ordered "for cause." *See, e.g.*, *In re Anderson*, Case No. 3:14-bk-09568, 2015 WL 534423, at *3 (Bankr. M.D. Tenn. Feb. 5, 2015) (recognizing ability of courts to *sua sponte* dismiss bad faith bankruptcy filings); *Furness* v. *Lilienfield*, 35 B.R. 1006, 1010–11 (D. Md. 1983) ("The law on the propriety of a court raising on its own motion questions of good faith is no different with regard to the lifting of the automatic stay. . . . [C]ourts have considered and granted modifications of the automatic stay imposed under 11 U.S.C. § 362(a), *sua sponte* when the circumstances required. . . . [T]his Court determines that it has the power to consider, *sua sponte*, lifting the automatic stay . . . and will do so.") (collecting cases).

Because the requirement of good faith permeates the entire bankruptcy case, it is not until plan confirmation (or dismissal of the case) that a bankruptcy court finally determines the issue by finding, for example, that section 1129(a)(3)'s good faith requirement has been satisfied. *See* 11 U.S.C. § 1129(a)(3). Thus, unless and until that point is reached, the issue is simply not finally resolvable. It follows that an order denying a motion premised on the debtor's bad faith presented at an early stage of the case cannot finally resolve the issue and is thus not final.[14]

Likewise, the finality of an order denying a motion for stay relief premised on the debtor's bad faith should be the same as the finality of an order denying a motion to dismiss a case premised on the same grounds. Both stay relief and dismissal of a case may be granted for cause. As noted, cause in both settings includes the debtor's bad faith. Because an order denying a motion to dismiss a case premised on the debtor's bad faith is an interlocutory order, an order denying a motion for stay relief premised on the same issue should be as well.

---

14. A motion premised on bad faith can be renewed any time up until plan confirmation. As the Tenth Circuit Bankruptcy Appellate Panel, citing section 1129(a)(3), held: "Nothing in the current Order is the final word on the Debtor's good faith. The Debtor's good faith is inextricably intertwined with the merits of the case as a whole. The bankruptcy court may or may not revisit the issue of the Debtor's good faith at any time during the pending proceedings." *In re Fox*, 241 B.R. at 226–31 (internal citations omitted); *see also In re 7th St. & Beardsley P'ship*, 181 B.R. 426, 431 (Bankr. D. Ariz. 1994) (explaining that whether or not the debtor's actions were undertaken "in good faith, however, is still subject to final determination at the final confirmation hearing").

The vast majority of the courts of appeal to have considered the issue have concluded that the denial of a motion to dismiss a bankruptcy case is not final. *See, e.g.*, *In re Donovan*, 532 F.3d at 1137 (recognizing that denial of motion to dismiss bankruptcy case is not final); *Fruehauf Corp.* v. *Jartran, Inc. (In re Jartran, Inc.)*, 886 F.2d 859, 863–64 (7th Cir. 1989) (same); *Promenade Nat'l Bank* v. *Phillips (In re Phillips)*, 844 F.2d 230, 235–36 (5th Cir. 1988) (same); *Farber* v. *405 N. Bedford Dr. Corp. (In re 405 N. Bedford Dr. Corp.)*, 778 F.2d 1374, 1379 (9th Cir. 1985) (same). This rule applies equally to orders denying a motion to dismiss premised on the debtor's bad faith. *See, e.g.*, *In re Fox*, 241 B.R. at 226–30.

In *Fox*, the creditor sought reversal of an order denying a request for dismissal of the debtor's bankruptcy case, arguing that the bankruptcy court had erred in finding that the debtor had filed its bankruptcy petition in good faith. *Id.* at 226. Rejecting appellate jurisdiction, the court explained that "neither the legal issue nor the factual issue [of bad faith] are 'final' determinations that render the Order reviewable," as both are "threshold inquiries into the merits of the Debtor's case." *Id.* at 231. In other words, "[n]othing" in the order denying the motion to dismiss was "the final word on the Debtor's good faith," as this issue was "inextricably intertwined with the merits of the case as a whole." *Id.* The *Fox* court recognized that only when the bankruptcy case was finally resolved, either by dismissal or plan confirmation under 11 U.S.C. § 122(a)(3), or until the parties settled the issues underlying the dispute, thereby precluding the need to revisit the issue of good faith, would the good faith determination be final for purposes of appeal. *Id.* at 231 n.13.

