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 AMICUS CURIAE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

The National Association of Consumer Bankruptcy Attorneys, or NACBA, is a non-profit organization of almost 3,000 consumer bankruptcy attorneys practicing throughout the country. NACBA is dedicated to preserving the integrity of the bankruptcy system and protecting the rights of consumer bankruptcy debtors.

[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus and its counsel made a monetary contribution to this brief's preparation or submission. The parties have consented in writing to the filing of this brief.

NACBA accordingly assists consumer debtors and their counsel in cases likely to have an impact on consumer bankruptcy law, and it submits *amicus curiae* briefs when in NACBA's view resolution of a particular case may affect consumer debtors throughout the country.

The issue in this case—whether orders denying relief from the Bankruptcy Code's automatic stay are final orders appealable as of right—directly implicates the interests of consumer debtors. Because the automatic stay applies in all cases filed under the Bankruptcy Code, including both business bankruptcy cases like this one and consumer bankruptcy cases, *see* 11 U.S.C. § 103(a), the rule established in this case will also affect the appealability of orders denying relief from the automatic stay. and potentially various other orders, in consumer bankruptcy cases.

NACBA's members represent debtors with limited financial resources. NACBA thus has a strong interest in clear jurisdictional rules, which promote the efficient litigation of bankruptcy disputes. A bright-line rule that orders granting or denying stay-relief motions are appealable as of right, except where the denial of such a motion is expressly without prejudice, will facilitate the expeditious determination of the rights of debtors and creditors alike. By contrast, a murky standard like that advocated by petitioner does not serve the interests of either creditors or debtors. Moreover, a decision holding that orders denying stay relief are not appealable as of right might lead to confusion among the lower courts and cause them to question the finality of orders *granting* stay relief as well. Such a result could be devastating to consumer debtors.

INTRODUCTION AND SUMMARY OF ARGUMENT

A decision to grant or deny a motion for relief from the automatic stay can have profound effects on the rights of a debtor and the debtor's creditors and on the ultimate outcome of the bankruptcy case. Resolving such disputes conclusively and expeditiously through a clear rule of immediate appealability benefits all parties and the bankruptcy system. That is true in both business and consumer bankruptcies, but perhaps especially true in consumer bankruptcy cases, where debtors often lack the resources to wait out lengthy delays in resolving key disputes or to litigate complicated questions of appellate jurisdiction.

Here, every relevant set of considerations supports the same conclusion: The decision to grant or deny a motion for relief from the automatic stay is final and appealable under Section 158 of the Judicial Code. That clear rule is supported by the statutory text and purposes, the profound practical impact of stay-relief rulings on parties' rights, traditional finality considerations, and the imperative to promote clarity in bankruptcy law.

First, the statute's text indicates that orders denying stay relief are final and appealable (unless expressly stated to be without prejudice). Section 158 provides for appellate jurisdiction in bankruptcy appeals from "final … orders" entered in "proceedings … under [28 U.S.C. §] 157." 28 U.S.C. § 158(a). And among the many types of "proceedings" listed in Section 157 are "motions to terminate, annul, or modify the automatic stay." An order granting or denying a stay-relief motion is the final order entered with respect to that motion and thus with respect to the "proceeding" the motion comprises. That straightforward textual analysis

is buttressed by the larger structure of the Bankruptcy Code (including the provisions governing the automatic stay itself), and by this Court's textual analysis in *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686 (2015).

Second, grants or denials of stay-relief motions are immediately appealable because they end such "proceedings" in orders that "fix[] the rights and obligations of the parties" and are therefore "final." *Bullard*, 135 S. Ct. at 1692. The automatic stay is an injunction that bars creditors from collecting their claims against the debtor or the bankruptcy estate. It is a fundamental protection that promotes an orderly resolution of the debtor's financial distress, but it can also harm creditors' interests in ways that cannot always be remedied. Congress accordingly provided a statutory process by which creditors may seek relief from the stay. *See* 11 U.S.C. § 362(d)-(g). Because the stay arises automatically without any court order, *id.* § 362(a), it cannot be appealed. A stay-relief motion is thus the first time a party can challenge, and a court can adjudicate, whether the movant should be enjoined. An order denying a stay-relief motion is accordingly the functional equivalent of an order granting a permanent injunction, an order that has immediate consequences for the parties' rights and that has long been viewed as a final order. Petitioner's contention that an order enforcing the stay's injunction is akin to a change-of-venue motion does not withstand scrutiny.

Third, traditional finality considerations further support immediate appealability. There should be little concern about "piecemeal" appeals in the stay-relief context, where an appeal typically only makes sense in the immediate wake of a decision granting or denying the motion. Because stay-relief motions concern the applicability of an injunction during the bankruptcy

case, after the case is complete any stay-relief issue will typically be mooted and appellate relief unavailable.

