No. 18-938

In the Supreme Court of the United States

RITZEN GROUP, INC., PETITIONER

v.

JACKSON MASONRY, LLC

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether a bankruptcy court's order denying a motion for relief from the automatic stay is a final order that is immediately appealable under 28 U.S.C. 158(a)(1).

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INTEREST OF THE UNITED STATES

This case concerns the appealability of a bankruptcy court's order denying relief from the automatic stay that the Bankruptcy Code imposes. United States Trustees, who are officials in the Department of Justice, supervise the administration of bankruptcy cases. See 28 U.S.C. 581-589a. They "may raise and may appear and be heard on any issue in any case or proceeding" under the Bankruptcy Code. 11 U.S.C. 307. Resolution of the question presented may affect the sound administration of the bankruptcy laws and the appealability of other orders relating to the duties of United States Trustees. The United States is also the largest creditor in the Nation. The United States often seeks to recover debts from persons who have filed for bankruptcy, and often files motions for relief from the automatic stay. The United

States thus has a substantial interest in the resolution of the question presented.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix to this brief. App., *infra*, 1a-14a.

STATEMENT

1. The district courts have original jurisdiction in bankruptcy cases. See 28 U.S.C. 1334. But they may, and for the most part do, refer bankruptcy cases to the bankruptcy courts. See 28 U.S.C. 157(a).

When that occurs, the district courts are authorized to hear appeals from various orders that the bankruptcy courts may enter. 28 U.S.C. 158(a). The district courts have mandatory jurisdiction over appeals from "final judgments, orders, and decrees" entered by bankruptcy courts in "cases and proceedings." 28 U.S.C. 158(a)(1). They are also authorized, but not required, to hear appeals from bankruptcy courts' "interlocutory orders and decrees." 28 U.S.C. 158(a)(3). In addition, the judicial council of a circuit may establish a bankruptcy appellate panel, composed of bankruptcy judges, to exercise the same appellate jurisdiction as the district courts. 28 U.S.C. 158(b)(1). But a bankruptcy appellate panel may hear a case only with the consent of the parties. 28 U.S.C. 158(c)(1).

The courts of appeals, in turn, hear appeals from certain orders issued by district courts and bankruptcy appellate panels—and, in some cases, direct appeals from orders of bankruptcy courts. They have mandatory jurisdiction over appeals from "final decisions, judgments, orders, and decrees" entered by district courts and bankruptcy appellate panels. 28 U.S.C. 158(d)(1). They also have discretion to hear appeals from orders of district courts, bankruptcy appellate panels, and

bankruptcy courts, if the court involved certifies or all parties agree that (1) the appeal "involves a question of law as to which there is no controlling decision" or "involves a matter of public importance"; (2) the appeal "involves a question of law requiring resolution of conflicting decisions"; or (3) "an immediate appeal" "may materially advance the progress of the case or proceeding in which the appeal is taken." 28 U.S.C. 158(d)(2)(A).

The general statutes that delineate the appellate jurisdiction of the federal courts of appeals apply to bankruptcy cases. See *Connecticut National Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). Under those statutes, courts of appeals have mandatory jurisdiction over appeals from district courts' final decisions and from district courts' interlocutory decisions awarding or denying injunctions. 28 U.S.C. 1291, 1292(a)(1). They are also authorized, but not required, to hear appeals from other interlocutory orders where the district court certifies both (1) that the order "involves a controlling question of law as to which there is substantial ground for difference of opinion," and (2) that "an immediate appeal" "may materially advance the ultimate termination of the litigation." 28 U.S.C. 1292(b).

2. This case concerns an appeal to a district court from a bankruptcy-court order that denied a request for relief from the automatic stay. Under the Bankruptcy Code, the filing of a petition for bankruptcy "operates as a stay" of most efforts to collect debts from the debtor. 11 U.S.C. 362(a). The stay prohibits, for example, the commencement or continuation of lawsuits to recover claims against the debtor; the enforcement of certain judgments against the debtor or bankruptcy estate; the possession of, or exercise of control over, prop-

erty of the estate; the creation, perfection, or enforcement of liens against property of the estate; and the setoff of certain debts. *Ibid.* In general, the stay remains in effect until the closure of the case, the dismissal of the case, or the grant or denial of a discharge, whichever comes first. 11 U.S.C. 362(c)(2). If a party willfully violates the stay, it may be held liable for "actual damages, including costs and attorneys' fees," and in appropriate cases for "punitive damages." 11 U.S.C. 362(k).

A party affected by the automatic stay may move for relief, such as an order "terminating, annulling, modifying, or conditioning such stay." 11 U.S.C. 362(d). The Bankruptcy Code states that a court "shall" grant relief "for cause" and under certain other conditions. 11 U.S.C. 362(d)(1). A court must grant relief if a debtor fails to offer a creditor "adequate protection" from the deteriorating condition or declining value of the creditor's collateral during the pendency of the bankruptcy. *Ibid.* A court also must grant relief if "the debtor does not have an equity" in the collateral and "such property is not necessary to an effective reorganization." 11 U.S.C. 362(d)(2). And a court may find "cause" for relief from the stay in a variety of circumstances—for instance, where the court decides that it is appropriate to allow litigation against the debtor to proceed in another forum. See 3 *Collier on Bankruptcy* ¶ 362.07 (Richard Levin & Henry J. Sommer eds., 16th ed. 2019) (Collier). In most circumstances, "the party opposing such relief has the burden of proof." 11 U.S.C. 362(g)(2).

