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

REPLY BRIEF

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ARGUMENT

Respondent Jackson concedes that the effect of the order denying stay relief in this case was to compel the litigation of Ritzen's breach-of-contract claim in the Bankruptcy Court, rather than the state court where the matter had been pending. *See* Resp. Br. 13. Jackson does not deny that, ordinarily, orders denying relief that merely determine where the parties will litigate a dispute are not final. Rather, Jackson argues for a special rule in bankruptcy, claiming that the order here was final "because it conclusively resolved the parties' dispute regarding the stay relief proceeding." Resp. Br. 1. But the Court rejected a substantially identical argument in *Bullard v. Blue Hills Bank*, __ U.S. __, 135 S. Ct. 1686 (2015) and should likewise reject Jackson's argument here. As the Court explained in *Bullard*, the test is not whether an order resolves a discrete proceeding *per se*, but rather whether, taking into account the relevant bankruptcy process in question, the order "alters the status quo and fixes the rights and obligations of the parties." *Bullard*, 135 S. Ct. at 1692. Applying that standard here, the stay-relief order was not final because it merely maintained the status quo and did not fix any party's substantive rights and obligations.

Seeking to avoid this conclusion, Jackson attempts to recast the *Bullard* finality standard as an inquiry into whether an order "allows the bankruptcy to move forward and alters the legal relationship between the parties, or otherwise has significant consequences." Resp. Br. 1. But that is not the standard this Court established. Moreover, the standard Jackson offers cannot be right because, if applied to the facts of *Bullard*, it would result in a conclusion contrary to the one the Court actually reached.

Jackson's amici also attempt to recast the *Bullard* standard. The United States contends that the proper approach is to identify the relevant bankruptcy "proceeding," and then ascertain "whether the order effects a 'final' resolution of that 'proceeding.'" U.S. Br. 7–8. The United States asserts that a matter qualifies as a proceeding if it "constitute[s] a 'discrete' procedural unit within the case" that is "'significant'—that is, its resolution must change the 'status quo' and fix 'the rights and obligations of the parties.'" *Id.* at 8. The government concludes that "[a]n order is final if it terminates the relevant proceeding." *Id.* The chief problem with this approach is that it focuses on the nature of the proceeding itself, rather than on the effect of an order disposing of the issue raised in the proceeding. That is also not the correct standard. Among other things, applying it to the circumstances in *Bullard* would again yield a result contrary to the Court's holding.

The National Association of Consumer Bankruptcy Attorneys ("NACBA") similarly focuses on the nature of the relevant proceeding rather than the finality of the particular order. According to the amicus, any order granting or denying stay relief is "final" if such order "fix[es] the rights and obligations of the parties." NACBA Br. 4. Notably absent from this approach is whether the order alters the status quo. As the Court observed in *Bullard*, the status quo in bankruptcy includes the continuation of the automatic stay. *See Bullard*, 135 S. Ct. at 1692. The Denial Order in this case affected only procedural rights—it did not fix any substantive rights and obligations of the parties. Indeed, the Denial Order continued the status quo—it certainly did not alter it. The Denial Order simply determined where Ritzen's claim would be litigated.

Jackson's and its amici's other arguments are similarly unpersuasive. Importantly, Jackson misperceives the role of the automatic stay in the administration of bankruptcy cases, arguing that it constitutes a "building block" of bankruptcy. Resp. Br. 19. But the stay is not a bankruptcy objective like the determination of claims, the confirmation of plans, or the discharge of debts. Rather, it is a utility provision that facilitates these objectives. Considered in context, an order denying stay relief that merely determines where the parties will adjudicate the merits of a claim is not final because it simply permits the adjudication to occur in the bankruptcy forum. The relevant larger process is the claims-adjudication process, and the Denial Order was not final until the conclusion of that process. Moreover, Jackson's contention that the Denial Order does not implicate the bankruptcy claims-adjudication process is the opposite of what it contended below. In the Bankruptcy Court, Jackson argued that Ritzen's motion constituted an informal proof of claim that effectively triggered that very process. As a matter of law and logic, the Denial Order directly implicated the bankruptcy claims-adjudication process because the entire point of the order was to determine where the parties would litigate their dispute.