Fourth, a clear rule will greatly benefit the bankruptcy system, but a muddled one—like the one petitioner proposes—will cause harm. A presumption that orders resolving stay-relief motions are final unless expressly entered without prejudice will allow bankruptcy courts the flexibility to deny stay-relief motions without prejudice where the facts remain undeveloped, while also ensuring that creditors harmed by a final denial of such motions have an opportunity to seek appellate review. Such a rule will also promote the development of binding appellate precedent that will lend much-needed clarity and uniformity to substantive bankruptcy law. And it will ensure that all parties know when to appeal, avoiding costly collateral litigation over whether a nebulous finality standard has been satisfied, which consumer debtors with limited resources can ill afford.

ARGUMENT

I. THE STATUTORY TEXT PROVIDES THAT AN ORDER DENYING A MOTION FOR STAY RELIEF IS IMMEDIATELY APPEALABLE

The text of the Judicial Code supports the conclusion that orders conclusively resolving motions for relief from the automatic stay are immediately appealable as of right. And this Court's decision in *Bullard* v. *Blue Hills Bank*, 135 S. Ct. 1686 (2015) is in accord.

A. Section 158(a) Authorizes Appeals From Orders Finally Resolving Stay-Relief Motions, Which Are Distinct "Proceedings" In The Bankruptcy Case

In ordinary civil litigation, each lawsuit has traditionally been viewed as a "single judicial unit" from which only one appeal will lie, at the conclusion of the case. *In re Saco Local Dev. Corp.*, 711 F.2d 441, 443 (1st Cir. 1983) (Breyer, J.); *see Bullard*, 135 S. Ct. at 1691. Section 1291 of the Judicial Code thus permits appeals as of right in ordinary civil litigation only from "final decisions of the district courts," 28 U.S.C. § 1291, or, rarely, from collateral orders that effectively operate as final decisions with respect to a discrete issue collateral to the merits, *see Cohen* v. *Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546-547 (1949).

Bankruptcy cases are different. A bankruptcy case involves "an aggregation of individual controversies" among the debtor, its creditors, and potentially numerous other parties in interest. *Bullard*, 135 S. Ct. at 1692. Moreover, the various disputes among the parties are often resolved well before the overall bankruptcy case is concluded. Thus, each distinct dispute resolved in a bankruptcy case has traditionally been viewed as a separate "judicial unit" from which an appeal may be taken. As this Court has observed, "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of *discrete disputes* within the larger [bankruptcy] case." *Id.* (emphasis added); *see also Saco*, 711 F.2d at 444-446.

The Judicial Code reflects that reality. It provides for appeals as of right in bankruptcy cases not simply from "final decisions," as Section 1291 does, but "from

final judgments, *orders*, and decrees … of bankruptcy judges entered in cases and *proceedings* referred to the bankruptcy judges under section 157 of this title." 28 U.S.C. § 158(a) (emphasis added).

That textual difference is important: Under Section 158, any "proceeding" that results in an order that is "final" is appealable as of right. Thus, as this Court recognized in *Bullard*, the critical question for bankruptcy finality purposes is "how to define the immediately appealable 'proceeding.'" 135 S. Ct. at 1692.

In *Bullard*, this Court concluded that a "proceeding" is a discrete dispute within the bankruptcy case that ends in a final order that "fixes the rights and obligations of the parties." 135 S. Ct. at 1692. Moreover, while Section 158(a) does not by its terms make clear which types of "proceedings" result in "final" orders, this Court recognized that the Judicial Code provides an important "textual clue." *Id.* at 1693.

Specifically, Section 158(a) makes appealable all "final … orders" entered in "cases and proceedings referred to bankruptcy judges under [Section] 157." In turn, Section 157(a) specifies matters that may be referred to bankruptcy judges, including both "cases under [the Bankruptcy Code]" and "proceedings arising under [the Bankruptcy Code] or arising in or related to a case under [the Bankruptcy Code]." 28 U.S.C. § 157(a); *see id.* § 1334(a)-(b) (granting district courts jurisdiction over such bankruptcy "cases" and "proceedings").

Section 157(b) then enumerates certain "proceedings" arising under the Bankruptcy Code or in a bankruptcy case as to which bankruptcy courts "may enter appropriate orders and judgments, subject to review under [Section 158]." 28 U.S.C. § 157(b)(1). The statute

enumerates sixteen such "core proceedings." *Id.* § 157(b)(2).[2]

These core "proceedings" include disputes that would typically be stand-alone lawsuits outside bankruptcy, such as the allowance or disallowance of claims against the debtor's bankruptcy estate, 28 U.S.C. § 157(b)(2)(B), and proceedings to recover preferences or fraudulent conveyances of assets the debtor transferred to third parties before bankruptcy, *id.* § 157(b)(2)(F), (H).

