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

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

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

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner is Ritzen Group, Inc. There is no parent or publicly held company owning 10% or more of Ritzen's stock. Respondent is Jackson Masonry, LLC. There is no parent or publicly held company owning 10% or more of Jackson Masonry's stock.

TABLE OF CONTENTS

TABLE OF CONTENTS—continued

TABLE OF AUTHORITIES

CASES Page

TABLE OF AUTHORITIES—continued

TABLE OF AUTHORITIES—continued

TABLE OF AUTHORITIES—continued

COURT DOCUMENTS

RULES

TABLE OF AUTHORITIES—continued

TABLE OF AUTHORITIES—continued

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a–23a) is reported at 906 F.3d 494. The opinion and order of the district court (Pet. App. 24a–47a) is not published in the *Federal Supplement* but is available at 2018 WL 558837. The opinion and order of the bankruptcy court (Pet. App. 48a–68a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 16, 2018. The petition for a writ of certiorari was filed on January 14, 2019, and granted on May 20, 2019. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

INTRODUCTION

The bankruptcy court denied Ritzen's motion for relief from the automatic stay. That order was immediately appealable under 28 U.S.C. § 158(a)(1) because it conclusively resolved the parties' dispute regarding the stay relief proceeding. Ritzen was therefore required to notice an appeal within 14 days of the order denying stay relief. Fed. R. Bankr. P. 8002(a)(1). But it failed to do so. Instead, over 10 months passed and the bankruptcy moved forward: Ritzen abandoned a pending state court lawsuit against Jackson Masonry—the very reason Ritzen sought stay relief in the first place; Ritzen filed a proof of claim and adversary proceeding, then lost its contract dispute with Jackson Masonry in bankruptcy court; and Ritzen failed to object to Jackson Masonry's reorganization plan. Then, long after the time to do so lapsed, Ritzen filed a notice of appeal from the order denying stay relief. The district court dismissed the appeal for lack of ju-

risdiction, and the Sixth Circuit affirmed. This Court should do the same.

This Court's opinion in *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686 (2015), provides the correct analytical approach for determining finality in bankruptcy cases. 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. When a motion for stay relief is conclusively denied, the automatic stay continues and the creditor is precluded from pursuing civil actions and collection efforts against the debtor outside bankruptcy. The court thus fixes the parties' rights vis-à-vis the automatic stay (*e.g.*, requiring the creditor to litigate its claim in a unique forum under a wholly different process), and reorganization is made possible at the expense of any single creditor's interests. All of that points to affirmance in this case.

Ritzen nonetheless maintains that the stay relief order was interlocutory until the bankruptcy court rendered an "ultimate judgment on the merits" of its claim. Pet. Br. 30. That contention is incorrect under this Court's precedent, and, as a practical matter, would disrupt the bankruptcy system as a whole. Understanding that the automatic stay is a fundamental part of any bankruptcy case, Congress intended for courts to conclusively and expeditiously resolve litigation over the stay. But Ritzen's approach would allow losing creditors to fully litigate their claims in bankruptcy court and then, after the dust settles, seek to appeal a stay relief dispute and unwind the entire case. That would prevent expeditious administration of bankruptcy cases, waste judicial and party resources, deplete the bankruptcy estate,

and chill participation in key restructuring transactions. Allowing delayed appeals would, moreover, risk rendering such orders moot and therefore unreviewable—after all, the automatic stay is ordinarily lifted when a bankruptcy case ends. Congress could not have intended such an anomalous result.

STATEMENT

A. Statutory Background

1. Section 362(a) of the Bankruptcy Code imposes an "automatic stay" at the outset of a case. 11 U.S.C. § 362(a) ("[A] petition filed under section 301, 302, or 303 of this title, . . . operates as a stay, applicable to all entities."). The stay generally precludes creditors from pursuing legal actions and "collection proceedings against the debtor," *Czyzewski* v. *Jevic Holding Corp.*, 137 S. Ct. 973, 979 (2017), and, thus, "prevent[s] damaging disruptions to the administration of a bankruptcy case," *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1804 (2019).

The automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l Bank* v. *N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986) (quoting H.R. Rep. No. 95-595, at 340 (1977); S. Rep. No. 95-989, at 54 (1978)). It "gives the debtor a breathing spell from his creditors," "stops all collection efforts, all harassment, and all foreclosure actions," and "permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." H.R. Rep. No. 95-595, at 340; S. Rep. No. 95-989, at 54–55.

The automatic stay "also provides creditor protection." H.R. Rep. No. 95-595, at 340; S. Rep. No. 95-989, at 49. Without the stay "certain creditors would

be able to pursue their own remedies against the debtor's property" and "[t]hose who acted first would obtain payment of the claims in preference to and to the detriment of other creditors." H.R. Rep. No. 95-595, at 340; S. Rep. No. 95-989, at 49. An individual creditor's "power to enforce its rights" is thus "checked by the Bankruptcy Code's automatic stay provision." *Nobelman* v. *Am. Sav. Bank*, 508 U.S. 324, 330 (1993).

2. The Bankruptcy Code allows parties to seek relief from the stay. Section 362(d) provides that, "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . by terminating, annulling, modifying, or conditioning such stay." 11 U.S.C. § 362(d); see also *id.* § 362(e)(1) (providing for a "final hearing and determination" on stay relief). The bankruptcy court may grant relief from the automatic stay "for cause," among other reasons. *Id.* § 362(d)(1).

Congress has stated that the automatic stay is "essentially an injunction." H.R. Rep. No. 95-595, at 344; S. Rep. No. 95-989, at 53. Specifically, conducting the final hearing and issuing an order concerning a motion for stay relief "are similar to the hearing and issuance or denial of a permanent injunction." H.R. Rep. No. 95-595, at 344; S. Rep. No. 95-989, at 53. Congress has also provided that resolving "motions to terminate, annul, or modify the automatic stay" are one of many "[c]ore proceedings" entrusted to bankruptcy judges. 28 U.S.C. § 157(b)(2)(G).

B. Factual Background

1. Jackson Masonry, LLC is a masonry company located in Nashville, Tennessee. In March 2013, Jackson Masonry entered into a real estate contract with Ritzen Group, Inc., a property management

company. Pet. App. 2a, 26a. Ritzen agreed to purchase real property from Jackson Masonry for $1.55 million. *Id.* The parties were unable to meet a closing deadline, however, and the sale fell through. *Id.* at 26a. Ritzen claimed that Jackson Masonry breached the contract by failing to provide certain documentation, and Jackson Masonry claimed that Ritzen breached the contract by failing to secure financing and appear at the closing. *Id.* at 2a, 26a–27a.

In December 2014, Ritzen sued Jackson Masonry for breach of contract and specific performance in the Chancery Court for Davidson County, Tennessee. *Id.* at 26a–27a. The lawsuit progressed for about a year and a half, while the parties conducted discovery and engaged in motion practice. *Id.* at 27a–33a. During the lawsuit, Jackson Masonry suffered financial setbacks—including unexpectedly small profit margins and a multi-million dollar construction defect lawsuit. 18-5157 C.A. Doc. 17, at 6–7 (6th Cir. May 25, 2018). Roughly a week before a scheduled trial date, Jackson Masonry filed a Chapter 11 petition in the Bankruptcy Court for the Middle District of Tennessee. The state court litigation was automatically stayed. 11 U.S.C. § 362(a).[1]

Now in bankruptcy court, Ritzen moved to modify or lift the automatic stay. Bankr. Ct. Doc. 57, at 23 (requesting "an order granting relief from the automatic stay" solely to resume pre-petition litigation). Ritzen argued that the court should grant relief "for cause," *i.e.*, for "judicial economy" and because the pe-

[1] The state court has since dismissed Ritzen's lawsuit against Jackson Masonry. *In re Jackson Masonry, LLC*, No. 3:16-BK-02065, 2018 WL 1636085, at *1 (Bankr. M.D. Tenn. Apr. 3, 2018) ("When Ritzen failed to prosecute or take any action to preserve the suit for over ten months, the Chancery Court entered an order dismissing the case.").

tition was allegedly filed in "bad faith." *Id.* at 15–23. Jackson Masonry opposed, and the court held a final hearing on the motion. 11 U.S.C. § 362(d)–(e)(1); see also Bankr. Ct. Docs. 101, 111. The court also heard live testimony from Rogers Jackson, the founder of Jackson Masonry, who detailed, among other things, the events leading up to the Chapter 11 filing. J.A. 64a–132a.