The same reasoning applies to an order denying a motion for stay relief that is premised on the debtor's bad faith. As the court below acknowledged, had Ritzen moved to dismiss the bankruptcy case on the same grounds that it presented in its motion for stay relief, an order denying dismissal of the case would not have been immediately appealable. *See* Pet. App. 12a. The appealability of an order should not depend on the label affixed to the motion. *See, e.g.*, *Andrews* v. *United States*, 373 U.S. 334, 338 (1963) ("[A]djudication upon the underlying merits of claims is not hampered by reliance upon the titles petitioners put upon their documents."); *Fleet Mortg. Corp.* v. *Lynts*, 885 F. Supp. 1187, 1192 (E.D. Wis. 1995) ("To hold that Chicago Title waived its right to arbitration merely because it titled its brief a 'motion to dismiss' rather than a 'motion to stay the proceedings' would be to favor form over substance . . . ."); *City & Cty. of S.F.* v. *Muller*, 2 Cal. Rptr.. 383, 386 (Cal. Dist. Ct. App. 1960) ("The nature of a motion is determined by the nature of the relief sought, not the label attached to it. The law is not a mere game of words."). For the same reasons that an order denying a motion to dismiss a bankruptcy case on grounds of bad faith is interlocutory, so too is the Denial Order.

On a practical level, under the Sixth Circuit's approach, litigants will be able to manipulate the appealability of orders resolving the same question (*i.e.* bad faith) simply by selecting one procedural vehicle for presenting it over another. This is true because a denial of a motion to dismiss for "cause" as a bad faith filing is plainly interlocutory. Yet, a denial of a motion for stay relief for "cause" premised on the same grounds—and analyzed under the same legal standard—would not be universally viewed as final. Such an approach would only serve to foster procedural gamesmanship.

III. The Sixth Circuit's Ruling Violates the Policy Against Piecemeal Appeals and, If Uncorrected, Will Improperly Expand the Types of Proceedings Subject to Immediate Appeal.

For a variety of reasons, piecemeal appeals have long been disfavored. *See, e.g.*, *Firestone Tire & Rubber Co.* v. *Risjord*, 449 U.S. 368, 374 (1981) (noting that "[p]ermitting piecemeal appeals would undermine the independence of the district judge, as well as the special role that individual plays in our judicial system"); *Balt. Contractors* v. *Bodinger*, 348 U.S. 176, 178–79 (1955) (noting that "Congress has long expressed a policy against piecemeal appeals" and that "Section 22 of the Judiciary Act of 1789, 1 Stat. 73, 84, provided that appeals in civil actions could be taken to the circuit courts only from final decrees and judgments. That requirement of finality has remained a part of our law ever since, and now appears as § 1291 of the Judicial Code."), *overruled on other grounds by Gulfstream Aerospace Corp.* v. *Mayacamas Corp.*, 485 U.S. 271 (1988). As this Court has explained, "[f]rom the very foundation of our judicial system the object and policy of the acts of congress in relation to appeals and writs of error, (with the single exception of a provision in the act of 1875 in relation to cases of removal, which was repealed by the act of 1887) have been to save the expense and delays of repeated appeals in the same suit, and to have the whole case and every matter in controversy in it decided in a single appeal." *Id.* at 178 (quoting *McLish* v. *Roff*, 141 U.S. 661, 665—66 (1891)).

Among other things, the single-appeal rule helps ensure the "efficient administration of justice in the federal courts." *Digital Equip. Corp.* v. *Desktop Direct,*

Inc., 511 U.S. 863, 868 (1994). As this Court has explained, this policy is so important that the exceptions to it (*i.e.*, the collateral order doctrine) are "stringent." *Id.* The Court has "warned that the issue of appealability under § 1291 is to be determined for the entire category to which a claim belongs, without regard to the chance that the litigation at hand might be speeded, or a 'particular injustice' averted, by a prompt appellate court decision." *Id.* (internal citations and brackets omitted).

The single-appeal rule also promotes judicial economy in that the rule is thought to encourage settlement. *See* 15A Charles Alan Wright et al., *Federal Practice and Procedure* § 3907 (2d ed. 2016); *see also Nat'l Union Fire Ins. Co. of Pittsburg* v. *Donaldson Co., Inc.*, No. 10-4948 (JRT/TNL), 2016 WL 4186930, at *2 (D. Minn. Aug. 8, 2016) ("Allowing piecemeal appeals at this stage would only water down the parties' existing incentives to hastily finish up or settle what remains undecided.").