But a bankruptcy case also involves disputes arising in the core bankruptcy process—such as the administration of the bankruptcy estate and the bankruptcy court's oversight of the debtor's ongoing economic activities—that may appear less analogous to traditional civil litigation, but that Congress similarly viewed as distinct "proceedings" within the bankruptcy case. These "proceedings" include disputes over new loans the debtor seeks to obtain in bankruptcy, 28 U.S.C. § 157(b)(2)(D), the turnover to the estate of assets possessed by third parties, *id.* § 157(b)(2)(E), the use, lease, or sale of property of the estate, *id.* § 157(b)(2)(M), (N), objections to the debtor's discharge or to the dischargeability of particular debts, *id.* § 157(b)(2)(I), (J), and—as at issue in *Bullard*—the confirmation of plans, *id.* § 157(b)(2)(L). As relevant here, these core "proceedings" also include "motions to ter-

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[2] In *Stern* v. *Marshall*, 564 U.S. 462 (2011), the Court held that bankruptcy judges lack constitutional authority to enter final judgments, absent the parties' consent, in certain matters statutorily designated as core, *see id.* at 502-503. For present purposes, however, the relevant point is simply that Congress specified that the matters listed in Section 157(b)(2) are distinct "proceedings" in bankruptcy.

minate, annul, or modify the automatic stay." *Id.* § 157(b)(2)(G). In each case, the relevant question for appealability purposes is whether such a proceeding is resolved in a "final" order.

Section 157 expressly identifies "motions" for stay relief as discrete "proceedings" under the Bankruptcy Code. That language strongly suggests that orders finally resolving such motions are immediately appealable under Section 158(a) as final orders entered in "proceedings referred … under section 157." After all, an order granting a stay-relief motion and an order denying such a motion—unless the denial is expressly without prejudice—will both finally resolve the motion. The statute's plain text thus points to the conclusion that orders denying a motion for relief from the automatic stay are appealable as of right.

Petitioner contends (at 31-32) that stay-relief motions are merely part of "some other larger bankruptcy process," implying that, in this case, the stay-relief proceeding was merely ancillary to the "claims-adjudication process in the Bankruptcy Court," to which petitioner was relegated after its stay-relief motion was denied. But both the statutory text and context refute that argument. Congress expressly identified stay-relief motions and claims allowance as distinct proceedings: Section 157(b) lists both "allowance or disallowance of claims against the estate," 28 U.S.C. § 157(b)(2)(B), *and* "motions to terminate … the automatic stay," *id.* § 157(b)(2)(G), as separate "[c]ore proceedings."

Moreover, as described below, because an order resolving a stay-relief motion effectively operates to grant or deny injunctive relief, it is the type of "proceeding" that "fixes the rights and obligations of the parties" and

thus is resolved in a "final" order. *Bullard*, 135 S. Ct. at 1692. Petitioner does not dispute that an order allowing or disallowing a claim is a final order in an immediately appealable "proceeding" under Section 158, as this Court has recognized. *See Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*, 547 U.S. 651, 657 n.3 (2006) (order denying priority status to claim, rendering it "valueless," is immediately appealable). There is no textual basis for treating an order granting or denying a stay-relief motion any differently.[3]

B. *Bullard* Supports The Appealability Of Orders Resolving Stay-Relief Motions

This Court's decision in *Bullard* further supports the same conclusion. Although *Bullard* held that the denial of confirmation of a Chapter 13 plan with leave to amend was not a final order, *Bullard*'s textual analysis and reasoning supports the opposite result here.

To be sure, as this Court noted in *Bullard*, Section 157's enumeration of core "proceedings"—like plan-confirmation there and stay-relief motions here—does not conclusively define which "proceedings" end in orders that "fix[] the [parties'] rights" and therefore are

[3] Petitioner suggests (at 31) that use of the plural term "motions" in Section 157(b)(2)(G) indicates that an order denying any single motion is not a final order. That is wrong and would yield nonsensical results. *All* the "core proceedings" listed in Section 157(b)(2) are referred to in the plural. For instance, the statute refers to "*confirmations* of *plans*," 28 U.S.C. §157(b)(2)(L) (emphasis added), yet an order confirming a single plan is plainly a final order. *Bullard*, 135 S. Ct. at 1692 (recognizing that an order confirming a plan is appealable as of right). As the Dictionary Act provides, "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise … words importing the plural include the singular." 1 U.S.C. § 1. Nothing in the context of Section 157(b)(2) indicates otherwise.

"final." 135 S. Ct. at 1692-1693. It is doubtful, for example, that all orders resolving "matters concerning the administration of the estate," 28 U.S.C. § 157(b)(2)(A)—such as orders approving disclosure statements to solicit creditors' votes on a Chapter 11 plan—will always be final orders immediately appealable under Section 158(a). *See* 11 U.S.C. § 1125; 1 *Collier on Bankruptcy* ¶ 5.08[5] (16th ed. 2019).

Nonetheless, as the Court recognized in *Bullard*, Section 157(b) does provide an important textual indication. In *Bullard*, Section 157(b) made clear that plan-confirmation proceedings are discrete "proceedings" for purposes of appeal under Section 158(a), notwithstanding that confirmation of a plan does not end the case. 135 S. Ct. at 1693; 11 U.S.C. §§ 1322, 1325, 1328, 1329. The only question was whether the scope of a plan-confirmation "proceeding" should be construed as limited to each separate plan the debtor proposed or instead the overall process of confirming a plan. 135 S. Ct. at 1692.