2. The bankruptcy court denied Ritzen's motion for stay relief. Pet. App. 48a. For several reasons, Ritzen failed to establish "cause" for lifting the stay and resuming its state court lawsuit. First, continuing the stay would preserve resources and promote judicial efficiency. Pet. App. 57a (explaining granting stay relief "to go to state court . . . would be silly" because "[i]t's not more efficient and it's not a good use of judicial time"). Even if Ritzen had returned to state court, it would eventually have had to assert a claim in bankruptcy. J.A. 137a (explaining that the parties were "going to come right back here" because the court had "exclusive jurisdiction over the property of the estate"). Second, there was no evidence that Jackson Masonry filed its petition in bad faith. Pet. App. 63a (explaining that this case "has [b]ankruptcy written all over it," and does not have the "stench" of cases "where there's no reorganization"). *Id.* at 62a. Third, the court made clear there was "no other place to go now for [this] litigation." J.A. 169a ("It's all going to happen right here and it's going to happen very efficiently under the Federal Rules.").

Ritzen failed to file a notice of appeal within 14 days of the order denying stay relief. 28 U.S.C. § 158(a)(1); Fed. R. Bankr. P. 8002(a)(1). Nor did it seek interlocutory review, 28 U.S.C. § 158(a)(3), seek relief from the order, Fed. R. Bankr. P. 9024, or otherwise renew its motion. Ritzen instead "sought to

vindicate its rights in bankruptcy court." Pet. App. 3a. Ritzen filed a proof of claim and an adversary proceeding against Jackson Masonry, then litigated its contract claim in bankruptcy court. *Id.* at 3a, 32a. After conducting a bench trial, the court found that Ritzen breached the parties' contract by failing to secure funding and appear at the closing. *Id.*

In April 2017, the bankruptcy court confirmed Jackson Masonry's reorganization plan. Bankr. Ct. Doc. 422. Article XI (§ G) of the plan permanently enjoined all creditors from the "commencement or continuation of any judicial, administrative, or other action or proceeding against [d]ebtor . . . on account of [c]laims against [d]ebtor, or on account of claims released pursuant to this [p]lan." Bankr. Ct. Doc. 388, at 15. Ritzen did not object to Jackson Masonry's reorganization plan.

More than 10 months after the bankruptcy court denied relief from the automatic stay, Ritzen filed a notice of appeal from that ruling. Compare Bankr. Ct. Doc. 133 (June 16, 2016), with Bankr. Ct. Doc. 427 (Apr. 28, 2017).[2] Ritzen appealed directly to the District Court for the Middle District of Tennessee.

3. The district court dismissed Ritzen's appeal from the order denying stay relief. Pet. App. 24a–47a. Jackson Masonry argued, in relevant part, that Ritzen's appeal was "untimely because a denial of a motion to lift or modify an automatic stay is a final

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[2] Ritzen separately noticed an appeal from the bankruptcy court's order disallowing its contract claim and entering judgment for Jackson Masonry. Bankr. Ct. Doc. 428. Despite appealing that order to the district court and the Sixth Circuit (Pet. App. 20a–23a, 37a–46a), Ritzen did not seek further review in this Court. Pet. i. The issue is abandoned. *See United States* v. *Int'l Bus. Machs. Corp.*, 517 U.S. 843, 855 n.3 (1996).

order from which a timely notice of appeal must be filed within fourteen days." *Id.* at 35a.

The district court agreed. It recognized that "most courts that have spoken on the issue," including the Sixth Circuit Bankruptcy Appellate Panel (BAP),[3] hold that an order denying stay relief "constitutes a final, appealable order." *Id.* at 36a. The court declined Ritzen's invitation to "go against every other identified case in this circuit," and adopt "a vague, unpredictable" test for appealability. *Id.* at 37a. The court was also wary of "leav[ing] parties forever guessing about when they needed to file an appeal, always at the risk of waiting too long and losing their rights or appealing too early and wasting their time." *Id.* Because Ritzen failed to appeal within 14 days, the court dismissed for lack of jurisdiction. *Id.*

4. The Sixth Circuit affirmed. Pet. App. 1a–23a. The court first recognized that bankruptcy cases are unique because they are "an aggregation of individual disputes." Pet. App. 4a. Citing this Court's decision in *Bullard*, the Sixth Circuit explained that "orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." Pet. App. 4a–5a (citing 135 S. Ct. at 1692). And consistent with "over 100 years" of bankruptcy jurisprudence, the court focused its analysis on the "proceeding" as the appealable "judicial unit" in bankruptcy. *Id.* at 7a (quoting *In re Saco Local Dev. Corp.*, 711 F.2d 441, 444–45 (1st Cir. 1983)).

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[3] The Sixth Circuit BAP has consistently held that orders denying stay relief are final. *See, e.g.*, *In re Lee*, 467 B.R. 906, 911 (B.A.P. 6th Cir. 2012); *In re Rice*, 462 B.R. 651, 653 (B.A.P. 6th Cir. 2011); *In re Schaffrath*, 214 B.R. 153, 154 (B.A.P. 6th Cir. 1997). That was true when the bankruptcy court issued its order denying stay relief in this case.

The Sixth Circuit concluded that the process of resolving a motion for relief from the automatic stay was the relevant "proceeding" under 28 U.S.C. § 158(a)(1). Pet. App. 8a–15a. The court first explained that stay relief motions entail "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 then "look[ed] to other provisions of the statute for help." *Id.* If a "motion[] to terminate, annul, or modify the automatic stay" is a "[c]ore proceeding[]" under 28 U.S.C. § 157(b)(2)(G), then such a motion may also be a "proceeding[]" under 28 U.S.C. § 158(a)(1). Pet. App. 10a.

The Sixth Circuit next considered "the consequences of the order at issue," which were significant. *Id.* at 13a. A motion for stay relief is not "one step in a back-and-forth process." *Id.* at 12a. Instead, when conclusively denied, "there are no more 'rights and obligations' at issue in the stay-relief proceeding." *Id.* at 12a. For example, a "stay-relief denial prohibits the moving party from pursuing its pre-bankruptcy claim against the debtor." *Id.* Then "the creditor usually has no choice but to file a proof of claim in bankruptcy, litigating their pre-bankruptcy dispute anew in the bankruptcy court." *Id.* at 13a. A creditor cannot "simply wait it out and pick up their pre-bankruptcy litigation where [it] left off." *Id.*

The Sixth Circuit also allowed for an "exception[]." *Id.* at 12a. Sometimes bankruptcy courts "deny stay-relief motions *without prejudice* if it appears that changing circumstances could change the stay calculus." *Id.* (emphasis added). For instance, if a court suggests that "a party may file a second motion if circumstances change," then the order denying stay relief is not final. *Id.* But here the bankruptcy court "did not deny Ritzen's motion without prejudice,

meaning that its stay-relief order was intended to be the final word on the matter." *Id.* at 13a.

Finally, the Sixth Circuit addressed Ritzen's policy arguments. Ritzen claimed the bankruptcy court's order was interlocutory because it was "not a ruling on the merits." *Id.* at 14a. But "[a] substantive claim against the bankruptcy estate is adjudicated in a *different* proceeding," and Ritzen's approach would have improperly "import[ed] the definition of finality from ordinary civil litigation." *Id.* Ritzen also argued that "debtors would be forced 'to confront early, costly, and time-consuming appeals.'" *Id.* The court was "skeptical" of that "doomsday prediction[]." *Id.* at 15a. The court found that "efficiency concerns" actually went the other way: Ritzen's proposal would "force creditors who lose stay-relief motions to fully litigate their claims in bankruptcy court and then, after the bankruptcy case is over, appeal and seek to redo the litigation all over again in the original court." *Id.* "That would be a tremendous waste of time and money," and give creditors "a second bite at the apple." *Id.*

SUMMARY OF THE ARGUMENT

I. The bankruptcy court's order denying Ritzen's motion for stay relief was final and immediately appealable.

A. This Court has recognized that, in the bankruptcy context, orders are immediately appealable if they finally dispose of discrete disputes within the larger case. Thus, contrary to Ritzen's suggestion, generic analogies to orders in ordinary civil litigation do not control here. In *Bullard*, for example, this Court focused on whether the order at issue allowed the bankruptcy to move forward, altered the parties' legal relationships, and otherwise generated significant consequences. This Court was also keenly aware

of the practical impact its decision would have on the bankruptcy system.