Ultimately, Jackson and its amici fail to recognize that, regardless of whether stay-relief motions trigger a discrete proceeding within the bankruptcy case, orders denying such relief are not final when they simply determine forum. If deemed final, such orders would facilitate piecemeal appeals—a result the finality requirement is intended to prevent. This Court has consistently recognized that any potential costs arising from delayed appeals are offset by the systemic benefits of avoiding piecemeal appeals. Jackson's and its amici's

arguments unpersuasively challenge that long-standing conclusion, and thus should be rejected.

I. Jackson and Its Amici Misconstrue the *Bullard* Finality Standard.

Jackson and its amici never adequately explain how the stay-relief denial in this case "alter[ed] the status quo and fix[ed] the rights and obligations of the parties," as *Bullard* requires. *Bullard*, 135 S. Ct. at 1692. Instead, they recast the *Bullard* standard—revising its elements. *See, e.g.*, Resp. Br. 2 ("An order is immediately appealable if it finally resolves a discrete dispute within the larger bankruptcy case—i.e., if it allows the bankruptcy to move forward and alters the legal relationships among the parties, or otherwise has significant consequences."); *see also* U.S. Br. 8, 13, 14, 17–18 (defining the *Bullard* standard as whether the order has "significant consequences");[1] NACBA. Br. 4 (citing the *Bullard* standard as only requiring that the order "fix[] the rights and obligations

1. The government concedes the relevance of the "status quo" analysis, U.S. Br. 8, but nonetheless focuses primarily on the phrase "significant consequences." This Court's use of "significant consequences" in *Bullard* undercuts the government's use. The Court explained the phrase as follows:

> When confirmation is denied *and the case is dismissed as a result,* the consequences are similarly significant. . . . Dismissal lifts the automatic stay . . . .
>
> Denial of confirmation with leave to amend, by contrast, changes little. The automatic stay persists. The parties' rights and obligations remain unsettled. . . . "Final" does not describe this state of affairs.

135 S. Ct. at 1692–93.

of the parties," omitting whether the order also "alters the status quo").

The reason for this is clear: the Denial Order neither altered the status quo nor fixed the rights of the parties. The status quo was left unaltered, as the automatic stay remained in place after its entry,[2] and the court made no ruling on the merits of Ritzen's claim, thereby leaving unfixed the parties' rights and obligations. All the Denial Order resolved was the litigation forum.

Instead of applying the *Bullard* standard as the Court articulated it, Jackson and its amici focus primarily on the particular "proceeding" resolved by the order, specifically whether the proceeding may be said to constitute a "discrete dispute[] within the larger case." *Bullard*, 135 S. Ct. at 1692 (quoting *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co*, 547 U.S. 651, 657 n.3 (2006)). For example, Jackson argues that "the relevant 'proceeding' is the discrete process of resolving a motion for relief from the automatic stay, which terminates when relief is granted or conclusively denied." Resp. Br. 18. Similarly, the government argues that "[a] 'proceeding' is a discrete and significant dispute within the bankruptcy case, and an order is 'final' if it terminates such a proceeding." U.S. Br. 11; *see also* NACBA Br. 9.

Although the Court in *Bullard* made use of the "discrete dispute" concept as a means to contextualize

2. Jackson recasts the "status quo" analysis, arguing, among other things, that stay-relief denial alters the status quo because the creditor "loses its choice of forum." Resp. Br. 24. This is incorrect. The automatic stay *is* the "status quo" as of the petition date. *See Bullard*, 135 S. Ct. at 1693.

its analysis, 135 S. Ct. at 1692 (citing *Howard Delivery Serv., Inc.*, 547 U.S. at 657, n.3), it did so to identify the distinguishing aspect of bankruptcy cases as involving "'an aggregation of individual controversies,' many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor," *id.* at 1691 (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b], p. 5-42 (16th ed. 2014)). Within this framework, the Court determined that finality rested on whether the order finally concluded the larger confirmation process of which the proceeding in question (consideration of the debtor's preferred plan) was but a part. Jackson and its amici miss this vital consideration.