This Court concluded that Section 157(b)'s identification of "*confirmations* of plans" (without "reference to denials" of confirmation) "suggests that Congress viewed the larger confirmation process"—*i.e.*, the process ending in an order that *confirms* a plan—"as the 'proceeding,' not the ruling on each specific plan." *Bullard*, 135 S. Ct. at 1693 (emphasis added). That reading made sense, the Court reasoned, because a dispute over confirmation of a plan does not end in an order that "fixes the rights and obligations of the parties" until a plan is confirmed (or the case is dismissed if no plan can be confirmed). *Id.* at 1692-1693. Orders denying confirmation, by contrast, are without prejudice as a matter of course. Thus, a denial of confirmation, without more, permits the debtor to amend the plan

and does not necessarily preclude the ultimate relief the debtor seeks: confirmation of a plan and discharge. The Court concluded that orders denying confirmation accordingly do not fix the parties' substantive rights. *Id.* And as the Court in *Bullard* explained, if each denial of confirmation were separately appealable, that would generate piecemeal appeals and inefficiently prolong the bankruptcy process. *Id.* at 1693. That practical reality corroborated the Court's reading of "confirmations of plans" as including the *entire* plan confirmation process as the relevant "proceeding" under Section 158(a).

The Court's analysis in *Bullard* thus recognized that, if Section 157 does not "clinch[] the matter," 135 S. Ct. at 1693, its designation of a particular dispute as a "proceeding" nevertheless suggests that orders finally resolving such disputes are immediately appealable "proceedings" under Section 158(a), at least where such proceedings end in "final" orders that determine the parties' substantive rights—as most of the "proceedings" listed in Section 157 do. For example, proceedings to turn over property of the estate (28 U.S.C. § 157(b)(2)(E)) are discrete disputes commenced under the Bankruptcy Code, 11 U.S.C. § 542, and orders granting or denying turnover determine the parties' competing claims to possession of the asset in question. Similarly, proceedings objecting to a bankruptcy discharge of the debtor or of certain debts (28 U.S.C. § 157(b)(2)(J), (K)) are likewise discrete disputes commenced under the Code, 11 U.S.C. §§ 523, 727, and orders granting or denying such objections similarly fix the parties' rights as to whether creditors can collect their pre-petition claims from the debtor after bankruptcy.

The same is true here. As noted, Section 157 expressly identifies stay-relief motions as discrete "proceedings." And unlike the statutory language discussed in *Bullard*, which referred only to "*confirmations* of plans," Section 157 does not similarly refer only to "terminations … of the automatic stay," but rather to "*motions* to terminate … the automatic stay." 28 U.S.C. § 157(b)(2)(G) (emphasis added). That language suggests that Congress viewed the adjudication of stay-relief *motions*—which may be resolved by orders granting *or denying* relief—as the relevant "proceeding."

This textual distinction makes sense given the different consequences resulting from the denial of a stay-relief motion. Unlike the denial of plan confirmation, the denial of stay relief typically does not leave the movant with another opportunity to seek and obtain relief from the stay, at least if there is no change in the underlying facts. Rather, as discussed below (Part II), unless expressly denied without prejudice, an order denying a stay-relief motion fixes the parties' rights with respect to the applicability of the automatic stay, which is an injunction having significant consequences for the parties. Accordingly, the textual and practical considerations that drove the result in *Bullard* point in the opposite direction here.

II. THE SERIOUS EFFECTS THAT FLOW FROM ORDERS DENYING STAY RELIEF SUPPORT APPEALABILITY

An order denying stay relief has conclusive effects on the parties' rights. And those consequential effects confirm the indications in the text and structure of Section 158(a) that such orders are final and appealable.

As discussed, this Court concluded in *Bullard* that a bankruptcy court order is a final appealable order that resolves a discrete "proceeding" in bankruptcy if the order "fixes the rights and obligations of the parties." 135 S. Ct. at 1692. An order adjudicating a stay-relief motion—whether the motion is granted or denied—readily meets that test. Because a ruling on a stay-relief motion will be the first time a court has ruled on whether the stay should remain in effect, a final order denying relief from the stay is the equivalent of an order granting a permanent injunction—an order that undoubtedly affects the parties' rights and is normally appealable as a final order.

A. The Overall Design Of The Automatic Stay And The Role Of Stay-Relief Motions Support Immediate Appealability Of Orders Denying Stay Relief

The straightforward reading of Section 158's text and structure, that orders resolving stay-relief motions are final appealable orders, is supported by Congress's overall design of the automatic stay and the key role stay-relief motions play in that design.

The Bankruptcy Code's automatic stay provision, 11 U.S.C. § 362, provides that the filing of a bankruptcy petition "operates as a stay" of a broad range of acts to collect pre-petition debts or seize property of the bankruptcy estate (*i.e.*, the assets the debtor owned on the petition date). *Id.* § 362(a); *see id.* § 541(a) (specifying the contents of the bankruptcy estate). Among other things, the automatic stay bars the prosecution of any "action or proceeding against the debtor … to recover a claim against the debtor" that arose before the bankruptcy case, *id.* § 362(a)(1); the enforcement of a pre-bankruptcy judgment against the debtor or the estate,

id. § 362(a)(2); "any act to obtain possession of property of … the estate or to exercise control over property of the estate," *id.* § 362(a)(3); and "any act to create, perfect, or enforce any lien against property of the estate," *id.* § 362(a)(4).