B. Applying the correct analytical framework, the Sixth Circuit concluded that the relevant "proceeding" is the discrete process of resolving a stay relief motion. That proceeding becomes "final" when relief is conclusively denied (*e.g.*, denied *with prejudice*). This conclusion flows from the procedurally discrete nature of stay relief, and the significant consequences the outcome has for the debtor, creditors, and the estate. For instance, when stay relief is conclusively denied, the creditor is precluded from pursuing ordinary civil litigation and collection efforts against the debtor outside bankruptcy. Not only does the creditor lose its choice of forum, but, when pursuing its claims, must proceed under different rules (*e.g.*, in some instances, the creditor may lose its right to a jury trial). The text of the U.S. Code further supports the conclusion that the relevant "proceeding" is the process of resolving a stay relief motion. Because Congress listed "motions to terminate, annul, or modify the automatic stay" as "[c]ore proceedings" under 28 U.S.C. § 157(b)(2)(G), such motions may also be "proceedings" under 28 U.S.C. § 158(a).

C. For decades, the majority of circuits have held that orders denying relief from the automatic stay are final and immediately appealable. Leading treatises uniformly explain that a wide variety of orders concerning the automatic stay are final, and the Department of Justice appears to agree. Ritzen has offered no justification for changing course now and upsetting decades of settled expectations in bankruptcy administration.

II. Permitting an immediate appeal from the denial of stay relief respects congressional intent and promotes judicial efficiency.

A. Congress intended for courts to conclusively and expeditiously resolve stay relief requests in bankruptcy cases. This Court has long recognized that expedition is an important value in bankruptcy, given the need to promptly administer and settle the estate's debts. Moreover, because the automatic stay is central to the administration of bankruptcy cases, discrete disputes about whether to terminate or continue the stay should also be resolved expeditiously. Congress has made that exact policy judgment. It follows that an order conclusively resolving a stay relief motion should be "final" because an immediate appeal is necessary to effectuate Congress's intent to settle the matter quickly.

B. Providing that the denial of stay relief is immediately appealable promotes judicial efficiency in bankruptcy cases. By resolving stay relief issues expeditiously, courts and parties can litigate in bankruptcy without the specter of a belated appeal unwinding the entire case. The alternative—permitting delayed appeals from stay relief issues—may generate additional legal and practical barriers to bankruptcy administration. This appeal proves the point. Ritzen seeks to unravel the bankruptcy, so that it can relitigate its contract claim in state court. But Ritzen's original lawsuit has since been dismissed, and, further, potential relitigation is likely barred by res judicata or the injunction in Jackson Masonry's confirmed reorganization plan. Thus, in these circumstances, Ritzen's focus on the policy against piecemeal appeals is misplaced.

C. Postponing appeal of the denial of stay relief creates additional practical problems. To benefit both debtors and creditors, reorganization requires a reasonable degree of certainty and finality. Injecting unnecessary doubt into the system, however, can nega-

tively impact lenders and purchasers of assets, along with creditors, debtors, and trustees. Ritzen's favored approach—waiting to appeal a stay relief denial until the court has rendered an ultimate judgment—is at odds with ordinary incentives for creditors in reorganization cases. Rather than seeking expeditious resolution and preserving the estate's value, Ritzen seeks to impose additional costs and uncertainty. That rule might deter creditors from supporting a reorganization plan, and chill participation in other key restructuring transactions (*e.g.*, debtor-in-possession financing, use of cash collateral, and sales of estate assets). Such uncertainty compromises the bankruptcy system's purpose.

ARGUMENT

I. THE BANKRUPTCY COURT'S ORDER DENYING RELIEF FROM THE AUTOMATIC STAY WAS FINAL AND IMMEDIATELY APPEALABLE.

Ritzen's motion to lift or modify the automatic stay sought relief only for the purpose of continuing prepetition litigation in state court. No other relief was requested. The bankruptcy court conducted a final hearing and conclusively determined that Ritzen was not entitled to such relief. Indeed, the bankruptcy court made clear there was nothing left to resolve with respect to the stay relief proceeding, and Ritzen had no choice but to file a proof of claim against Jackson Masonry and litigate its contract dispute in bankruptcy court. Ritzen did not appeal, seek reconsideration, or otherwise renew its request for relief. Accordingly, the bankruptcy court fixed the parties' rights and obligations vis-à-vis the automatic stay.

The bankruptcy court's order denying stay relief was immediately appealable because it finally re-

solved a discrete dispute within the larger case. That conclusion is consistent with this Court's analysis in *Bullard*, and flows from the nature of a stay relief proceeding and the significant consequences it has on the debtor, creditors, and the estate. The text of the U.S. Code further bolsters the conclusion that the relevant "proceeding" is the discrete process of resolving a motion for relief from the automatic stay.

A. Bankruptcy court orders are immediately appealable if they finally dispose of discrete disputes within the larger case.

1. As this Court has explained, the rules governing finality are "different in bankruptcy." *Bullard*, 135 S. Ct. at 1692. That is because, unlike ordinary civil cases, "[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." *Id.* (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b] (16th ed. 2014)); see also Fed. R. Bankr. P. 7001 (listing various "adversary proceedings"), 9014 (governing other "contested matters").

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." *Bullard*, 135 S. Ct. at 1692 (quoting *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, 547 U.S. 651, 657 n.3 (2006)). Section 158 authorizes immediate appeals "from final judgments, orders, and decrees . . . in cases and proceedings." 28 U.S.C. § 158(a)(1); compare 28 U.S.C. § 1291 ("The courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts of the United States.").

Ritzen nonetheless invites this Court to apply concepts of "general finality" when addressing the ques-

tion presented. Pet. Br. 36; see also *id.* at 40–42 (discussing purportedly "[a]nalogous [o]rders" where district courts resolve ordinary civil motions "seek[ing] to change the forum of a dispute"). But that approach ignores the reality that bankruptcy cases are unique—so unique, in fact, that "[t]he same flexible approach is used when appeal is taken under [Section] 1291 from a bankruptcy order entered by the district court initially." 16 C. Wright & A. Miller, Federal Practice and Procedure § 3926.2 (3d ed. 2019); see also *Conn. Nat'l Bank* v. *Germain*, 503 U.S. 249, 253 (1992) ("Section 1291 confers jurisdiction over appeals from 'final decisions of the district courts' acting in any capacity.").[4] Thus, it is immaterial that "orders concerning transfer of venue, abstention, and remand" (Pet. Br. 22) are considered interlocutory in the ordinary civil context.

2. This Court's decision in *Bullard* supplies the correct analytical approach for determining finality in bankruptcy cases. 135 S. Ct. 1686. There, Louis Bullard filed a Chapter 13 petition. *Id.* at 1688. His primary debt was to Blue Hills Bank, which had a mortgage on his home. *Id.* at 1690. Soon after filing the petition, Bullard proposed a repayment plan. *Id.*

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[4] Many circuits hold that finality analysis under 28 U.S.C. § 1291 (*i.e.*, when reviewing decisions of district courts exercising original jurisdiction over bankruptcy cases) is the same as finality analysis under 28 U.S.C. § 158(d) (*i.e.*, when reviewing decisions of bankruptcy courts exercising jurisdiction over bankruptcy cases). *See, e.g.*, *In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 470 (3d Cir. 1998); *In re Cajun Elec. Power Coop., Inc.*, 119 F.3d 349, 354 (5th Cir. 1997); *Jove Eng'g, Inc.* v. *IRS*, 92 F.3d 1539, 1547–48 (11th Cir. 1996); *In re Dow Corning Corp.*, 86 F.3d 482, 488 (6th Cir. 1996); *Tringali* v. *Hathaway Mach. Co.,* 796 F.2d 553, 558 (1st Cir. 1986); *A.H. Robins Co.* v. *Piccinin*, 788 F.2d 994, 1009 (4th Cir. 1986); *In re UNR Indus., Inc.*, 725 F.2d 1111, 1115 (7th Cir. 1984).