In general, a court may grant relief from the automatic stay only "after notice and a hearing." 11 U.S.C. 362(d). But a court may act *ex parte* when that is "necessary to prevent irreparable damage" that would occur

"before there is an opportunity for notice and a hearing." 11 U.S.C. 362(f). The Bankruptcy Code encourages the expeditious resolution of motions for "relief from the stay of any act against property of the estate." 11 U.S.C. 362(e). It provides that, in the absence of judicial action, the automatic stay terminates once a specified period (60 days for individual debtors, 30 days for other debtors) has elapsed after the filing of such a motion. *Ibid.* If the court determines at a "preliminary hearing" that "there is a reasonable likelihood that the party opposing relief from such stay will prevail," the stay remains in effect until the court makes a final ruling. *Ibid.* And if the court makes a "final" decision denying the motion for relief, the stay remains in effect for the rest of the case. *Ibid.*

3. In 2013, petitioner Ritzen Group entered into a contract to buy real property in Nashville, Tennessee, from respondent Jackson Masonry. Pet. App. 26a. The sale did not go through, however, and each party later claimed that the other had breached the contract. *Id.* at 26a-27a. Ritzen sued Jackson for breach of contract in chancery court in Tennessee. *Id.* at 27a. The state-court litigation continued for more than a year, but days before the trial was set to start, Jackson filed for bankruptcy under Chapter 11 of the Bankruptcy Code. *Ibid.* That filing triggered the automatic stay, halting the state-court litigation. *Ibid.*

In the bankruptcy case, Ritzen moved for relief from the automatic stay to "allow trial to proceed" in "the state court," arguing that such relief would promote judicial economy and that Jackson had filed for bankruptcy in bad faith. Pet. App. 28a (citation omitted). After a hearing, the bankruptcy court denied the motion. *Id.* at 48a. In an oral ruling, the court explained that

factors such as "trial readiness in state court," the predominance of "Bankruptcy issues" over "state court issues," "burdens to the Bankruptcy estate," and "impact on other creditors" weighed "in favor of not granting a relief from the stay." *Id.* at 51a-52a; see *id.* at 49a-68a.

Ritzen did not pursue an immediate appeal from that ruling, instead litigating its breach-of-contract claim in bankruptcy court. Pet. App. 2a-3a. After a bench trial, the court disallowed Ritzen's claim, concluding that Ritzen and not Jackson had breached the contract. *Id.* at 3a.

4. Ritzen filed two separate notices of appeal, one from the order denying stay relief and the other from the order disallowing Ritzen's claim. Pet. App. 3a. The district court dismissed the first appeal as untimely and affirmed on the second appeal. *Id.* at 24a-47a.

In addressing the first appeal, the district court explained that, under 28 U.S.C. 158(c)(2) and Federal Rule of Bankruptcy Procedure 8002(a), a notice of appeal is timely only if it is filed "within fourteen days" after the entry of a final, appealable order. Pet. App. 35a. The court further explained that, under the "simple, predictable rule" adopted by "most courts" that have addressed the issue, "a denial of a motion for relief from an automatic stay constitutes a final, appealable order." *Id.* at 36a-37a. The district court concluded that, because "Ritzen did not appeal the denial of relief from the automatic stay within fourteen days, that appeal is untimely." *Id.* at 37a.

5. The court of appeals affirmed. Pet. App. 1a-23a. As relevant here, the court held that an order denying relief from the automatic stay with prejudice constitutes a final, appealable order, so that an appeal from such an order is timely only if it is taken within 14 days.

Id. at 3a-15a. The court explained that, under the applicable statute, district courts "have jurisdiction to hear appeals from final judgments, orders, and decrees" entered by bankruptcy judges "in cases and proceedings." *Id.* at 6a (quoting 28 U.S.C. 158(a)). The court read the statute to mean that "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, ellipsis, and internal quotation marks omitted). The court concluded that the bankruptcy court's stay-relief adjudication constituted a "proceeding" within the meaning of Section 158(a) because it involved "a discrete claim for relief, a series of procedural steps, and a concluding decision based on the application of a legal standard." *Id.* at 10a. The court further held that an order denying relief from the automatic stay is "final," because "the stay-relief proceeding * * * is over once a stay-relief denial is issued," and because the "consequences of a stay-relief denial are both significant and irreparable." *Id.* at 12a-13a.

SUMMARY OF ARGUMENT

A. Congress has long treated appeals in bankruptcy cases differently from other appeals. In ordinary civil litigation, the "final" decision from which a party may appeal as of right generally is one that resolves the entire case. 28 U.S.C. 1291. In bankruptcy, by contrast, a party may appeal as of right from a "final" order that resolves an individual "proceeding" within the case, even though other aspects of the case remain ongoing. 28 U.S.C. 158(a); see *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015).