The stay is "automatic" because it is an injunction against creditor collection activity that takes effect automatically upon the filing of a petition, without the need for any court order. 11 U.S.C. § 362(a). Creditors can be sanctioned for violations of the automatic stay just as they can be sanctioned for violations of any injunction. And "willful" stay violations entitle the debtor to compensatory damages and potentially punitive damages. *Id.* § 362(k); *see, e.g.*, *IRS* v. *Murphy*, 892 F.3d 29, 36 (1st Cir. 2018).

The automatic stay is one of the central features of the bankruptcy process. It is a "fundamental debtor protection[]," *Midlantic Nat'l Bank* v. *New Jersey Dep't of Envt'l Protection*, 474 U.S. 494, 503 (1986), "giv[ing] the debtor a breathing spell from his creditors" and "stop[ping] all collection efforts, all harassment, and all foreclosure actions," S. Rep. No. 95-989, at 54-55 (1978); H.R. Rep. No. 95-595, at 340 (1977). "It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *Id.*

The automatic stay is also an important protection for the debtor's creditors. It halts creditors' first-come, first-served race to the courthouse to collect their debts, enabling the trustee or debtor-in-possession to marshal all property of the estate, maximize the value of that property, and distribute the value among all creditors according to their respective priorities. *See, e.g.*, S. Rep. No. 95-989, at 49; H.R. Rep. No. 95-595, at 340.

But preventing creditors from enforcing their claims can sometimes cause harm to creditors that provides cause for relief from the stay. For instance, a commercial lender that is prevented by the automatic stay from repossessing and selling a business debtor's equipment and machinery securing the loan may see the value of that collateral, and thus its ability to recover on its claim, diminish during the bankruptcy case. In such situations, the trustee or debtor-in-possession is required to provide "adequate protection" of the lender's interest in the collateral—such as demonstrating that an "equity cushion" exists or making cash payments to the creditor in the amount of the diminution in value of the creditor's interest. 11 U.S.C. § 361. But the trustee may not always be able to provide adequate protection. Alternatively, the debtor may not have any equity in the collateral that justifies retaining the collateral in the estate if it is not necessary for an effective reorganization of the debtor's business under a Chapter 11 plan. Other circumstances, too, may justify lifting the automatic stay as to a particular creditor.

To ensure that creditors are not unfairly disadvantaged by the automatic stay, the Bankruptcy Code establishes a process by which any affected party in interest can seek relief from the stay. Section 362 provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay," "such as by terminating, annulling, modifying, or conditioning such stay," if specified grounds are met. 11 U.S.C. § 362(d). Those grounds include "cause," such as "the lack of adequate protection of an interest in property of such party in interest." *Id.* § 362(d)(1); *see also* H.R. Rep. No. 95-595 at 343 ("permit[ting] an action to proceed to completion in another tribunal may provide another cause"). In addition,

"with respect to a stay of an act against property," the court "shall" grant relief "if the debtor does not have an equity in such property" (that is, the property is collateral that is worth less than the debt it secures) and "such property is not necessary to an effective reorganization." 11 U.S.C. § 362(d)(2). Once a stay-relief motion is filed, "the party opposing relief has the burden of proof on all … issues" except "the issue of the debtor's equity in property." *Id.* § 362(g).

The Bankruptcy Code recognizes the importance of expedition in resolving such motions. For example, for motions filed in individual debtor cases, the stay is automatically "terminated" if the court fails to render a "final decision" within 60 days of the motion (unless the 60-day period is extended by agreement or for cause). 11 U.S.C. § 362(e)(2). Likewise, for motions seeking relief against property of the estate, the stay is "terminated" if the court fails to "order[] such stay continued in effect" within a similarly expedited timeframe (generally 30 to 60 days, with limited possible extensions). *Id.* § 362(e)(1). Moreover, the court "shall" grant emergency relief, even on an ex parte basis, if "necessary to prevent irreparable damage to the interest of an entity in property" before there is an opportunity for notice and a hearing. *Id.* § 362(f); Fed. R. Bankr. P. 4001(a)(2).

The central role of the automatic stay in the bankruptcy process and the Bankruptcy Code's detailed framework for obtaining relief from the stay reinforce the strong indications in the text and structure of Section 158(a) that a stay-relief motion is a discrete "proceeding" within the bankruptcy case. Moreover, the urgency with which the Code treats the stay-relief process reflects Congress's evident concern that the decision to grant or deny a stay-relief motion has serious consequences for the parties' rights. Indeed, the au-

thorization to grant emergency relief from the stay on an ex parte basis recognizes that denial of relief from the stay—even for a short time—could cause affected parties to suffer "irreparable damage." 11 U.S.C. § 362(f).