He then "amended it three times over the course of a year." *Id.* Bullard's third-amended plan proposed "hybrid" treatment of his debt to the Bank, and ultimately called for him to pay only a fraction of the claim. *Id.* at 1690–91.

The Bank objected to the plan. The bankruptcy court sustained the objection, and directed Bullard to file a "further amended plan within thirty days." *In re Bullard*, 475 B.R. 304, 314 (Bankr. D. Mass. 2012). Bullard appealed. The First Circuit BAP held, in relevant part, that the order was not final under § 158(a)(1) because Bullard was "free to propose an alternate plan." *In re Bullard*, 494 B.R. 92, 95 (B.A.P. 1st Cir. 2013). Bullard sought further review, but the First Circuit dismissed his appeal for lack of jurisdiction. Following the majority of circuits, the court concluded that an order denying confirmation "is not a final order so long as the debtor remains free to propose an amended plan." *In re Bullard*, 752 F.3d 483, 486 (1st Cir. 2014).

This Court affirmed. At the outset, this Court explained that a bankruptcy court order is immediately appealable when it finally disposes of a discrete dispute within the larger case. *Bullard*, 135 S. Ct. at 1692. Under that standard, the parties' disagreement concerned "how to define the immediately appealable 'proceeding' in the context of the consideration of Chapter 13 plans." *Id.* Bullard advocated for a "plan-by-plan approach," where each proposal initiated a "separate proceeding." *Id.* But the Bank argued that the relevant proceeding was "the entire process of considering plans." *Id.*

This Court agreed with the Bank. For purposes of Chapter 13 confirmation, "[t]he relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move for-

ward." *Id.* As compared to the alternate proposal, "only plan confirmation—or case dismissal—alters the status quo and fixes the rights and obligations of the parties." *Id.* Plan confirmation and case dismissal have "significant consequences" for the debtor, creditors, and the estate. *Id.* at 1695; see also *id.* at 1692 (explaining, *e.g.*, that "[c]onfirmation has preclusive effect" and "[d]ismissal . . . dooms the possibility of a discharge"). Denial with leave to amend, by contrast, "changes little"—other than "rul[ing] out the specific arrangement of relief embodied in a particular plan." *Id.* at 1693.

Bullard was not driven by general finality concepts from ordinary civil cases. To the contrary, this Court emphasized the practical impact of its decision on the bankruptcy system. For example, under Bullard's proposed rule, debtors would have been able to file multiple appeals from denials of confirmation. Because "each climb up the appellate ladder and slide down the chute can take more than a year," serial appeals regarding plan confirmation could have become abusive and might have prolonged the bankruptcy process. *Id.* This Court was also wary of debtors using appeals as "leverage in dealing with creditors." *Id.* Rather than short-circuit a negotiated process, the debtor was encouraged to "work with creditors and the trustee to develop a confirmable plan as promptly as possible." *Id.* at 1694. This Court viewed confirmation like purchasing a car—often involving successive proposals during a back-and-forth negotiation. *Id.* at 1693 ("It ain't over till it's over.").

B. The relevant "proceeding" is the process of resolving a stay relief motion, which becomes "final" when the motion is granted or conclusively denied.

The Sixth Circuit correctly concluded 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 (*e.g.*, denied *with prejudice*). When relief is granted and the automatic stay is terminated, the debtor and its assets are immediately exposed to legal action, repossession, or offset. When relief is conclusively denied and the automatic stay is continued, the creditors is precluded from pursuing ordinary civil actions and collection efforts against the debtor outside bankruptcy. In this way, reorganization is made possible at the expense of any single creditor's interests. In either case, the bankruptcy court fixes the parties' rights vis-à-vis the automatic stay and triggers significant consequences for the debtor, creditors, and the estate.

1. Stay relief involves a discrete claim, a discrete proceeding, and a discrete decision based on a legal standard.

Congress envisioned various disputes cropping up within a larger bankruptcy case—*i.e.*, "contested matters, adversary proceedings, and plenary suits." *In re Saco Local Dev. Corp.*, 711 F.2d at 445; see also H.R. Rep. No. 95-595, at 444; S. Rep. No. 95-989, at 153. To take an example, adversary proceedings are "essentially full civil lawsuits carried out under the umbrella of the bankruptcy case." *Bullard*, 135 S. Ct. at 1694. Even though adversary proceedings constitute less than the entire bankruptcy case, they are, as the Sixth Circuit noted, the "archetypal example" of a

proceeding under § 158(a)(1). Pet. App. 9a ("[A] 'proceeding' is akin to a case within a case.").

As previously explained, the automatic stay is one of the fundamental building blocks of a bankruptcy case. *Midlantic Nat'l Bank*, 474 U.S. at 503. It is therefore unsurprising that "Congress intended the courts to conclusively and expeditiously adjudicate, apart from the bankruptcy proceedings as a whole, complaints for relief from the automatic stay." See *In re Am. Mariner Indus., Inc.*, 734 F.2d 426, 429 (9th Cir. 1984); see also Fed. R. Bankr. P. 7001, advisory committee's 1983 note (describing the need to "establish an expedited schedule for judicial disposition of requests for relief from the automatic stay").

Accordingly, the Sixth Circuit correctly recognized that the process of resolving a motion for relief from the automatic stay is the relevant "proceeding." Such motions involve "a discrete claim for relief, a series of procedural steps, and a concluding decision based on the application of a legal standard." Pet. App. 9a–10a (citing 11 U.S.C. § 362(d)–(e); Fed. R. Bankr. P. 9014(a)–(b)). Unlike the denial of plan confirmation at issue in *Bullard*, an order conclusively denying relief from the automatic stay is not "one step" in negotiated "back-and-forth" process. *Id.* at 12a. To the contrary, in the ordinary case, an order denying stay relief is "procedurally complete—once entered there are no more 'rights and obligations' at issue in the stay-relief proceeding." *Id.*

Ritzen implies that an order denying relief from the automatic stay is "closely analogous" to an order denying plan confirmation with leave to amend. See Pet. Br. 9, 25. It is unclear why that would be the case, and Ritzen offers no explanation. See *John Hancock Mut. Life Ins. Co.* v. *Route 37 Bus. Park Assocs.*, 987 F.2d 154, 157 (3d Cir. 1993) ("[A] lift stay

hearing should not be transformed into a confirmation hearing." (quoting *In re 266 Wash. Assocs.*, 141 B.R. 275, 281 (Bankr. E.D.N.Y. 1992)). In any event, plan confirmation is a malleable process that can involve many parties, objections, votes, negotiations, modifications, and amendments. See, *e.g.*, 11 U.S.C. §§ 1127, 1129, 1323, 1325, 1329. Resolving a motion for relief from the automatic stay is, by contrast, a discrete process (focused on a finite and generally static set of facts). As the Sixth Circuit recognized, conclusive resolution of a stay relief motion involves a process that is "distinct from the overall bankruptcy case." Pet. App. 11a.

Ritzen contends that motions for stay relief "universally implicate some other larger bankruptcy process" and are "never granted for their own sake." Pet. Br. at 31. In Ritzen's view, the relevant proceeding is actually "the claims-adjudication process" because it "sought stay relief to litigate its claim in state court." *Id.* at 32. That position fails for several reasons. For starters, Ritzen did not request that the bankruptcy court adjudicate its contract claim in connection with the stay relief motion. Bankr. Ct. Doc. 57. Further, stay relief and claims adjudication involve entirely different requests for relief, legal standards, and applicable rules. On Ritzen's stay motion to lift the stay, the standard for relief (*i.e.*, "cause") was dictated by the Bankruptcy Code, 11 U.S.C. § 362, and the proceeding was governed by Federal Rule of Bankruptcy Procedure 4001. During claims adjudication, the standard for relief was dictated by Tennessee substantive law and the proceeding was governed by Federal Rule of Bankruptcy Procedure 3007. Discrete proceedings are not merged simply because one follows the other. As the Sixth Circuit observed, "[a] substantive claim against the bankruptcy estate is

adjudicated in a *different* proceeding, separate from the stay-relief proceeding." Pet. App. 14a.