To determine whether a party may appeal as of right from a particular bankruptcy-court order, a court should first identify the relevant "proceeding" and then

ascertain whether the order effects a "final" resolution of that "proceeding." See 28 U.S.C. 158(a). To qualify as a "proceeding," a matter must constitute a "discrete" procedural unit within the case. *Bullard*, 135 S. Ct. at 1692 (citation omitted). The matter must also be "significant"—that is, its resolution must change "the status quo" and fix "the rights and obligations of the parties." *Id.* at 1692, 1695. An order is final if it terminates the relevant proceeding.

Under that framework, the adjudication of a motion for relief from the automatic stay constitutes a proceeding, and the conclusive denial of the motion constitutes a final order. The adjudication forms a discrete procedural unit within the bankruptcy case: It begins with the filing and service of a separate motion, continues with a hearing, and ends when the court issues its decision granting or denying relief. The resolution of the dispute also has significant consequences. The grant of relief can allow a creditor to prosecute lawsuits, to seize property, and to take other measures to collect debts from the debtor; conversely, the denial of relief precludes the creditor from taking such actions. See 11 U.S.C. 362. And the conclusive denial of a motion for stay relief terminates the relevant proceeding by providing the bankruptcy court's last word on the motion. Consistent with that understanding, the Judicial Code elsewhere describes motions for relief from the automatic stay as "core proceedings," 28 U.S.C. 157(b)(2)(G), and the Bankruptcy Code elsewhere describes orders deciding such motions as "final," 11 U.S.C. 362(e).

B. Ritzen's contrary arguments lack merit. Ritzen acknowledges that some denials of relief from the auto-

matic stay will constitute appealable final orders. It asserts, however, that a denial of stay relief does not have the requisite finality when a party seeks stay relief in order to allow the adjudication of a claim in state court, or when a party's request for relief rests on an allegation that the debtor acted in bad faith. But there is no sound basis in the statutory text for treating a stay-relief adjudication as a proceeding in some cases but not others, or for treating a denial of stay relief as final in some circumstances but not others. This Court's precedents on appellate jurisdiction likewise require a court to assess finality as a categorical matter, not, as Ritzen proposes, case by case.

ARGUMENT

A. The Conclusive Denial Of A Motion For Relief From The Automatic Stay Is Final And Appealable

Under the bankruptcy-appeals statute, parties may appeal from "final" orders entered by bankruptcy courts in discrete "proceedings" within the larger bankruptcy case. 28 U.S.C. 158(a). A bankruptcy court's adjudication of a motion for relief from the automatic stay qualifies as a "proceeding" because it is a discrete and significant dispute within the bankruptcy case. And the conclusive denial of such a motion is "final" because it ends that proceeding. The court of appeals was therefore correct to hold that such a denial is appealable.

1. An order is appealable if it finally resolves a proceeding within the bankruptcy case

a. Since 1867, Congress has treated appeals in bankruptcy differently from other appeals. See *In re Saco Local Development Corp.*, 711 F.2d 441, 443-446 (1st Cir. 1983) (Breyer, J.). Under the general civil-appeals

statute, parties may appeal as of right from "final decisions of the district courts." 28 U.S.C. 1291. The general rule under that statute is that an appellant must raise all claims of error in a single appeal after the district court enters a decision that "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Catlin* v. *United States*, 324 U.S. 229, 233 (1945).

Under the bankruptcy-appeals statute, by contrast, parties may appeal as of right from "final judgments, orders, and decrees" entered by bankruptcy courts "in cases *and proceedings*." 28 U.S.C. 158(a) (emphasis added). That statute was enacted in 1978 and carries forward a longstanding rule that "orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015) (citation omitted). Thus, whereas the usual judicial unit for analyzing finality in ordinary civil litigation is the case, in bankruptcy it is the proceeding.[*]

That approach reflects Congress's response to the distinctive features of bankruptcy litigation. "A bank-

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[*] Even in ordinary civil litigation, the general rule that an appeal as of right can be taken only from a final judgment is not inflexible. This Court has interpreted the term "final decisions" in 28 U.S.C. 1291 to encompass "a small class of collateral rulings that, although they do not end the litigation, are appropriately deemed 'final.'" *Mohawk Industries, Inc.* v. *Carpenter*, 558 U.S. 100, 106 (2009) (citation and internal quotation marks omitted). An order granting or denying an injunction likewise is immediately appealable even if it does not terminate the litigation. See 28 U.S.C. 1292(a)(1). The difference between the rules governing appealability in bankruptcy and appealability in ordinary civil litigation thus is one of degree rather than of kind; but the difference of degree is substantial.

ruptcy case involves 'an aggregation of individual controversies.'" *Bullard*, 135 S. Ct. at 1692 (citation omitted). The overall litigation may remain pending for a long period of time, but the bankruptcy court may resolve discrete controversies at various points during that period, making it wasteful to require parties to wait until the end of the litigation to take an appeal. See *Dubin* v. *SEC* (*In re Johns-Manville Corp.*), 824 F.2d 176, 180 (2d Cir. 1987). In addition, decisions made over the course of a bankruptcy case often depend on entitlements established earlier in the litigation. Waiting until the end to reverse one decision could force the bankruptcy court to redo many other steps that it had taken on the basis of that decision. See *England* v. *FDIC* (*In re England*), 975 F.2d 1168, 1171 (5th Cir. 1992); *Reichman* v. *United States Fire Insurance Co.* (*In re Kilgus*), 811 F.2d 1112, 1116 (7th Cir. 1987).

b. Under the applicable statute, a party may appeal as of right from "final" orders in bankruptcy "proceedings." 28 U.S.C. 158(a). A "proceeding" is a discrete and significant dispute within the bankruptcy case, and an order is "final" if it terminates such a proceeding.