These considerations further support the conclusion that an order finally resolving a stay-relief motion is appealable as of right. It would make little sense for Congress to have set forth a detailed process to ensure rapid decisions on the application of the automatic stay, only for appeal of those decisions to then be held needlessly in limbo. *See Eddleman* v. *U.S. Dep't of Labor*, 923 F.2d 782, 785 (10th Cir. 1991) ("Immediate appeal from … orders granting or denying relief from the automatic stay is necessary to effectuate Congress' intent to settle these matters quickly" (citing 11 U.S.C. § 362(e)-(f))); *In re American Mariner Indus., Inc.*, 734 F.2d 426, 429 (9th Cir. 1984) (same), *overruled on other grounds by United States Ass'n of Texas* v. *Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988).

B. Orders Denying Stay Relief Are The Bankruptcy Equivalent Of Orders Granting Permanent Injunctions

That conclusion is further supported by the serious consequences that rulings on stay-relief motions have for the parties. There is little doubt that an order *lifting* the stay is a final order. As the Court recognized in *Bullard*, "lift[ing] the automatic stay … expos[es] the debtor to creditors' legal actions and collection efforts." 135 S. Ct. at 1692-1693. That can have devastating effects on the debtor. Many consumer debtors file Chapter 13 bankruptcy to save a home from foreclosure; an order lifting the stay to permit foreclosure thus can defeat the primary relief the debtor sought in the case.

Id. at 1695 ("Without the stay, the debtor might lose the very property at issue in the [debtor's proposed] plan."). The courts of appeals have accordingly recognized that orders lifting the stay are final orders appealable as of right. *See, e.g.*, *In re Atlas IT Export Corp.*, 761 F.3d 177, 182 & n.6 (1st Cir. 2014); *In re Comer*, 716 F.2d 168, 172 (3d Cir. 1983); *see also* Fed. R. Bankr. P. 4001(a)(3), 8002(a)(1) (order lifting stay tolled for 14-day period to file an appeal).

An order *denying* relief from the stay has equally significant consequences. The automatic stay is an injunction. It bars creditors and other parties, on pain of sanctions, from exercising the rights and remedies they would have outside bankruptcy to protect their interests. In the example discussed above, for instance, the commercial lender would have the right, outside bankruptcy, to exercise its state-law remedies upon the debtor's default to repossess and sell the equipment and machinery securing the defaulted loan to recover on its claim. *See, e.g.*, Uniform Commercial Code §§ 9-609, 9-610, 9-615. In bankruptcy, if the court denies the lender's motion for stay relief, the denial will deprive the lender of its non-bankruptcy default remedies. In their place, the secured creditor is entitled to "adequate protection" against any loss in the value of its interest in the collateral. But as noted, the debtor-in-possession may be unable to provide adequate protection, which provides "cause" to lift the stay. 11 U.S.C. § 362(d)(1). If the court erroneously denies such relief, the creditor will be enjoined from exercising its non-bankruptcy remedies and may face potentially irreparable harm to its interests.

An order denying relief from the stay is thus a decision by the court that the moving party should be enjoined. Of course, the denial leaves in place the stay

that arose upon the bankruptcy filing. But the stay arises automatically without any court order and cannot itself be appealed. Thus, a motion for relief from stay is the first opportunity for a party to litigate, and for a court to decide, the question whether the party should properly be enjoined. And the denial of such a motion means that the party is relegated to recovering through the bankruptcy process. Accordingly, the denial of a stay-relief motion in bankruptcy is the functional equivalent of an order granting a permanent injunction in ordinary civil proceedings.

In that regard, a final decision to deny relief from the stay is not akin to a preliminary injunction that will be reconsidered in subsequent proceedings. (The automatic-stay provision does contemplate "preliminary" orders continuing the stay pending a final hearing, 11 U.S.C. § 362(e)(1), but the issue here concerns final denials of relief.) An order denying relief means that, absent a significant change in the underlying circumstances, the stay will remain in effect until the end of the bankruptcy case, when the debtor will normally receive a discharge. *Id.* § 362(c)(2). The discharge, in turn, "operates as an injunction" that bars creditors from collecting pre-petition claims from the debtor, thus effectively extending the stay permanently. *Id.* § 524(a). Similarly, the stay against property of the estate remains in place until the property leaves the estate, *id.* § 362(c)(1), which occurs in many cases when a plan is confirmed in a consumer or business bankruptcy case. Confirmation, in turn, operates to "vest all property of the estate in the debtor," "free and clear of all claims and interests of creditors" (unless the plan or order provides otherwise), *id.* §§ 1141(b)-(c), 1227(b)-(c), 1327(b)-(c), thus again effectively continuing the stay permanently.

Indeed, the legislative history of the automatic-stay provision confirms that understanding:

> Because the stay is essentially an injunction, the three stages of the stay may be analogized to the three stages of an injunction. The filing of the petition which gives rise to the automatic stay is similar to a temporary restraining order. The preliminary hearing is similar to the hearing on a preliminary injunction, and the final hearing and order are similar to the hearing and issuance or denial of a permanent injunction.