Ritzen offers no reason to infer that "claims adjudication" is inextricably linked with stay relief. In contrast, Congress has identified them as separate "proceedings." Compare 28 U.S.C. § 157(b)(2)(B) (listing "allowance or disallowance of claims against the estate"), with *id.* § 157(b)(2)(G) (listing "motions to terminate, annul, or modify the automatic stay"). And in practical terms, the bankruptcy court's order denying stay relief did not touch Ritzen's claim: Ritzen only requested relief from the stay to resume litigation in state court. Indeed, the bankruptcy court only addressed the merits months later when disallowing Ritzen's claim. See, *e.g.*, Bankr. Ct. Docs. 375, 423. Ritzen then filed a distinct notice of appeal from each order. Bankr. Ct. Docs. 427, 428.[5]

2. Resolving a motion for stay relief triggers significant consequences.

Resolving a request for relief from the automatic stay triggers significant consequences, and thus al-

[5] Ritzen also attempts to liken "the finality of an order denying a motion for stay relief premised on the debtor's bad faith" to "the finality of an order denying a motion to dismiss a case premised on the same grounds." Pet. Br. 45. That is incorrect. Unlike an order conclusively denying stay relief, an order denying a motion to dismiss does not necessarily fix the parties' rights and obligations or otherwise trigger significant consequences going forward. *See In re Lane*, 591 B.R. 298, 306–07 (B.A.P. 6th Cir. 2018) (holding that order denying a motion to dismiss "effected no change in the parties' rights or the status quo and is a non-final order"). In any event, even if Ritzen were correct, the bankruptcy court conclusively determined that Jackson Masonry's petition was not filed in "bad faith" when it denied Ritzen's stay relief motion. Pet. App. 63a–64a, 173a–74a. Ritzen did not renew its purported bad faith argument, nor did it object to plan confirmation based on alleged bad faith.

ters the parties' rights and obligations. Generally, "the automatic stay protects a debtor from various collection efforts over a specified period." *Pa. Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 560 n.3 (1990). It "gives the debtor a breathing spell from his creditors," "stops all collection efforts," and "permits the debtor to attempt a . . . reorganization plan." H.R. Rep. No. 95-595, at 340; S. Rep. No. 95-989, at 54–55. The automatic stay "also provides creditor protection"—it prevents any single creditor from "pursu[ing] their own remedies against the debtor's property" and thus forecloses "a race of diligence by creditors for the debtor's assets." H.R. Rep. No. 95-595, at 340; S. Rep. No. 95-989, at 49.

Ritzen suggests that a stay relief order denying a request to continue pre-petition litigation does nothing more than determine "where the parties will litigate," and is thus similar to "orders concerning transfer of venue, abstention, and remand." Pet. Br. 4, 22. As explained above, these analogies are inapt in the bankruptcy context; in any event, they fail on their own terms. Congress has expressly stated that, conducting a final hearing and issuing an order on a stay relief motion "are similar to the hearing and issuance or denial of a permanent injunction." S. Rep. No. 95-989, at 53; see also H.R. Rep. No. 95-595, at 344. Permanent injunctions are ordinarily considered "final." See, *e.g.*, *Smith* v. *Ill. Bell Tel. Co.*, 270 U.S. 587, 588–89 (1926); *Mayor of Vicksburg* v. *Henson*, 231 U.S. 259, 266–67 (1913) (explaining that an injunction was "final as to the city's right to do what it was then proposing to do," and was therefore "a final decree . . . from which an appeal could be taken"). Consistent with that characterization, lower courts also recognize that "the denial of relief from an automatic stay in bankruptcy is equivalent to a permanent in-

junction and is thus a final order." *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1284 (2d Cir. 1990); see also *Eddleman* v. *U.S. Dep't of Labor*, 923 F.2d 782, 785 (10th Cir. 1991) ("Because a permanent injunction is appealable as a final order, . . . we may infer that Congress intended the grant or denial of stay to be similarly appealable.").[6]

The Sixth Circuit correctly identified the significant consequences associated with a stay relief proceeding. Pet. App. 13a. The court explained that a "stay-relief denial prohibits the moving party from pursuing its pre-bankruptcy claim against the debtor." *Id.* at 12a. It follows that "the creditor usually has no choice but to file a proof of claim in bankruptcy, litigating their

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[6] Ritzen argues that an order denying stay relief "is not helpfully analogous to an order denying an injunction." Pet. Br. 42 n.13. But Ritzen's position is contrary to the views of Congress. H.R. Rep. No. 95-595, at 344; S. Rep. No. 95-989, at 53. Moreover, Ritzen's reliance on *In re Atlas IT Exp. Corp.*, 761 F.3d 177 (1st Cir. 2014), is misplaced. That the automatic stay is a "default" position in bankruptcy cases "has no logical bearing on the question of appealability" under § 158(a)(1). *See id.* at 189 (Kayatta, J., dissenting). Ritzen also points out that, in ordinary civil cases, Congress provides appellate jurisdiction over interlocutory injunctions under 28 U.S.C. § 1292(a)(1). Because Congress has not "expressly" done the same for "orders granting or denying stay relief," Ritzen implies that the bankruptcy appeals statute cannot support jurisdiction over such orders. Pet. Br. 43 n.13. That is wrong. As explained above, § 158(a)(1) reflects a unique concept of finality for bankruptcy cases. *Bullard*, 135 S. Ct. at 1692; *see also* 28 U.S.C. § 158(a)(1). Thus, Congress had no need to "specially and particularly" (Pet. Br. 43 n.13) create a bankruptcy analog to § 1292(a)(1). At any rate, following the implication of Ritzen's argument to its logical conclusion would create an incongruity. A creditor could appeal the denial of stay relief from a district court to a court of appeals under § 1292(a)(1), but that creditor could not appeal the same order if it were issued by bankruptcy court. *See Germain*, 503 U.S. at 253–54; 16 Wright & Miller § 3926.1.

pre-bankruptcy dispute anew in the bankruptcy court." *Id.* at 13a. Likewise, this Court has recognized that imposition or continuation of the automatic stay impacts creditors' rights and obligations. See *Nobelman*, 508 U.S. at 330 (explaining that a home mortgage lender's "contractual rights," *e.g.*, "its right to foreclose on the property in the event of default," is "checked by the Bankruptcy Code's automatic stay provision"); see also *Till* v. *SCS Credit Corp.*, 541 U.S. 465, 494 (2004) (Scalia, J., dissenting) ("[T]he costs of foreclosure are substantially higher in bankruptcy because the automatic stay bars repossession without judicial permission.").[7]

A denial of stay relief also changes the status quo. The creditor not only loses its choice of forum, but also typically loses the right to a jury trial and must proceed under a wholly different set of rules—where even a successful claim may be remitted in light of the confirmation process as a whole. See, *e.g.*, *Langenkamp* v. *Culp*, 498 U.S. 42, 44 (1990) (per curiam) (holding there is no Seventh Amendment right to a jury trial where a creditor makes a claim against the bankruptcy estate); *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 58–59 & n.14 (1989) (recognizing that a creditor's filing of a claim against a bankruptcy estate triggers the process of allowance and disallowance of claims, which in turn subjects the creditor to

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[7] *See also In re Comer*, 716 F.2d 168, 174 (3d Cir. 1983) (explaining that order on automatic stay "resulted in a diminution of the creditors' secured debt" and therefore "ma[de] a reorganization possible at the expense of the creditors' interests"); *Farmers & Merchants Bank & Tr. of Watertown* v. *Trail W., Inc.*, 28 B.R. 389, 392 (D.S.D. 1983) (explaining that order on automatic stay "will have a potentially significant impact on the financial health of the party who loses at the hearing," *e.g.*, "the losing creditor faces the prospect of standing by powerless while his debtor erodes his collateral").

the bankruptcy court's equitable power and eliminates right to a trial by jury); *Katchen* v. *Landy*, 382 U.S. 323, 337 (1966) (recognizing "the fundamental principle that the right of trial by jury, considered an absolute right, does not extend to cases of equity jurisdiction," like in a bankruptcy court).