The first step in applying the statute is to identify the judicial unit for analyzing finality, the "proceeding." To constitute a "proceeding," a matter must be discrete —that is, separate from other matters in the bankruptcy litigation and resolved through its own procedural steps. See Pet. App. 9a. That requirement follows from the traditional understanding of the word "proceeding" in bankruptcy. A leading legal dictionary explains that a bankruptcy "proceeding" is a "particular dispute or matter arising within a pending case—as opposed to the case as a whole." *Black's Law Dictionary*

1398 (10th ed. 2014). A leading treatise equates a "proceeding" with "a discrete unit of litigation." 1 Collier ¶ 5.08. This Court likewise has equated "proceedings" with "discrete disputes within the larger case." *Bullard*, 135 S. Ct. at 1692 (citation omitted). All of that suggests that discreteness is a hallmark of a bankruptcy "proceeding."

The Court in *Bullard* further held that, to constitute a proceeding, a matter must be "significant"—that is, its resolution must change "the status quo" and fix "the rights and obligations of the parties." 135 S. Ct. at 1692, 1695. The Court explained that treating "minor disagreements" as proceedings would lead to "implausible" results, such as allowing an immediate appeal from "an order resolving a disputed request for an extension of time." *Id.* at 1694. The Court also observed that 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." *Id.* at 1693.

Once a court identifies the relevant "proceeding," it should determine whether the order effects a "final" resolution of that proceeding. 28 U.S.C. 158(a). In ordinary civil cases, an order typically is "final" only if it "terminate[s] an action" or "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Gelboim* v. *Bank of America Corp.*, 135 S. Ct. 897, 902 (2015) (citation omitted). The word "final" carries a similar meaning in bankruptcy—except that, instead of asking whether the order ends the litigation, a court should ask whether it ends the proceeding.

2. The conclusive denial of a stay-relief motion finally resolves a proceeding within the bankruptcy case

a. Under the framework just discussed, a party may appeal as of right from an order that conclusively denies a motion for relief from the automatic stay. The adjudication of the motion constitutes a proceeding because it is both discrete and significant. And the conclusive denial of the motion is final because it terminates that proceeding.

The adjudication of a motion for stay relief constitutes a discrete unit of litigation. The adjudication begins with the filing of a separate motion. See 11 U.S.C. 362(d); Fed. R. Bankr. P. 4001(a)(1) (2013), 9014(a) (Supp. 2019). The movant must give notice of the motion by serving it on interested parties, under the same procedure that governs the service of a summons and complaint. See 11 U.S.C. 362(d); Fed. R. Bankr. P. 4001(a)(1) (2013), 9014(b) (Supp. 2019). The court must then hold a hearing on that motion. See 11 U.S.C. 362(d); Fed. R. Bankr. P. 9014(a) (Supp. 2019). The statute and the Federal Rules establish special procedures for the adjudication. See 11 U.S.C. 362(e)-(f); Fed. R. Bankr. P. 4001(a). Finally, the court must determine whether to continue, terminate, annul, modify, or condition the automatic stay, and it then grants or denies relief accordingly. 11 U.S.C. 362(d). That sequence—"a discrete claim for relief, a series of procedural steps, and a concluding decision based on the application of a legal standard"—fits within the traditional understanding of the term "proceeding." Pet. App. 10a.

The resolution of a dispute over stay relief also has "significant consequences"—that is, it "alters the status quo and fixes the rights and obligations of the parties." *Bullard*, 135 S. Ct. at 1692, 1695. The grant of relief

changes the creditor's legal relationship with the debtor by enabling the creditor to collect debts outside the bankruptcy process. For example, depending on the scope of the relief granted, the order may free the creditor to prosecute debt-collection lawsuits in other courts (as Ritzen sought to do here), to enforce judgments, to seize property that the debtor would otherwise retain, to create and perfect liens, and to set off one debt against another. See 11 U.S.C. 362(a).

The consequences of a conclusive denial of stay relief are no less significant. The denial precludes the creditor from performing the acts just mentioned, on pain of actual damages, attorney's fees, and in appropriate cases punitive damages. See 11 U.S.C. 362(k)(1). A creditor can also lose money every day that the stay remains in force—for instance, because the stay delays the collection of the debt, or because the creditor's collateral declines in value while the stay remains in effect.

Finally, the conclusive denial of a motion for stay relief terminates the stay-relief proceeding. A conclusive denial—as opposed to a "preliminary" denial pending further consideration, 11 U.S.C. 362(e)—constitutes the bankruptcy court's last word on the motion for relief. The "'judicial unit' is the stay-relief proceeding, and that unit is over once [the] stay-relief denial is issued." Pet. App. 12a (citation omitted).

b. Several additional considerations confirm that stay-relief adjudications are proceedings and that conclusive denials of relief are final.