Viewed in its entirety, the finality standard articulated in *Bullard* is not circumscribed by whether the order in question "finally disposes of a discrete dispute within the larger case," has "significant consequences," or resolves a procedurally defined "proceeding" in some narrow sense. If that were true, every order resolving a contested matter would be immediately appealable, a result expressly rejected in *Bullard*. 135 S. Ct. at 1694. Yet Jackson and its amici argue for a rule that would lead to exactly that result.

In urging their revisionist approach, Jackson and its amici rely on the list of "core proceedings" set out in 28 U.S.C. § 157 as the relevant benchmark for determining what proceedings result in final orders.[3] But numerous

3. To the extent Jackson, its amici, and the Sixth Circuit interpret section 158's citation to section 157 as applying to the list of core proceedings in 157(b), such interpretation violates the "rule of the last antecedent." The relevant language of section 158 reads: "The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and

"core proceedings" are resolved by orders that are plainly not final. Most relevant here, motions to dismiss a bankruptcy case are "core proceedings" under section 157(b)(2)(A) and (O). *See, e.g.*, *In re Segal*, 527 B.R. 85, 88 (Bankr. E.D.N.Y. 2015) (recognizing debtor's motion to dismiss his case as a "core proceeding"). As the court below effectively conceded, an order denying a motion to dismiss would not be immediately appealable, *see* Pet. App. 16a, but under Jackson's test it would be because it would resolve a procedurally defined "core proceeding."[4]

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decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title." The rule of the last antecedent establishes that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Lockhart v. United States*, __ U.S. __, 136 S. Ct. 958, 962 (2016). Under this rule, the phrase "under section 157" modifies the language "referred to the bankruptcy judges" and not "proceedings." Accordingly, the phrase points to the general referral language of section 157, not the list of core proceedings.

4. Other core proceedings are resolved through non-final motions. For example, motions to transfer venue are core proceedings under section 157(b)(2)(A) and (O). *See, e.g.*, *Storage Equities, Inc. v. Delisle*, 91 B.R. 616, 618 (N.D. Ga. 1988). Yet, orders granting or denying venue-transfer motions are not immediately appealable. *See, e.g., Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 25 (1988) (considering venue-transfer denial via interlocutory appeal under section 1292(b)).

A motion to approve a settlement under Bankruptcy Rule 9019 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). But whether such an order is final depends on whether the relief is granted or denied. *See, e.g.*, *Lockwood v. Snookies, Inc.*, 60 F.3d 724, 726 (11th Cir. 1995) (holding that approval of settlement was final but denial was interlocutory).

Jackson and its amici also tout the importance of "prejudice," with Jackson implying incorrectly that the Denial Order in this case was entered "with prejudice." Resp. Br. 9–10, 18. In truth, however, the Bankruptcy Court's order was silent on the issue, and for good reason. The presumption in bankruptcy practice is that a stay-relief motion may be renewed at any time during the course of the bankruptcy as circumstances change. *See, e.g.*, *Pinpoint IT Servs., LLC v. Rivera (In re Atlas Export Corp)*, 761 F.3d 177 (1st Cir. 2014) (recognizing that stay-relief orders are often based on "rapidly changing" circumstances and undeveloped records). That is especially true where, as here, the motion is premised on evidence of the debtor's lack of good faith. As explained

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Other examples of "core proceedings" often adjudicated by interlocutory, as opposed to final, orders include: orders under section 157(b)(2)(M) "approving the use or lease of property, including the use of cash collateral," *see, e.g.*, *In re Fontainebleau Las Vegas Holdings, LLC*, 434 B.R. 716, 736 (S.D. Fla. 2010) (order denying non-consensual cash collateral order interlocutory as it had not resolved all issues between the parties); orders under section 157(b)(2)(K) regarding "determinations of the validity, extent or priority of liens," *see, e.g.*, *In re Durability, Inc.*, 893 F.2d 264, 266 (10th Cir. 1990) (per curiam) (order determining lien priority, but not resolving all issues between parties, was "nonfinal"); and orders under section 157(b)(2)(I) regarding "determinations as to the dischargeability of particular debts," *see, e.g.*, *State of Nebraska v. Strong (In re Strong)*, 293 B.R. 764 (B.A.P. 8th Cir. 2003) (denial of motion for partial summary judgment on dischargeability objection not "final").