3. The bankruptcy court did not deny Ritzen's motion without prejudice.

Ritzen maintains that the Sixth Circuit's application of *Bullard* was flawed because "virtually any contested matter . . . would qualify as final." Pet. Br. 23. Not so. As the Sixth Circuit noted, "[c]ourts may deny stay-relief motions without prejudice if it appears that changing circumstances could change the stay calculus." Pet. App. 12a. In such cases, a creditor may be free to file a successive motion on the same grounds. This "exception" may apply, for example, when the court indicates that "a party may file a second motion if circumstances change." See *Bullard*, 135 S. Ct. at 1693 (explaining that an order denying plan confirmation with leave to amend is not final because it merely "rule[s] out the specific arrangement of relief embodied in a particular plan"). This is simply not a scenario where the Sixth Circuit deemed every "contested matter" a proceeding for purposes of appealability. *Id.* at 1694.

Ritzen also contends that the Sixth Circuit's "without prejudice" exception is unsuitable because stay relief motions can be "made and remade as the circumstances warrant." Pet. Br. 23. But that position assumes away the doctrines of preclusion and estoppel. Regardless, Ritzen made no such attempt to "remake" its stay relief motion in this case. As the Sixth Circuit said, "the bankruptcy court did not deny Ritzen's motion without prejudice, meaning that its stay-relief order was intended to be the final word on

the matter." Pet. App. 13a. Indeed, every indication was that the bankruptcy court's order conclusively denied Ritzen's request for stay relief. *Id.* at 62a (explaining that "[t]here is no other place to go now for [this] litigation").

In any event, the Sixth Circuit's decision is harmonious with Ritzen's preferred approach. When seeking review in this Court, Ritzen faulted the Sixth Circuit for rejecting a "case-by-case approach, as employed by the First and Third Circuits." Pet. 5; see also *id.* at 8–10. But the First and Third Circuits also recognize that orders denying relief from the automatic stay may be final, subject to certain exceptions or the particular circumstances of the case. For example, in *In re W. Elecs. Inc.*, 852 F.2d 79 (3d Cir. 1988), the Third Circuit concluded that an order denying stay relief was final, but hypothesized an exception where, *inter alia*, "relief from the stay [is] denied without prejudice because the record [is] incomplete." *Id.* at 82; see also *In re Atlas IT Exp. Corp.*, 761 F.3d 177, 185 (1st Cir. 2014) (acknowledging the "possibil[ity] that in some cases an order denying stay relief may lack finality," but stating that "[e]verything depends on the circumstances").

4. Textual clues suggest that a stay relief motion is the relevant proceeding for purposes of appealability.

The text of the U.S. Code bolsters the conclusion that a motion for stay relief is the relevant proceeding for purposes of appealability. Section 158(a)(1) authorizes appeals as of right from "final judgments, orders, and decrees . . . in cases and *proceedings*." 28 U.S.C. § 158(a)(1) (emphasis added). As this Court recognized in *Bullard*, an immediately adjacent provision contains a "list of 'core proceedings' statutorily entrusted to bankruptcy judges." 135 S. Ct. at 1693.

In § 157(b)(2), Congress listed "motions to terminate, annul, or modify the automatic stay" as one of many "[c]ore *proceedings*." 28 U.S.C. § 157(b)(2)(G) (emphasis added). While this "textual clue" does not "clinch[] the matter," *Bullard*, 135 S. Ct. at 1693, it is instructive that Congress viewed the discrete process of resolving "motions to terminate, annul, or modify the automatic stay"—without any reference to the decision's ultimate outcome—as the relevant "proceeding." Pet. App. 10a; see also *IBP, Inc.* v. *Alvarez*, 546 U.S. 21, 34 (2005) (noting the "normal rule of statutory interpretation that identical words used in different parts of the same statute are generally presumed to have the same meaning").

Ritzen rejects this textual analysis. Because § 157(b)(2)(G) is drafted in the plural, Ritzen contends that Congress "implicitly acknowledg[ed] a larger process beyond *any singular motion* or individual disposition." Pet. Br. 6 (emphasis added). That is incorrect. As an initial matter, the entire list of "[c]ore proceedings" is drafted in the plural. See 28 U.S.C. § 157(b)(2)(A)–(P) (listing, *inter alia*, "objections to discharges" and "confirmations of plans"). Yet, in *Bullard*, this Court did not suggest the relevant "proceeding" entailed multiple "confirmations of plans." 135 S. Ct. at 1693; see also 11 U.S.C. § 1321 ("The debtor shall file a plan."). Ritzen reads too much into § 157(b)(2)(G), and, in doing so, ignores "common sense and everyday linguistic experience." See A. Scalia & B. Garner, Reading Law: *The Interpretation of Legal Texts* 130 (2012) (explaining the "singular-plural principle," which holds that the plural construction "normally include[s] the singular"); see also 1 U.S.C. § 1 ("In determining the meaning of any Act of Congress, unless the context indicates oth-

erwise . . . words importing the plural include the singular.").

5. The history of the Bankruptcy Code does not support Ritzen's argument.

The history of the Bankruptcy Code provides no support for Ritzen's finality analysis. According to Ritzen, "under the provisions governing appellate review [in] the former Bankruptcy Act of 1898 . . . , orders denying stay relief were treated as interlocutory." Pet. Br. 22; see also *id.* at 37–38 (drawing on an obsolete distinction between proceedings in bankruptcy and controversies in proceedings in bankruptcy). Even assuming that was true in the late 19th century, Ritzen's argument provides a hazardous basis for addressing questions of finality under the modern bankruptcy appeals statute.

Ritzen's argument runs headlong into systemic reformations of the Bankruptcy Code in the late 20th century. See 16 Wright & Miller § 3926 (discussing the "dramatically new regime adopted in 1978 as part of sweeping changes in the bankruptcy laws," which "repealed" the old appeals provisions and "replaced" them with "a new structure that was substantially different"). These "[c]hanges in the structure of the bankruptcy system in 1978 and 1984 make it unwise to attempt to draw any lessons from [older legislative] history in attempting to unravel current appeal provisions." *Id.* In any event, when examining prior versions of legislation, this Court "will not assume that Congress intended to enact statutory language that it has earlier discarded in favor of other language." *Chickasaw Nation* v. *United States*, 534 U.S. 84, 93 (2001) (quoting *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 443 (1987)).

C. The majority of circuits have long held that orders denying relief from the automatic stay are "final."

Since Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, the majority of circuits have consistently held that orders denying relief from the automatic stay are final.[8] The remaining circuits also recognize that orders denying stay relief can be final, depending on the particular circumstances of the case (*e.g.*, whether all issues in the stay relief proceeding were resolved).[9] Even Ritzen appears to agree that at least "some orders denying stay relief are final orders subject to immediate appeal." Pet. Br. 22; see also *id.* at 6 ("None of this is to say that an order denying stay relief may *never* be final.").

Leading treatises explain that "[a]utomatic-stay rulings by a bankruptcy judge or appellate panel should be appealable as final decisions." 16 Wright & Miller § 3926.2, nn.39–40 (collecting cases); see also 1 Collier on Bankruptcy ¶ 5.09 (16th ed. 2014) ("The courts have also concluded, almost unanimously, that orders refusing to lift the stay, are final."). The Department of Justice appears to agree. See Samuel R. Maizel, *Civil Resource Manual: 96. The "Who, What, When, Where, Why, And How" of Appeals*

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[8] *See, e.g.*, *Rajala* v. *Gardner*, 709 F.3d 1031, 1034 (10th Cir. 2013); *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1092 (9th Cir. 2007); *In re James Wilson Assocs.*, 965 F.2d 160, 166 (7th Cir. 1992); *In re Lieb*, 915 F.2d 180, 185 n.3 (5th Cir. 1990); *In re Sonnax Indus.*, 907 F.2d at 1284–85; *In re Apex Oil Co.*, 884 F.2d 343, 347 (8th Cir. 1989); *In re Dixie Broad., Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989); *Grundy Nat'l Bank* v. *Tandem Min. Corp.*, 754 F.2d 1436, 1439 (4th Cir. 1985).

[9] *See, e.g.*, *In re Atlas,* 761 F.3d at 185; *In re W. Elecs. Inc.*, 852 F.2d at 81.

in Bankruptcy Proceedings—Generally, Dep't of Justice § II.A.4 (Mar. 15, 1996), https://www.justice.gov/jm/civil-resource-manual-96-who-what-when-where-why-and-how-appeals-bankruptcy-proceedings ("Orders denying or granting relief from the automatic stay are final and appealable.").