Related statutory provisions describe stay-relief adjudications as "proceedings." The Judicial Code provision that immediately precedes Section 158 sets forth a non-exhaustive list of "core proceedings"—*i.e.*, matters

in which bankruptcy courts may themselves enter orders and judgments, rather than proposing findings of fact and conclusions of law for consideration by the district courts. 28 U.S.C. 157(b). The *Bullard* Court explained that, although Section 157's "purpose is not to explain appealability," its catalogue of core proceedings provides a "textual clue" about the meaning of Section 158. 135 S. Ct. at 1693. As relevant here, the list of "core proceedings" in Section 157 includes "motions to terminate, annul, or modify the automatic stay." 28 U.S.C. 157(b)(2)(G). Congress's designation of stay-relief adjudications as "core proceedings" under Section 157 reinforces the conclusion that such adjudications are "proceedings" under Section 158.

Related statutory provisions likewise describe stay-relief orders as "final." Section 362(e) of the Bankruptcy Code—which provides that the automatic stay terminates in certain circumstances if the court fails to act on a motion for relief within 30 or 60 days—refers four times to a "final hearing" on stay relief, once to a "final hearing and determination" on stay relief, and once to a "final decision" on stay relief. 11 U.S.C. 362(e). Section 362(e) provides a textual clue—indeed, six textual clues—that stay-relief orders are final.

Two other provisions that address the automatic stay reinforce those conclusions. As just discussed, Section 362(e) encourages expedition by terminating the automatic stay in certain circumstances if no judicial action occurs within 30 or 60 days. See 11 U.S.C. 362(e). A neighboring provision authorizes courts to grant relief *ex parte* if the stay would cause the creditor "irreparable" harm "before there is an opportunity for notice and a hearing." 11 U.S.C. 362(f). Both provisions underscore the discreteness of a stay-relief adjudication by

establishing unique procedures for resolution of that particular matter. Both provisions also underscore the significance of a stay-relief adjudication: Congress created expedited and *ex parte* procedures precisely because the continuation of the stay, even for a brief period of time, can cause significant and sometimes irreparable consequences. And both provisions suggest that Congress sought the prompt resolution of disputes regarding stay relief—a goal served by allowing parties to appeal at once.

The analogy between the denial of relief from the automatic stay and the entry of an injunction reinforces that analysis. The structure of the automatic-stay provisions shows—and the House and Senate Reports accompanying their enactment confirm—that the "three stages of the stay may be analogized to the three stages of an injunction." H.R. Rep. No. 595, 95th Cong., 1st Sess. 344 (1977) (House Report); S. Rep. No. 989, 95th Cong., 2d Sess. 53 (1978) (Senate Report). "The filing of the petition which gives rise to the automatic stay is similar to a temporary restraining order." *Ibid.* The preliminary hearing—at which the bankruptcy court may continue the stay pending a final hearing if the party opposing stay relief shows a "reasonable likelihood" of success, 11 U.S.C. 362(e)(1)—"is similar to the hearing on a preliminary injunction." House Report 344; Senate Report 53. And "the final hearing and order are similar to the hearing and issuance or denial of a permanent injunction." *Ibid.* The "main difference lies in which party must bring the issue before the court": In "the injunction setting, the party seeking the injunction must prosecute the action," but "in proceedings for relief from the automatic stay, the enjoined party must

move." *Ibid.* A court's denial of stay relief thus parallels the entry of a permanent injunction—a paradigmatic example of an order from which a party may take an immediate appeal as of right, even in ordinary civil litigation. See 28 U.S.C. 1292(a)(1); *Baltimore Contractors, Inc.* v. *Bodinger*, 348 U.S. 176, 181 (1955); p. 10 n.*, *supra*.

Finally, an immediate appeal is often the only mechanism by which a denial of stay relief can be subjected to meaningful appellate review. The automatic stay lasts only for the duration of the bankruptcy case. See 11 U.S.C. 362(c). When the case ends, the stay expires, and any remaining dispute over its scope or propriety usually becomes moot. See Pet. App. 13a. Foreclosing immediate review would thus often be tantamount to foreclosing appellate review altogether.

c. Treating denials of stay relief as final comports with *Bullard*. In that case, the bankruptcy court had refused to confirm the debtor's proposed repayment plan, while leaving open the possibility that an alternative plan might be confirmed. 135 S. Ct. at 1690. In holding that Section 158 did not authorize an immediate appeal from that order, this Court concluded that the "relevant proceeding" in that context is "the entire process of considering plans," not the consideration of a particular plan, because only the resolution of the entire process has "significant" consequences. *Id.* at 1692-1693. That understanding of the relevant judicial unit logically implies that either confirmation of a plan or dismissal of the case is "final" because both those types of orders terminate the "process of considering plans," but that the denial of confirmation of a particular plan is interlocutory because it "leaves the debtor free to propose another plan." *Id.* at 1692.