Additionally, orders denying a request to sell property under section 363 are not final, even though they are "core proceedings" under section 157(b)(2)(M), (N), and (O). *See, e.g.*, *Spitz v. Nitschke*, 528 B.R. 874, 880 (E.D. Wis. 2015) (collecting cases and concluding that "orders denying motions to sell are interlocutory").

in Ritzen's opening brief, the question of good faith is an ongoing inquiry, not one statically fixed at a particular point in the bankruptcy process. *See* Pet. Br. 43–47.

Although the Sixth Circuit believed the Denial Order to be "the final word on the matter," Pet. App. 13a, it was, in fact, only dispositive as to which court would adjudicate Ritzen's claim. It did not "alter[] the status quo and fix[] the rights and obligations of the parties" as *Bullard* requires, and, thus, was not final.

II. The Majority Rule Rests on a Procedural Anachronism.

Jackson argues that, because a majority of circuits hold that stay-relief denials are final, that outcome must be correct. This argument, however, both fails to afford proper deference to *Bullard* and, critically, overlooks a key anachronism on which the majority rule is based. The foundational cases for the majority rule rose out of former Rule 701 of the Bankruptcy Rules. *See, e.g.*, *Grundy Nat'l Bank v. Tandem Mining Corp.*, 754 F.2d 1436 (4th Cir. 1985); *Crocker Nat'l Bank v. Am. Mariner Indus., Inc. (In re Am. Mariner Indus., Inc.)*, 734 F.2d 426 (9th Cir. 1984); *Aetna Life Ins. Co. v. Leimer (In re Leimer)*, 724 F.2d 744 (8th Cir. 1984); *Moxley v. Comer (In re Comer)*, 716 F.2d 168 (3d Cir. 1983); *DiPierro v. Taddeo (In re Taddeo)*, 685 F.2d 24 (2d Cir. 1982).

Under former Rule 701, stay-relief requests were adjudicated as adversary proceedings. *See* Rule 701, 411 U.S. 991, 1068 (1973) ("The rules of this Part VII govern any proceeding instituted by a party before a bankruptcy judge to . . . (6) obtain relief from a stay as

provided in Rule 401[5] or 601 . . . ."). Understandably, courts treated the resolution of these proceedings as final because adversary proceedings have the appearance and procedural amenities of independent civil actions.[6] The new rules (initially enacted in 1983[7]), however, treat stay-relief requests as contested matters instituted by motion. *See* Fed. R. Bankr. P. 4001; 7001; 9014. The procedural basis for treating orders resolving stay-relief proceedings as final thus no longer exists.

Every case that Jackson cites traces back to these foundational cases. *See* Resp. Br. 29 n.8 (collecting cases). Importantly, all the cases Jackson cites pre-date *Bullard*. By contrast, *In re Atlas Export Corp.* from the First Circuit, although pre-dating this Court's holding in *Bullard*, relied on its analysis regarding the finality of bankruptcy orders from three months earlier in *Bullard v. Hyde Park Savings Bank (In re Bullard)*, 752 F.3d 483, 485 (1st Cir. 2014)—the holding ultimately affirmed by this Court. *See In re Atlas Export Corp.*, 761 F.3d at 181–82. Accordingly, the "majority" approach is premised on an abandoned procedural foundation.

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5. Rule 401 addressed the automatic stay of the continuation or commencement of actions against the debtor, which would apply in this case if the rule were in effect today. Rule 401, 411 U.S. at 1048.

6. In practice, treating stay-relief requests as adversary proceedings made little sense, as it allowed for the introduction of unrelated counterclaims into stay-relief litigation. *See* Frank R. Kennedy, *Automatic Stays under the New Bankruptcy Law*, 12 Mich. J.L. Reform 1, 40 n.166 (1978).

7. *See* 461 U.S. 973 (1983).

III. The Permanent-Injunction Analogy Fails.

Because the practical effect of the Denial Order was merely to resolve where the parties would litigate their dispute, the order is best analogized to other kinds of interlocutory orders resolving ligation over where to litigate.[8] Ignoring this fact, Jackson and its amici analogize stay-relief denials to "permanent injunctions." That analogy is inapt.