Ritzen has not offered any justification for changing course and upsetting decades of settled expectations in bankruptcy practice. To the contrary, Ritzen's arguments are "just an attempt to import the definition of finality from ordinary civil litigation." Pet. App. 14a; see also Pet. Br. 32 (arguing that orders denying stay relief "are not appealable when they do not fully resolve the creditor's claim"); 18-5157 C.A. Doc. 16, at 28 (6th Cir. Apr. 25, 2018) (arguing that an order denying stay relief "is interlocutory when . . . it does not finally resolve all issues between the parties"). While the bankruptcy court's order denying stay relief was not an "ultimate judgment on the merits" of Ritzen's contract claim (Pet. Br. 30), final resolution of all issues between the parties is not a prerequisite for appealability in bankruptcy cases. See *Howard Delivery Serv.*, 547 U.S. at 657 n.3.

II. PERMITTING AN IMMEDIATE APPEAL FROM THE DENIAL OF STAY RELIEF PROMOTES CONGRESSIONAL INTENT AND JUDICIAL EFFICIENCY.

An order denying relief from the automatic stay is final and immediately appealable under 28 U.S.C. § 158(a)(1). Congress intended for courts to conclusively and expeditiously adjudicate requests for stay relief, apart from the bankruptcy case as a whole. That policy makes good sense, moreover, because permitting immediate appeal from the denial of stay relief promotes efficient judicial administration in bankruptcy cases. A contrary approach would inject

uncertainty into the bankruptcy system and lead to impractical, negative consequences.

A. Congress intended for courts to conclusively and expeditiously resolve stay relief requests in bankruptcy cases.

1. This Court has long recognized that "expedition is always an important consideration in bankruptcy." *Bullard*, 135 S. Ct. at 1694; see also *Ex parte Christy*, 44 U.S. 292, 312 (1845) (discussing the need "to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period"). Courts endeavor to "quickly resolve issues central to the progress of a bankruptcy" because such cases are "often protracted, and time and resources can be wasted if an appeal is delayed until after a final disposition." See, *e.g.*, *In re Armstrong World Indus., Inc.*, 432 F.3d 507, 511 (3d Cir. 2005).

The automatic stay is a central part of administering any bankruptcy case. *Midlantic Nat'l Bank*, 474 U.S. at 503; see also *Hillis Motors, Inc.* v. *Haw. Auto. Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993) (explaining that "[t]he automatic stay plays a vital and fundamental role in bankruptcy," protecting debtors and creditors alike). It follows that the discrete issue of whether to terminate or continue the automatic stay should be resolved expeditiously. See Fed. R. Bankr. P. 1001 (requiring "the court and the parties to secure the just, speedy, and inexpensive determination of every case and proceeding").

2. Congress has made the policy judgment that a stay relief proceeding should be resolved conclusively and expeditiously. See 11 U.S.C. § 362(e)(1) (providing for expedited relief from stay), (f) (providing for *ex parte* relief from stay); see also H.R. Rep. No. 95-595, at 344; S. Rep. No. 95-989, at 55; Fed. R. Bankr. P.

7001, advisory committee's 1983 note (explaining the need to "establish an expedited schedule for judicial disposition of requests for relief from the automatic stay"). As the Eleventh Circuit has also noted, "Congress intended protection for those disadvantaged by the stay, since continuation of the stay may, in some cases, cause more harm than if the stay is dissolved." *In re Regency Woods Apartments, Ltd.*, 686 F.2d 899, 902–03 (11th Cir. 1982). It follows that an order denying stay relief should be "final" because "an immediate appeal 'is necessary to effectuate Congress' intent to settle these matters quickly.'" See *Rajala* v. *Gardner*, 709 F.3d 1031, 1034 (10th Cir. 2013).

B. Providing that the denial of stay relief is immediately appealable promotes judicial efficiency in bankruptcy cases.

1. Ritzen contends that the Sixth Circuit's decision "affirmatively *requires* piecemeal appeals," and would therefore "lead[] to protracted delays at the outset of many bankruptcy cases and the forced imposition of the costs of appellate litigation on those with insufficient resources to bear them." Pet. Br. 23, 50. But Ritzen has it backwards. As the Sixth Circuit noted, Ritzen's proposed rule would actually "force creditors who lose stay-relief motions to fully litigate their claims in bankruptcy court and then, after the bankruptcy case is over, appeal and seek to redo the litigation all over again in the original court." Pet. App. 15a. By all accounts, that sort of relitigation would be "a tremendous waste of time and money." *Id.*

The facts of this case illustrate the point well. Here, the bankruptcy court denied Ritzen's motion for stay relief after a final hearing—there was a discrete claim, a discrete proceeding, and a discrete decision based on application of a legal standard. The court's order also fixed the parties' rights and obligations vis-

à-vis the stay. If Ritzen immediately appealed, then the reviewing courts could have expeditiously decided whether continuing the automatic stay was appropriate. The bankruptcy would have continued,[10] and, in all likelihood, the appeal would have concluded before the parties expended resources litigating an adversary proceeding and confirming a plan.

Instead of following that orderly process, Ritzen now seeks to relitigate the stay relief issue at the back end—*i.e.*, an issue that was necessary to allow the bankruptcy to move forward. See *A.H. Robins Co.* v. *Piccinin*, 788 F.2d 994, 1009 (4th Cir. 1986) (explaining that policy of "efficient judicial administration" weighed against voiding "months and months of litigation, carried on at great expense to all concerned . . . with consequent extensive delays both in reorganization and in resolution of . . . claims"). Thus, contrary to Ritzen's assumption, judicial efficiency favors permitting an immediate appeal here because it would have actually expedited final resolution of the bankruptcy case. If the Court were to adopt Ritzen's position, it would pave the way for dismantling entire bankruptcy cases. For example, in this case, Jackson Masonry has already filed a reorganization plan, sold property in its bankruptcy case, negotiated with creditors, and ultimately confirmed its reorganization plan. Bankr. Ct. Docs. 137, 288, 422, 479. Ritzen's proposed rule would give losing creditors a second

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[10] Ritzen incorrectly assumes that permitting an immediate appeal would have caused "protracted delays at the outset." Pet. Br. 50. Ordinarily, the administration of a bankruptcy case runs parallel with an appeal. *See* Fed. R. Bankr. P. 8007; *see also In re Revel AC, Inc.*, 802 F.3d 558, 567–68 (3d Cir. 2015) (discussing procedure for seeking stay pending appeal). In fact, suspension of a bankruptcy case is exceedingly rare. *See In re Paper I Partners, L.P.*, 283 B.R. 661, 678 (Bankr. S.D.N.Y. 2002).

bite at the apple, and, worse still, could force reorganized debtors to resubmit to the process of administering a bankruptcy.

2. This appeal also serves as a case study, demonstrating how delayed resolution of a stay relief issue can spawn additional and unnecessary litigation. In pursuing the ultimate relief it seeks (*i.e.*, continuing to litigate its contract claim in state court), Ritzen will necessarily consume additional judicial and party resources. Indeed, Ritzen must overcome at least three significant hurdles.

First, Ritzen's original lawsuit against Jackson Masonry has been dismissed. In January 2017, the Tennessee Chancery Court issued an order dismissing Ritzen's case without prejudice for failure to prosecute (or otherwise take action to preserve the lawsuit for over 10 months). See Dismissal Order, *Jackson Masonry, LLC* v. *Ritzen Group, Inc.*, No. 18-486-IV (Tenn. Ch. Ct. Jan. 4, 2017); see also *In re Jackson Masonry, LLC*, 2018 WL 1636085, at *1. Ritzen did not appeal the state court's dismissal order.