The denial of stay relief that is at issue here differs in meaningful ways from the refusal to confirm a specific plan that was at issue in *Bullard*. While the refusal to confirm a particular plan is one step in a broader "process of considering plans," *Bullard*, 135 S. Ct. at 1692, the conclusive denial of relief from the stay finally resolves its own discrete controversy. And while the denial of confirmation of a single proposed plan lacks "significant consequences," *id.* at 1695, the consequences of denying relief from the stay are significant, immediate, and sometimes irreparable.

In explaining why the resolution of the entire process of considering plans has "significant" consequences, the *Bullard* Court observed that the dismissal of the bankruptcy case "lifts the automatic stay entered at the start of bankruptcy, exposing the debtor to creditors' legal actions and collection efforts." 135 S. Ct. at 1693. The Court also noted that dismissal "can limit the availability of an automatic stay in a subsequent bankruptcy case." *Ibid.* And elsewhere in its opinion, the Court remarked that the continuation of the stay "can cost creditors money and allow a debtor to retain property he might lose." *Ibid.* Those statements confirm the significance of relief from the stay and further justify allowing appeals from final denials of such relief.

B. Ritzen's Contrary Arguments Lack Merit

Ritzen concedes (Br. 6) that the denial of relief from the automatic stay *sometimes* may be final. It nonetheless identifies three main reasons for treating the denial of relief as interlocutory in this particular case. Ritzen's case-by-case approach to finality is flawed, and the arguments it offers are unconvincing.

1. The denial of stay relief is final even where the relief sought is permission to litigate in another forum

a. The automatic stay prohibits a variety of acts, including (for example) enforcing certain judgments, taking possession of certain property, creating or perfecting certain liens, and setting off certain debts. See 11 U.S.C. 362(a). Ritzen acknowledges (Br. 6) that an order denying stay relief "may well be final" in other circumstances, depending on "the context," "the purpose of the relief requested," and "how the request relates to the overall process within the larger case to which it is directed." Ritzen emphasizes (Br. 32), however, that it sought relief in this case only "to litigate its claim in state court." Ritzen argues that "an order denying stay relief *to litigate a claim in state court* is an interlocutory order that is not subject to immediate appellate review." Ritzen Br. 25 (capitalization and emphasis altered).

Ritzen's ad hoc approach to assessing finality has no basis in the statutory text, which authorizes appeals from "final" orders entered in "proceedings." 28 U.S.C. 158(a). Ritzen does not explain how a stay-relief adjudication would qualify as a "proceeding" in some circumstances but not others, or how a denial that terminates the adjudication would qualify as "final" in some cases but not others, depending on the specific action that a creditor proposes to take if the automatic stay were lifted or modified.

Ritzen's case-by-case approach also contradicts this Court's precedents, which establish that "[a]ppeal rights cannot depend on the facts of a particular case." *Carroll* v. *United States*, 354 U.S. 394, 405 (1957). Outside the bankruptcy context, the Court has "expressly rejected efforts to reduce the finality requirement * * *

to a case-by-case determination of whether a particular ruling should be subject to appeal." *Richardson-Merrell Inc.* v. *Koller*, 472 U.S. 424, 439 (1985). It has stated that, in "fashioning a rule of appealability," a court must "look to categories of cases, not to particular injustices." *Van Cauwenberghe* v. *Biard*, 486 U.S. 517, 529 (1988). It has warned that "the issue of appealability * * * is to be determined for the entire category to which a claim belongs." *Digital Equipment Corp.* v. *Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994). And it has explained that finality turns on an analysis of "the class of claims, taken as a whole," not on an "'individualized jurisdictional inquiry.'" *Mohawk Industries, Inc.* v. *Carpenter*, 558 U.S. 100, 107 (2009) (citation omitted).

This Court's decision in *Bullard* reflects the categorical approach required by those precedents. The Court defined the "relevant proceeding" as "the process of attempting to arrive at an approved plan." *Bullard*, 135 S. Ct. at 1692. And it held that plan confirmations and case dismissals are final, while denials of confirmation with leave to amend are interlocutory, rather than directing that denials within the latter category be subjected to further case-by-case analysis to determine whether an immediate appeal could be taken. See *id.* at 1692-1693.

"[A]dministrative simplicity is a major virtue in a jurisdictional statute." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). Simple jurisdictional rules allow judges and parties to spend their time on the merits rather than on preliminary matters, help judges discharge their independent duty to ascertain their jurisdiction, and enable parties to predict what they can appeal and when they have to do so. See *ibid.* To be sure, the jurisdictional analysis is inherently more complex in

bankruptcy cases than in ordinary civil litigation, since a single bankruptcy case may encompass numerous discrete "proceedings," and a broader range of orders therefore may be appealable. But Ritzen's approach would make the analysis substantially and unnecessarily more complicated, by requiring courts to subdivide the category of "final denials of stay relief," based on a vague multi-factor test.

b. Ritzen contends (Br. 20-21) that, when a party seeks "stay relief to permit the adjudication of a claim in state court," "the relevant process for finality purposes is the bankruptcy claims-adjudication process," so that the "relevant *final* order [is] the judgment resolving the merits of [the] claim." But a bankruptcy court's adjudication of a stay-relief motion is a discrete proceeding separate from its adjudication of the creditor's claim. Each of those adjudications forms a distinct procedural unit within the bankruptcy case: Each begins with the filing and service of its own motion or pleading, continues with its own series of procedural steps, and ends with its own grant or denial of relief. See Pet. App. 9a-10a.