A. Orders Denying Stay Relief Are Not Analogous to Orders Denying Permanent Injunctive Relief.

The automatic stay is imposed by statute, not judicial order. In contrast, injunctive relief rests upon a court's case-specific balancing of the factors for such relief, turning most prominently on the movant's likelihood of success on the merits of some claim. Accordingly, injunctive relief is typically ancillary to, and dependent on, an assessment of the merits of some other claim. Not so with the automatic stay, which serves a distinct, administrative bankruptcy purpose.

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8. Jackson argues that Ritzen's examples of analogous motions are not persuasive because they do not involve bankruptcy. Resp. Br. 14–15. That is false. Ritzen cited motions to withdraw the reference under 28 U.S.C. § 157 and motions to abstain under 28 U.S.C. § 1334, both "bankruptcy motions." Further, the government argues that dismissals of a plaintiff's lawsuit are immediately appealable if such dismissals merely determine the forum of where the plaintiff may bring its case. *See* U.S. Br. 22–23. This argument, however, is a non-sequitur. Ritzen has always maintained that orders dismissing cases are final. The question here, however, is what to make of an order denying relief that means the case will continue unaffected.

Jackson and its amici mischaracterize legislative history to make their analogy, taking language out of context for the proposition that Congress intended all stay-relief orders be viewed as analogous to permanent-injunction orders. Resp. Br. 23; U.S. Br. 16; NACBA Br. 21. The cited passage, however, refers to 11 U.S.C. § 362(e), which delineates a specific expedited hearing process for stay-relief requests regarding "any act against property of the estate." H.R. Rep. No. 95-595, at 344 ("Subsection (e) provides a protection for secured creditors that is not available under present law."). This provision of the legislative history does not address motions, like this one, regarding actions or proceedings under section 362(a)(1) regarding the litigation of claims.

Moreover, other passages in the legislative history affirmatively undercut the permanent-injunction analogy. Specifically, the same legislative history states emphatically that "[t]he [automatic] stay is not permanent." *Id.* at 341. Among other things, it does not outlast the case, *see* 11 U.S.C. § 362(c), and is designed to be replaced by the permanent discharge injunction, *see id.* § 524(b). Analogizing an order denying stay relief to a "permanent injunction" when the stay is concededly "not permanent" is inapt.[9]

9. The NACBA supports its "permanent injunction" analogy by merging the preliminary nature of the automatic stay with the permanent nature of the discharge injunction under Bankruptcy Code section 524. NACBA Br. 20. But the discharge injunction is separate from the automatic stay. Although the discharge injunction may be thought of as permanent in nature, the automatic stay manifestly is not.

The Government misleadingly contends that, because section 362(e) uses the term "final hearing" several times, it provides "six textual clues" to support its argument. U.S. Br. 15. Any sensible reading of this provision, however, indicates that the term "final" as used here simply means "last in a series," rather than "resulting in a final order." In sharp contrast, Federal Rule of Bankruptcy Procedure 8002(d), governing extension of time to appeal certain orders does provide an important textual clue. It expressly provides: "The bankruptcy court may not extend the time to file a notice of appeal if the judgment, order, or decree appealed from: (A) grants relief from an automatic stay . . . ." Fed. R. Bankr. P. 8002(d)(2). While not dispositive, the fact that the rule only addresses "grants" of stay relief, not denials, suggests that stay-relief denials are not sufficiently momentous to warrant recognition under the rule.

B. Even if Stay-Relief Denials Are Analogous to Injunctions, That Does Not Mean Such Orders Are Final.

The purpose of a preliminary injunction is to maintain the status quo during the pendency of the litigation. 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948 (3d ed. 2019). In other words, the *preliminary* injunction serves much the same purpose in a civil suit as the automatic stay serves in a bankruptcy matter. Congress has vested jurisdiction in the courts of appeals over "*interlocutory* orders of the district courts . . . granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1) (emphasis added). This provision is applicable to preliminary injunctions. *See, e.g.*,

Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 350 (1985) (recognizing that under section 1292(a) "the courts of appeals may promptly review district court orders granting or denying preliminary injunctions.").