The Tennessee Chancery Court recently reaffirmed that conclusion. In May 2018, Jackson Masonry filed a separate lawsuit against Ritzen. See *Jackson Masonry, LLC* v. *Ritzen Group, Inc.*, No. 18-486-IV (Tenn. Ch. Ct.) (filed May 2, 2018). There, Jackson Masonry sought a declaration that Ritzen's *lis pendens*—which had been recorded against the real estate at the center of the parties' dispute—should be released as both void and moot. See Tenn. Code Ann. § 20-3-103(a). The Chancery Court agreed, granting Jackson Masonry's motion for summary judgment. Final Order, *Jackson Masonry, LLC* v. *Ritzen Group, Inc.*, No. 18-486-IV (Tenn. Ch. Ct. Aug. 13, 2018). The court explained that Ritzen's original lawsuit, "on which the lien *lis pendens* was based, was fully trans-

formed into a core proceeding before the [b]ankruptcy [c]ourt, where it was adjudicated through the claims litigation process." *Id.* at 2. Because "Ritzen did not appeal or move to alter or amend the [o]rder dismissing the [original state court case], the lawsuit upon which the lien *lis pendens* 'finally' terminated." *Id.* at 9 (quoting *Figlio* v. *Shelley Ford, Inc.*, No. 88-15-II, 1988 WL 63497, at *4 (Tenn. Ct. App. June 22, 1988)). Ritzen did not appeal. Thus, even assuming the automatic stay could be lifted, there is no state court litigation to which Ritzen could return.

Second, Ritzen's claim is likely barred by res judicata. As previously explained, Ritzen litigated the merits of its contract claim in bankruptcy court. This adversary proceeding involved the same claim that Ritzen initially brought against Jackson Masonry in state court. Bankr. Ct. Doc. 252 (pleading that the bankruptcy court had jurisdiction to hear Ritzen's state law contract claim, that the matter was a core proceeding, and that venue was proper in the bankruptcy court); Bankr. Ct. Doc. 224, at 2 ("All parties expressly consent to final disposition of this adversary proceeding by the bankruptcy court."). The bankruptcy court then confirmed Jackson Masonry's reorganization plan. Bankr. Ct. Doc. 422. Generally, res judicata bars parties from relitigating their claims in such circumstances. See, *e.g.*, *Eubanks* v. *FDIC*, 977 F.2d 166, 171 (5th Cir. 1992) ("There is little doubt that the bankruptcy court's confirmation order is binding and final, and we accord it the weight of a final judgment for res judicata purposes."); *Sure-Snap Corp.* v. *State St. Bank & Tr. Co.*, 948 F.2d 869, 876 (2d Cir. 1991) ("[T]he doctrine of res judicata serves important interests other than protecting parties from inconsistent judgments, including 'reliev[ing] parties of the cost and vexation of

multiple lawsuits [and] encourag[ing] reliance on adjudication.'" (quoting *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980)).

Third, Jackson Masonry's confirmed reorganization plan contains a permanent injunction against creditors. Article XI (§ G) of the plan permanently enjoins all creditors, including Ritzen, from the "commencement or continuation of any judicial, administrative, or other action or proceeding" against Jackson Masonry "on account of [c]laims against [Jackson Masonry], or on account of claims released pursuant to [reorganization plan]." See Bankr. Ct. Docs. 388, 422.

Even if the automatic stay was lifted, even if the state court action could be reopened, and even if Ritzen's contract claim was not barred by res judicata, Jackson Masonry's reorganization plan would still stand in the way of Ritzen relitigating its claim. All of these protracted legal issues could have been avoided if Ritzen immediately noticed an appeal from the bankruptcy court's order denying stay relief.

3. Ritzen's concern with "piecemeal" appeals is not well founded in this context. True, in *Bullard*, this Court explained that the finality requirement in § 158(a)(1) should operate as "a meaningful constraint on the availability of appellate review." 135 S. Ct. at 1693. But that case was in a different posture; it involved the potential for a debtor filing serial appeals throughout the course of a back-and-forth plan confirmation process. This Court was concerned that debtors might short-circuit those negotiations and use immediate appeals as "leverage in dealing with creditors." *Id.* Moreover, because each appeal would have "extend[ed] the automatic stay that comes with bankruptcy," the Court was wary of "cost[ing] creditors money and allow[ing] a debtor to retain property he might [otherwise] lose." *Id.*

Ritzen's strict insistence on the rule against "piecemeal" appeals proves too much. The fact that a bankruptcy may generate an early appeal is "a necessary consequence of the looser concept of finality" in such cases. Pet. App. 14a. Moreover, as the Sixth Circuit noted, upon denial of relief from the automatic stay, "[c]reditors cannot simply wait it out and pick up their pre-bankruptcy litigation where they left off." *Id.* at 13a. Doing so would risk mooting the controversy because, "once a bankruptcy case ends, the automatic stay is lifted anyway." *Id.*; see also *Eddleman*, 923 F.2d at 785 ("[I]n most cases, by the time the bankruptcy case is complete the issue of the stay will be moot."). Indeed, the automatic stay only remains in place during the pendency of a bankruptcy case. 11 U.S.C. § 362(c)(2). Accordingly, Ritzen's proposed rule renders stay relief proceedings "virtually unreviewable." See *Eddleman*, 923 F.2d at 785; see also Pet. App. 13a ("[I]f a stay-relief denial is not immediately appealable, then it is effectively never appealable.").

C. Postponing appeal of the denial of stay relief creates practical problems for the administration of bankruptcy cases.

Ritzen fails to acknowledge that treating the denial of stay relief as interlocutory would undermine the bankruptcy reorganization process. Designed to benefit the debtor and creditors, reorganization relies on a reasonable degree of certainty and finality in the bankruptcy process. The unnecessary interjection of doubt into the system that would accompany interlocutory treatment of an order denying stay relief would negatively impact lenders, purchasers of assets, creditors, debtors, and trustees.

Unlike the dispute at issue in *Bullard*, this case is not about whether permitting an appeal as of right

from the denial of stay relief will lead to serial, protracted appeals. That is implausible. See *In re Gledhill*, 76 F.3d 1070, 1081 (10th Cir. 1996) (holding that "exceptional circumstances" warranted granting the motion for relief from a 10-month old order lifting the automatic stay under Federal Rule of Civil Procedure 60(b)(6)). Instead, the question here is whether it would be more prudent to allow an immediate appeal concerning a discrete proceeding at the outset (*i.e.*, before the court and the parties expend resources), or later down the road (*i.e.*, after the court and the parties have expended resources). With Ritzen's proposed rule comes a significant risk of unraveling the entire bankruptcy case, including, perhaps, proceedings involving creditors and related appeals. In such circumstances, Ritzen's proposal would deplete party resources and erode the value of the bankruptcy estate. All of that undermines efficient administration of a bankruptcy case.

Creditors participating in a reorganization should ordinarily favor expeditious resolution of automatic stay issues. Because the automatic stay is a central part of administering bankruptcy cases, finality on that discrete issue allows creditors to effectively negotiate their treatment and informs how they will vote on a reorganization plan. By contrast, generating uncertainty about the automatic stay may not only deter creditors from supporting the debtor's plan, but also chill participation in other key restructuring transactions such as debtor-in-possession financing, use of cash collateral, and sales of estate assets. Prospective lenders, purchasers, and other stakeholders may be reluctant to fund the debtor's restructuring where it could be subject to challenge months or even years later by any creditor whose stay relief motion was previously denied in the bankruptcy case.

Debtors and trustees also depend on finality. For example, debtors seek to emerge from the bankruptcy process with a confirmed plan that is final and protected from post-confirmation dismantling. Uncertainty endangers bankruptcy's underlying purpose—*i.e.*, to "give[] to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934). And from a trustee's perspective, it would be a waste of time and money to administer an estate that risks disruption or demise by an appeal of a previous denial of stay relief.

Finally, this Court's reasoning in *Caterpillar Inc.* v. *Lewis,* 519 U.S. 61 (1996), is worth considering because it reveals the systemic inefficiencies of Ritzen's proposed rule. In that case, the district court incorrectly denied a motion to remand the case to state court, thinking there was complete diversity among the parties. *Id.* at 65–66. Later on, but before final judgment, the defendant who defeated complete diversity was dismissed from the case. *Id.* at 66–67. Thus, the parties were completely diverse at the time of final judgment. This Court held that the district court's "error in failing to remand a case improperly removed is not fatal to the ensuing adjudication if federal jurisdictional requirements are met at the time judgment is entered." *Id.* at 64. In such circumstances, "wip[ing] out the adjudication postjudgment" and "return[ing] to state court" would impose "an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice." *Id.* at 77. Similar efficiency and fairness concerns are implicated in this case.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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