Each of those adjudications also addresses a distinct substantive matter. In the stay-relief adjudication, the court applies bankruptcy law to determine whether to lift or maintain the automatic stay. In the claim adjudication, by contrast, the court applies non-bankruptcy law to determine whether the debtor has breached a contract, committed a tort, or the like. The list of "core proceedings" in Section 157 reinforces the conclusion that these are distinct proceedings. That list identifies "motions to terminate, annul, or modify the automatic

stay" as one item, 28 U.S.C. 157(b)(2)(G), and "allowance or disallowance of claims against the estate" as a separate item, 28 U.S.C. 157(b)(2)(B).

In addition, when a creditor seeks relief from the automatic stay in order to litigate its claim in another forum, appellate review of the denial of stay relief would be largely pointless if that review were delayed until the entry of judgment on the merits of the claim. "The normal rules of *res judicata* and collateral estoppel apply to the decisions of bankruptcy courts." *Katchen* v. *Landy*, 382 U.S. 323, 334 (1966). Under those rules, "a creditor who offers a proof of claim and demands its allowance is bound by what is judicially determined, and if his claim is rejected, its validity may not be relitigated in another proceeding." *Ibid.* (citation omitted). Once the bankruptcy court enters a final judgment on the merits of the claim, that judgment would bar relitigation of the claim in state court, even if an appellate court subsequently concluded that stay relief should have been granted.

c. Even under the principles that govern appealability in ordinary civil litigation, the bankruptcy-court order at issue here would be subject to immediate appeal. Ritzen invokes (Br. 22, 26) a supposed "general rule" of ordinary civil litigation that orders that "simply resolve where the parties will litigate their disputes" are not subject to immediate appeal. Ritzen's reliance on that purported "general rule" is misplaced.

Many orders that effectively determine where a particular dispute will be litigated are subject to immediate appeal. For example, a plaintiff may appeal from an order that dismisses its suit for lack of personal jurisdiction, for improper venue, or under the doctrine of *forum non conveniens*, even though such an order leaves him

free to litigate in a different forum. See *United States* v. *Wallace & Tiernan Co.*, 336 U.S. 793, 794 n.1 (1949). A party may also appeal from an order declining to compel arbitration, declining to order arbitration to proceed, or declining to stay a case pending arbitration. See 9 U.S.C. 16(a)(1)(A)-(C). And almost every court that has considered the issue has held that the statute authorizing an immediate appeal from the grant or denial of an injunction, 28 U.S.C. 1292(a), applies to antisuit injunctions that bar litigation in other forums. See 16 Charles Alan Wright et al., *Federal Practice and Procedure* § 3923 nn.2-3 (3d ed. 2012 & Supp. 2019) (Wright & Miller). That last example is particularly relevant here, given the analogy between the denial of relief from the automatic stay and the entry of a permanent injunction. See pp. 16-17, *supra*.

Although Ritzen's decision to assert its state-law claims in the bankruptcy case was a natural and foreseeable consequence of the bankruptcy court's denial of stay relief, the only legal effect of the court's order was to maintain in force the existing Bankruptcy Code bar to assertion of those claims in state court. An order of that sort, which precludes the plaintiff from seeking relief in its chosen forum, typically is subject to immediate appeal in ordinary civil litigation even if it leaves the plaintiff free to bring its claims elsewhere.

2. The denial of stay relief is final even where the request for relief rests on an allegation of bad faith

In seeking relief from the automatic stay in the bankruptcy court, Ritzen argued that such relief was justified because Jackson had commenced the bankruptcy case in bad faith. Ritzen now contends (Br. 43) that, even if not all denials of stay relief are interlocutory, a particular denial is interlocutory and therefore non-appealable if

the motion for relief was "premised on the debtor's bad faith." Ritzen states (Br. 45) that "an order denying a motion premised on the debtor's bad faith" does not "finally resolve the issue" of the debtor's good or bad faith. That jurisdictional argument is mistaken.

First, and most important, Ritzen's argument is inconsistent with the text of the applicable jurisdictional provision. As relevant here, the bankruptcy-appeals statute vests district courts with jurisdiction over appeals "from final judgments, orders, and decrees * * * of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges." 28 U.S.C. 158(a). The dispositive question under Section 158(a) thus is whether the order denying stay relief finally resolved a discrete "proceeding," 28 U.S.C. 158(a), not whether it finally resolved a particular issue. The fact that Ritzen sought stay relief on the basis of Jackson's asserted bad faith, rather than on some other ground, has no logical bearing on that question.

Second, as discussed earlier, "[a]ppeal rights cannot depend on the facts of a particular case." *Carroll*, 354 U.S. at 405; see pp. 19-20, *supra*. Ritzen's fallback rule violates that principle, because it makes the appealability of a denial of stay relief depend on the arguments Ritzen advanced in support of its motion, rather than on the nature and effect of the order that the bankruptcy court ultimately entered.