This Court has described the history of the injunction exception to the final judgment rule as reflecting "a developing need to permit litigants to effectually challenge interlocutory orders of serious, perhaps irreparable, consequence." *Balt. Contractors, Inc. v. Bodinger*, 348 U.S. 176, 181 (1955), *overruled on other grounds by Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271 (1988). An order granting or denying a request for a temporary injunction fits that description.

Critically, section 1292(a) recognizes that preliminary-injunction orders are *interlocutory*. Nothing in the plain language of sections 158 or 1292 requires that *interlocutory* orders be immediately appealed or else the right to appeal becomes lost forever. Only "final" orders carry such a heavy toll. Indeed, even though section 1292 explicitly allows for immediate appeals of injunction orders, it does not make such orders "final." Appeal of interlocutory injunction orders under section 1292(a) is therefore permissive, not mandatory. *See, e.g.*, *Tincher v. Piasecki*, 520 F.2d 851, 854 n.3 (7th Cir. 1975) (holding that, under section 1292(a), defendants did not waive their right to appeal by failing to appeal the preliminary-injunction order).[10]

10. Section 1292 does not make all injunction orders final, it merely recognizes that such interlocutory orders may—not must—be appealed immediately. This Court has narrowly construed section 1292(a). *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 84 (1981) ("[W]e have construed the statute narrowly to ensure

Thus, even if the Denial Order were to be viewed within the scope of section 1292(a), it would only mean that Ritzen *could* have sought leave to appeal. This, of course, does not mean that Ritzen *had* to immediately appeal the Denial Order or waive its right to do so. Section 1292(a)'s interlocutory appeal mechanism is a right, not an obligation.

IV. Jackson and Its Amici Rely on Invalid Arguments Against the Single-Appeal Rule.

The government argues that the single-appeal rule does not apply at all to bankruptcy cases: "The point of the bankruptcy-appeals statute, however, is to make an exception to that general policy, and to authorize appeals from orders resolving discrete pieces of the bankruptcy case." U.S. Br. 25. But the government's view of this issue is too broad. Although this Court in *Bullard* noted that bankruptcy cases are different, it did not reject the single-appeal rule entirely. Instead, the Court stated:

> A bankruptcy case involves an aggregation of individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor. Accordingly, Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case.

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that appeal as of right under § 1292(a)(1) will be available only in circumstances where an appeal will further the statutory purpose of 'permit[ting] litigants to effectually challenge interlocutory orders of serious, perhaps irreparable, consequence.'").

Bullard, 135 S. Ct. at 1692 (citation and internal quotation marks omitted); *see also In re Saco Local Dev. Corp.*, 711 F.2d 441, 446 (1st Cir. 1983) (final order "includes an order that conclusively determines a separable dispute over a creditor's claim or priority"). *Bullard* makes clear that orders disposing of a discrete dispute that would be a stand-alone lawsuit outside of bankruptcy may be immediately appealed even if the bankruptcy case as a whole persists. This is not an exception to the single-appeal rule, simply the logical application of that rule in the bankruptcy context.

Under this rationale, the discrete dispute in this case is Ritzen's breach-of-contract claim, which the Denial Order determined would be adjudicated through the bankruptcy claims-adjudication process. There is no merit to Jackson's contention that the claims-adjudication process is entirely separate from the stay-relief matter when, in fact, Jackson expressly contended below that, by filing its stay-relief motion, Ritzen effectively asserted a claim triggering that very process.[11]

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11. Jackson's assertion that "Ritzen offers no reason to infer that 'claims adjudication' is inextricably linked with stay relief" and that "the bankruptcy court's order denying stay relief did not touch Ritzen's claim" is contrary to the record. Resp. Br. 21. Jackson affirmatively argued below that the stay-relief motion implicated the claims-adjudication process. In response to Ritzen's stay-relief motion, Jackson filed an objection to what it deemed Ritzen's informal proof of claim, arguing: "The stay relief motion asserts a claim against Jackson Masonry, and therefore constitutes an informal proof of claim." D.E. 118, J.A. 2a. Jackson thus triggered the claims-adjudication process, contrary to the claim in its brief.

Moreover, in rejecting the policy arguments advanced in *Bullard* by the petitioner and its amici (including the amici in this case), the Court referenced the single-appeal rule, stating:

> [E]ach climb up the appellate ladder and slide down the chute can take more than a year. Avoiding such delays and inefficiencies is precisely the reason for a rule of finality. It 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.