S. Rep. No. 95-989, at 53; H.R. Rep. No. 95-595, at 344 (same).

Orders granting permanent injunctions have traditionally been treated as final appealable orders under 28 U.S.C. § 1291. *See City of Vicksburg* v. *Henson*, 231 U.S. 259, 267 (1913). And as numerous courts have recognized, because a final order denying relief from the stay is the bankruptcy equivalent of a permanent injunction, and is just as final in substance, such orders are likewise final appealable orders under Section 158. *See, e.g.*, *In re James Wilson Assocs.*, 965 F.2d 160, 166 (7th Cir. 1992) (Posner, J.) ("The automatic stay, unless lifted, remains in effect until the entire bankruptcy proceeding is wound up—at which point, ordinarily, the debtor is discharged and whatever proceedings were stayed become moot. An injunction that continues in effect until mootness supervenes could be thought, if not permanent, at least closer to the permanent than to the preliminary end of the injunctive spectrum"); *Eddleman*, 923 F.2d at 785 ("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" (citing *Vicksburg*, 231 U.S. at 266-

267)); *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1284 (2d Cir. 1990) (same).

Petitioner urges (at 29-30) that the Court in *Bullard* held that the denial of plan-confirmation there was not final on grounds that it "changes little," noting "[t]he automatic stay persists." 135 S. Ct. at 1693. But in that case, no party sought relief from the stay. Denial of *confirmation*, of course, did not have any immediate effect on the pre-existing stay (as confirmation or dismissal of the case would), and in that sense, it changed little. But an order denying a *motion for stay relief* is a judicial determination that the moving party should be enjoined, which *is* a final determination of the parties' rights with respect to the stay. Indeed, in an analogous context, this Court has recognized that "orders finally settling creditors' claims" are final orders, *Howard*, 547 U.S. at 657 n.3, notwithstanding that an order denying an objection to allowance of a claim similarly leaves in place the result (allowance) that would have obtained absent the objection. *See* 11 U.S.C. § 502(a) ("A claim … is deemed allowed … unless a party … objects"). There, as here, the order conclusively adjudicates the parties' rights and is accordingly appealable as of right.

Petitioner also suggests (at 32) that a motion for stay relief can always be "renewed" and therefore is not final. That is not so. Where an order denying stay relief is issued with prejudice, but the facts underlying the motion change—for example, the case is converted to a chapter 7 liquidation case, or the value of the property diminishes such that the debtor has no equity in the property—a "renewed" motion is really a new motion and thus a new "proceeding" based on those different facts and circumstances. Permanent injunctions, too, can always be modified or dissolved based on new

facts. *See, e.g.*, *United States* v. *Swift & Co.*, 286 U.S. 106, 114 (1932). Yet orders granting permanent injunctions are undoubtedly final and appealable orders. *See, e.g.*, *In re Chateaugay Corp.*, 880 F.2d 1509, 1513 (2d Cir. 1989) (denial of stay relief is a final order though movant may file a new motion based on changed circumstances).

In sum: An order denying a stay-relief motion—and thus determining that the automatic stay will apply to a given party—is in substance the grant of a permanent injunction, which further supports the conclusion that such orders are appealable as of right.

C. An Order Denying Stay Relief Is Not Akin To An Order Denying Venue Transfer

Petitioner suggests (at 28-32) that denials of stay relief are simply preliminary orders entered in the "bankruptcy claims-adjudication process," likening stay-relief denial to orders denying a party's request to change the forum of the dispute, such as orders denying venue transfer. The comparison is inapt.

Petitioner's "change of venue" analogy presumably stems from the particular facts of this case, where petitioner sought stay relief to continue a pending state-court lawsuit against the debtor. But the automatic stay is much broader than that, and many stay-relief motions will not involve any lawsuit asserting a claim against the debtor (or any issue as to venue). As noted, the stay enjoins acts to enforce a lien or obtain or control property of the estate. 11 U.S.C. § 362(a)(3)-(5). Many stay-relief motions are thus brought by secured creditors seeking to exercise non-judicial remedies to repossess and liquidate collateral. Other parties with interests in property of the estate, such as landlords or

licensors of intellectual property, may similarly seek relief to terminate a lease or license with the debtor. In yet other cases, a bank or business counterparty may seek relief to set off a payable against a receivable, which is likewise stayed. *See id.* § 362(a)(7); *Citizens Bank of Maryland* v. *Strumpf*, 516 U.S. 16, 19 (1995). None of these matters can be characterized as a dispute over the proper forum in which to litigate a disputed claim.

Even where a stay-relief motion seeks to have the movant's claim against the debtor adjudicated in a non-bankruptcy proceeding, more than the forum is at issue. At stake is the movant's right to have its interests determined according to the non-bankruptcy regime of adjudication.

In core bankruptcy proceedings to determine claims against the estate, while non-bankruptcy law governs the validity of claims, 11 U.S.C. § 502(b)(1), the process of adjudication is materially different. Given that a bankruptcy estate typically has scarce resources to fund litigation, claims are determined in bankruptcy through a summary process, since it may make little sense for the estate to incur significant expense litigating claims that will be paid only cents on the dollar. Objections to proofs of claim may be resolved in a notice-and-hearing procedure governed by a significantly truncated subset of the Federal Rules (or analogous state-court rules) that would apply in a civil action outside bankruptcy. *See* id. §§ 501, 502(a)-(b); Fed. R. Bankr. P. 3007, 7001, 9014. Furthermore, the determination of claims in bankruptcy is treated as an equitable proceeding with no jury-trial right. *See, e.g.*, *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 58 (1989); *cf.* 28 U.S.C. § 1411(a) (preserving jury-trial rights in narrow set of proceedings).