Third, again as discussed earlier, jurisdictional rules should be easy to administer. See pp. 20-21, *supra*. It would be difficult to administer a rule that made appealability turn on the grounds a party had asserted for seeking relief from the automatic stay. In this case, for example, the parties disputed "the degree to which Ritzen's motion can be characterized as having raised, and the

Bankruptcy Court can be characterized as having considered, the issue of dismissing the Chapter 11 petition on the basis of bad faith filing." Pet. App. 28a.

3. Allowing appeals from denials of stay relief is consistent with relevant congressional policies

Ritzen asserts (Br. 3) that the decision below contravenes "the general policy against piecemeal appeals." 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. See *Bullard*, 135 S. Ct. at 1692. Congress adopted that approach because "a bankruptcy case is like a jigsaw puzzle," and to "complete the puzzle, one must 'start by putting some of the pieces firmly in place.'" Pet. App. 4a (citation omitted). In making that choice, Congress considered the advantages and disadvantages of piece-by-piece appeals, see Ritzen Br. 48-52, and decided that in this context the benefits of many such appeals outweigh the harms. In any event, Ritzen's alternative hardly advances the goals Ritzen claims to pursue. The "'purpose of the finality rule, judicial economy,' would not be served by an ad hoc, case sensitive approach to determining jurisdiction over orders denying relief from the stay." *Pinpoint IT Services, LLC* v. *Rivera* (*In re Atlas IT Export Corp.*), 761 F.3d 177, 190 (1st Cir. 2014) (Kayatta, J., dissenting) (citation omitted), cert. dismissed, 135 S. Ct. 1758 (2015).

Ritzen also contends (Br. 50) that the Sixth Circuit's approach would inundate courts with "appeals in a broad variety of bankruptcy settings," overtaxing the limited resources of the federal judiciary and bankruptcy litigants. That contention is unpersuasive. Since the 19th century, Congress has authorized appeals from

bankruptcy orders that resolved discrete disputes within the larger bankruptcy case. See *Saco*, 711 F.2d at 444-445. And during the four decades since the modern Bankruptcy Code was enacted in 1978, courts have "concluded, almost unanimously, that orders refusing to lift the stay, are final." Pet. App. 15a (citation omitted); see 16 Wright & Miller § 3926.2 n.39 (3d ed. 2012 & Supp. 2019) (collecting cases). Ritzen identifies no evidence that this approach has led reviewing courts to be overburdened with improper bankruptcy appeals.

Finally, Ritzen objects (Br. 23) that "the decision below affirmatively *requires* piecemeal appeals." But that objection concerns a separate aspect of the decision below that is not properly before this Court. The court of appeals reasoned that (1) the denial of stay relief was final and immediately appealable, see Pet. App. 3a-15a, and (2) Ritzen could obtain appellate review of the order denying stay relief only by appealing within 14 days after the entry of that order, see *id.* at 8a.

The second step of the court of appeals' analysis implicates a separate circuit conflict. See 16 Wright & Miller § 3926.1 (3d ed. 2012 & Supp. 2019). Some courts have held that a bankruptcy litigant who *may* take an immediate appeal from a particular order *must* do so, or else forfeit his right to review of that order. See, *e.g.*, *Preblich* v. *Battley*, 181 F.3d 1048, 1056 & n.7 (9th Cir. 1999). Other courts have held that, even when an order finally resolves a proceeding and therefore may be immediately appealed, a litigant in some circumstances retains the option of deferring appeal until the case as a whole has concluded. See, *e.g.*, *Butler Machinery, Inc.* v. *Haugen* (*In re Haugen*), 998 F.2d 1442, 1447 (8th Cir. 1993), cert. denied, 510 U.S. 1093 (1994); *Kilgus*, 811 F.2d at 1116.

Ritzen therefore might have argued below that, even if the bankruptcy court's denial of stay relief were subject to immediate appeal, that order could also be challenged in an appeal from the bankruptcy court's final order disallowing Ritzen's state-law contract claims. Ritzen did not make that argument in its briefs in the court below, however, and the court of appeals did not separately analyze the question. Ritzen likewise did not raise that argument as a separate ground for reversal in either its petition for a writ of certiorari or its opening brief in this Court.

The only issue properly before this Court thus is "[w]hether an order denying a motion for relief from the automatic stay is a final order," Pet. i—*i.e.*, whether a party *may* take an immediate appeal from a bankruptcy court's denial of relief from the automatic stay. For the reasons discussed above, such an order is final and immediately appealable. The question on which the Court granted review does not encompass the distinct question whether, if an immediate appeal is permissible, such an appeal is the *only* means of obtaining appellate review of a denial of stay relief.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 11 U.S.C. 362 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.

* * * * *

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

* * * * *

(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.

* * * * *

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final

hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

* * * * *

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

* * * * *

2. 28 U.S.C. 157 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. 28 U.S.C. 158 provides:

Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[1]

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

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[1] So in original. Probably should be followed by a dash.

(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.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(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.

4. 28 U.S.C. 1291 provides:

Final decisions of 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.

5. 28 U.S.C. 1292 provides in pertinent part:

Interlocutory decisions

(a) Except as provided in subsections (c) and (d) of this section, the courts of appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders 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, or of the judges thereof, granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions, except where a direct review may be had in the Supreme Court;

* * * * *

(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.

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