135 S. Ct. at 1693.

This Court's cautious approach to creating exceptions to finality reflects its rejection of the kinds of policy arguments Jackson and its amici offer in support of their view, such as expedience and efficiency, Resp. Br. 31–33, "administrative simplicity," U.S. Br. 20, and "judicial economy," NACBA Br. 28. As this Court noted in *Bullard*, "our litigation system has long accepted that certain burdensome rulings will be 'only imperfectly reparable' by the appellate process." 135 S. Ct. at 1695 (quoting *Dig. Equip. Corp. v. Desktop Direct, Inc.,* 511 U.S. 863, 872 (1994)). Moreover, when appeal as of right is not available, those involved in the bankruptcy will be more likely to focus on developing a plan that the court will confirm, thus serving the goal of expedition, "always an important consideration in bankruptcy." *Id.* at 1694.

V. Treating the Denial Order as Interlocutory Will Benefit, Not Harm, the Bankruptcy System.

Jackson and its amici claim that the bankruptcy system will be harmed if Ritzen prevails, arguing hyperbolically that, if accepted, Ritzen's position would "pave the way for dismantling entire bankruptcy cases." Resp. Br. 33. This, however, is obviously untrue.

Jackson's argument is based on a flawed syllogism with the following progression: claims determinations that may be appealed at the end of the case remain unresolved; unresolved claims cannot be addressed appropriately in a plan of reorganization; therefore, reorganization depends upon appeals of unresolved claims being addressed early. This logic is flawed for several reasons. First, unresolved claims are routinely dealt with in plans of reorganization by providing for claims reserves (money set aside to pay them, if needed) and post-confirmation adjudication. This case is a good example. Here, Jackson has already escrowed $400,000 to address Ritzen's claim, at least in part, in the event Ritzen prevails. *See* D.E. 413, J.A. 6a.

Second, regardless of whether a claim is adjudicated in the bankruptcy court or before some other tribunal, immediate appeal of a stay-relief determination directing which court will hear the matter will not solve the problem Jackson identifies. It will simply result in two potential appeals—one from the stay-relief determination, and another from the ultimate resolution of the merits of the claim (as happened in this case). Only one of these will be resolved "early," leaving the other unresolved.

Regarding alleged efficiency concerns, Jackson and its amici argue that swift appeals of all stay-relief orders are better than a case-by-case approach because such would streamline the bankruptcy process. Resp. Br. 32; U.S. Br. 19–20; NACBA Br. 31–34. But this does not square with the facts. Bankruptcy cases continue during the pendency of an appeal, and many chapter 11 cases reach the plan-confirmation stage before an appeal has run its course.[12] Rather than facilitate expeditious and efficient administration, early appeals may well thwart it. Among other things, early appeals would force debtors into additional, costly appellate proceedings at the outset of the case and could chill settlement discussions until after resolution of the appeal.

And as this Court recognized in *Bullard*, the policy against piecemeal appeals counsels against adopting a blanket category of orders that must be appealed, regardless of their effect. *See* 135 S. Ct. at 1695 (recognizing that even "imperfectly reparable" errors do not justify "the costs entailed by a system of universal immediate appeals").

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12. The average chapter 11 case lasts roughly seven months. *See* Robert J. Duffy, *The Changing Profile of Large Chapter 11 Cases*, FTI Consulting 1 (Oct. 9, 2019, 7:08 PM), https://www.fticonsulting.com/~/media/Files/us-files/insights/articles/the-changing-profile-of-large-chapter-11-cases.pdf. By contrast, a first-level appeal generally takes nine months to prosecute, and a second-level appeal will add a like amount of time. *See* Robyn B. Sokol et al., *Appealing Positions: Everything You Need to Know About Appeals*, Am. Bankr. Inst., 032117 ABI-CLE 45 (Mar. 21, 2017) (recognizing that the median time for an appeal to the 9th Circuit BAP is nine months).