These considerations are particularly relevant in the bankruptcy context, which depends for its success on the settlement of claims, and where, by definition, resources are scarce. *See, e.g.*, *Harlem-Irving Realty, Inc.* v. *Wieboldt Stores, Inc. (In re Wieboldt Stores, Inc.)*, 68 B.R. 578, 580 (N.D. Ill. 1986) ("'[I]nterlocutory bankruptcy appeals should be the exception rather than the rule; we do not want to encourage piecemeal appeals."); *In re Hunt Int'l Res. Corp.*, 57 B.R. 371, 372 (N.D. Tex. 1985) ("Because interlocutory appeals interfere with the overriding goal of the bankruptcy system, expeditious resolution of pressing economic difficulties, they are not favored.") (internal citations omitted). As this Court has noted, "a chief purpose of the bankruptcy laws is to secure

a prompt and effectual administration and settlement of the debtor's estate within a limited period." *Katchen*, 382 U.S. at 328 (marks omitted). Quite clearly, applying the single-appeal principle robustly helps achieve these goals. As the Court observed in *Bullard*:

> We think that in the ordinary case treating only confirmation or dismissal as final will not unfairly burden a debtor. He retains the valuable exclusive right to propose plans, which he can modify freely. The knowledge that he will have no guaranteed appeal from a denial should encourage the debtor to work with creditors and the trustee to develop a confirmable plan as promptly as possible. And expedition is always an important consideration in bankruptcy.

135 S. Ct. at 1694 (internal citation omitted).

In contrast, the approach taken by the Sixth Circuit would require piecemeal appeals in a broad variety of bankruptcy settings, leading to protracted delays at the outset of many bankruptcy cases and the forced imposition of the costs of appellate litigation on those with insufficient resources to bear them. Left standing, the Sixth Circuit's approach would essentially transform any order that disposed of a procedurally defined contested action within a bankruptcy case into a final disposition subject to immediate appeal.

In particular, if uncorrected, the Sixth Circuit's holding would render virtually any order concluding a contested "core proceeding" a "final" order subject to immediate appeal. This would have far-reaching

implications, given the breadth of matters covered by "core proceedings," many of which are contested. *See, e.g.*, 28 U.S.C. § 157(b)(2)(A) (including as core proceedings "matters concerning the administration of the estate"); *id.* § 157(b)(2)(O) (including "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship"). For example, a motion to approve a settlement involving the bankruptcy estate is a core proceeding under section 157(b)(2)(A). *See*, *e.g.*, *In re Derosa-Grund*, 567 B.R. 773, 781 (Bankr. S.D. Tex. 2017). Ordinarily, an order denying approval of a settlement is not final. *See*, *e.g.*, *Lockwood* v. *Snookies, Inc. (In re F.D.R. Hickory House, Inc.)*, 60 F.3d 724, 726 (11th Cir. 1995) (holding that "an order *approving* a compromise is final because it finally determines the rights of the parties. An order *disapproving* a compromise, however, is not final. It determines no rights and settles no issues. It merely leaves the question open for future adjudication." (brackets and ellipsis omitted)). Under the Sixth Circuit's approach, however, an order denying approval of a settlement would be final, as it would conclude a procedurally distinct action within a case.

The Sixth Circuit down-played this result, stating "we do not assume that being listed as a 'core proceeding' in § 157(b)(2) is either necessary or sufficient to be an appealable 'proceeding' under § 158(a)." Pet. App. 10a (brackets omitted). Actually applying the court's two-part test, however, would result in virtually all orders denying contested motions that have the effect of concluding a procedurally-defined core proceeding (such as an order denying approval of a settlement) being final, unless specifically designated "without prejudice." The Sixth

Circuit's approach is fundamentally inconsistent with not only this Court's standard in *Bullard*, but also the principles and concerns that undergird the concept of finality itself.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below and remand the case with instructions to consider the underlying merits of the Denial Order.

Respectfully submitted,

Shane G. Ramsey
Counsel of Record
James A. Haltom
John T. Baxter
Nelson Mullins Riley
& Scarborough LLP
150 Fourth Avenue, North
Suite 1100
Nashville, TN 37219
(615) 664-5300
shane.ramsey@nelsonmullins.com

James K. Lehman
A. Mattison Bogan
William C. Wood, Jr.
Nelson Mullins Riley
& Scarborough LLP
Meridian
1320 Main Street, 17th Floor
Columbia, SC 29201
(803) 799-2000

G. Eric Brunstad, Jr.
Dechert, LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

Counsel for Petitioner

APPENDIX

APPENDIX — STATUTORY PROVISIONS INVOLVED

1. Section 157 of Title 28 of the United States Code provides in pertinent part:

Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

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

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

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

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

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

2. Section 158 of Title 28 of the United States Code provides in pertinent part:

Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

* * * * *

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its

own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken; and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A); then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

3. Section 1291 of Title 28 of the United States Code provides:

Final decisions of the district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

4. Section 1292 of Title 28 of the United States Code Provides in pertinent part:

Interlocutory Decisions

* * * * *

(b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an appeal to be taken from such order, if application is made to it within ten days after the entry of the order: Provided, however, That application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order.

5. Section 362 of Title 11 of the United States Code provides in pertinent part:

Automatic Stay

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

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

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

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

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

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

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

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

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

* * * * *

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

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

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

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

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

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of

the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—

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

(B) the debtor has commenced monthly payments that—

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

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

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

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

(B) multiple bankruptcy filings affecting such real property.

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