The NACBA's argument that Ritzen's proposed standard is "murky," NACBA Br. 32, is nothing more than an attempt to relitigate the standard articulated in *Bullard*. The *Bullard* standard provides flexibility, not "murkiness," as it allows for finality when an order truly includes the hallmarks of finality. And the argument that parties will have to devote time to brief which "process" is implicated by the stay-relief motion is unlikely. Stay relief is always tied to a distinct bankruptcy process—a party cannot request stay relief in a vacuum. The stay-relief request will indicate which bankruptcy process is implicated, whether it be the claims-adjudication process, as here, or whatever other process is relevant.

VI. Ritzen's Claim Remains Viable.

Finally, Jackson's brief contains an incomplete and misleading account of the status of Ritzen's claim. Resp. Br. 34–36. After conceding that "Ritzen's motion to lift or modify the automatic stay sought relief only for the purpose of continuing prepetition litigation in state court," Resp. Br. 13, Jackson argues that Ritzen has no case to return to because the state-court case was dismissed, claiming that Ritzen failed to "take action to preserve the lawsuit for over 10 months" and that "Ritzen did not appeal the state court's dismissal order." Resp. Br. 34. This argument is baseless. Ritzen could not take any action in the state-court case because of the automatic stay. Any action by Ritzen to preserve the state-court case would have violated section 362(a)(1), which is precisely why Ritzen sought stay relief. Moreover, the state court order was expressly entered "without prejudice." *See Jackson Masonry, LLC v. Ritzen Grp. Inc. (In re Jackson Masonry, LLC)*, Case No. 3:16-bk-02065, Adv. P. No. 17-

9157, at *6 (Bankr. M.D. Tenn. Apr. 3, 2018) (recognizing the dismissal was not on the merits). As such, the dismissal of the state-court case in no way prevents Ritzen from obtaining relief on remand.

Jackson's plan-injunction argument is equally flawed. After trial, the parties entered into an agreed order resolving outstanding damages issues. In this order—which is expressly incorporated into the plan-confirmation order—Jackson recognized:

> In the event that Ritzen appeals the Disallowance Order or any other order entered in the Consolidated Matters and is successful at obtaining final relief, the parties agree that the Debtor shall amend the Plan as necessary to address the relief obtained by Ritzen. Ritzen shall then have an opportunity to object to the Debtor's proposed amendments to the Plan . . . .

D.E. 413, J.A. 6a.

To bolster its factually deficient argument regarding the status of the state-court case, Jackson claims that Ritzen's claim would be barred by *res judicata*. This doctrine does not apply.[13] As this Court has recognized,

13. The government cites *Katchen v. Landy*, 382 U.S. 323, 334 (1966) for its *res judicata* argument, quoting: "a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined . . . ." U.S. Br. 22. This dictum is inapposite. In *Katchen*, the creditor attempted to argue the bankruptcy court did not have "plenary jurisdiction" over a preference action regarding a previously allowed claim. The creditor willfully elected to have the bankruptcy court adjudicate

when a trial is completed in the incorrect forum, the ruling may be overturned and the case transferred to the correct forum. *See, e.g.*, *Olberding v. Ill. Cent. R.R. Co.*, 346 U.S. 338, 340 (1953) (remanding case tried based on improper venue and directing the case be transferred to the correct venue for trial); *see also Save Power Ltd. v. Syntek Fin. Corp.*, 121 F.3d 947, 952 (5th Cir. 1997) (vacating summary judgment order, finding motion to transfer to different judge should have been granted).

Finally, Jackson's reliance on *Caterpillar Inc. v. Lewis*, 519 U.S. 61 (1996) is misplaced. *Caterpillar* does not stand for the proposition that overturning a trial court decision is impermissible based on jurisdictional defects. As Jackson noted, the jurisdictional defect in *Caterpillar* was corrected by the time of trial, thereby resolving the jurisdictional problem. *See id.* at 77. Here, Ritzen has always maintained that the state court was the proper forum for adjudication of its claim. As such, this case finds its analogue in cases vacating trial verdicts issued in an incorrect forum, and not *Caterpillar*.

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its claim, but then attempted to manipulate the Bankruptcy Act's jurisdictional rules (now superseded by statute) to avoid claw-back. Here, the Bankruptcy Court required Ritzen to adjudicate its claim in that forum, despite Ritzen's stay-relief request. Ritzen has always maintained that the state court was the proper forum to adjudicate its claim.

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.

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