Moreover, the Bankruptcy Code permits the court to refrain from even determining the claim in the case of disputed claims not yet reduced to judgment, like the breach-of-contract claim here. If the court determines that "the fixing or liquidation" of such claims "would unduly delay the administration of the case," the court "shall" "estimate" for "purpose of allowance" the validity and amount of such claims. 11 U.S.C. § 502(c)(1). The Code specifies no particular method for estimating such claims, leaving the matter largely to the judge's discretion. *See, e.g.*, *Bittner* v. *Borne Chem. Co.*, 691 F.2d 134, 135 (3d Cir. 1982) (claims-estimation procedure is "to be undertaken … using whatever method is best suited to the particular contingencies").[4]

The venue analogy is wrong for another reason. Unlike an order denying a transfer of venue, an order denying stay relief enforces an injunction barring the movant from continuing its pending non-bankruptcy action. Here, for example, but for the automatic stay, petitioner could have continued litigating its suit, and proceeded to obtain a judgment that could have had is-

[4] By contrast, the examples Petitioner cites (at 40-42) are more akin to traditional forum disputes where the fundamental rules of adjudication do not change. When a district court withdraws a proceeding referred to a bankruptcy judge under 28 U.S.C. § 157(d), the district court applies the same Federal Rules of Bankruptcy Procedure in the withdrawn proceeding as the bankruptcy court would. *See* Fed. R. Bankr. P. 1001, 9001(4). Mandatory abstention under 28 U.S.C. § 1334(c)(2) does not apply to core bankruptcy proceedings to determine claims against the estate, but only proceedings "related to" the bankruptcy case, which are generally conducted as adversary proceedings governed by most of the same Federal Rules that apply in federal civil actions. Fed. R. Bankr. P. 7001. Finally, 28 U.S.C. § 1452, which provides that orders denying remand of removed actions are "not reviewable by appeal," says nothing about the finality of orders that *are* appealable.

sue-preclusive effects in any competing proceeding (including in any bankruptcy-court proceedings).[5] The imposition of that injunction had serious consequences and was accordingly appealable.

III. TRADITIONAL FINALITY CONSIDERATIONS SUPPORT APPEALABILITY

A rule that orders denying stay-relief motions are final (unless expressly without prejudice) is also consistent with the purposes underlying the "final order" requirement: to avoid "piecemeal appeals" that could "undermine[] efficient judicial administration" and to promote efficiency by respecting "the prerogatives of [the trial] judge[] … in managing ongoing litigation." *Bullard*, 135 S. Ct. at 1691-1692. Appeals as of right from orders conclusively denying stay relief would not lead to piecemeal appeals or interfere with the management of the case.

A. A Presumptive Finality Rule Does Not Risk Piecemeal Appeals

Unless a stay-relief motion is denied without prejudice, an order denying relief is the end of the matter. This case illustrates the point. The bankruptcy court's ruling denying petitioner stay relief makes unmistakably clear that the denial was the court's final decision on the matter. *See* Pet. App. 57a-58a ("[G]ranting relief from the stay to go to state court … would be silly … . It's not more efficient and it's not a good use of judicial

[5] *See Atlas IT*, 761 F.3d at 191 (Kayatta, J., dissenting) (rejecting analogy of denial of stay-relief motion to an order transferring venue; "by refusing to lift the automatic stay, [the court] left in place an injunction barring [the movant] from … pursu[ing] a lawsuit in another federal court"; "[s]uch orders, when entered by the [federal] district courts … are … routinely appealable").

time in either place. … The only situation where I would do that would be if I was also willing to dismiss the case.").

There is no chance of successive appeals over the same dispute, as *Bullard* anticipated could result if the denial of each iteration of a plan were immediately appealable. 135 S. Ct. at 1693. And requiring a movant seeking stay relief to wait until the conclusion of some purported larger proceeding often will, as a practical matter, effectively moot the appeal. For example, a lender that is denied stay relief to repossess depreciating collateral based on an erroneous determination that the creditor was adequately protected may have no meaningful way to obtain appellate correction of that error if, in the interim, the collateral is sold at a materially diminished value. *Sonnax*, 907 F.2d at 1285 ("[I]f there is in fact insufficient equity cushion or lack of other protection for the creditor, the lack of an appeal from the denial of a motion will render the right to renew the motion later irrelevant.").

The question therefore is not whether there will be multiple appeals of the stay-relief decision, but whether there will be any meaningful appeal at all. Congress plainly meant to afford a right to appeal to stay-relief parties—and a rule that stay-relief decisions are final when made is by far the better course to ensure that right. *See Cobbledick* v. *United States*, 309 U.S. 323, 328-329 (1940) (the "doctrine of finality" should "not be carried so far as to deny all opportunity for the appeal contemplated by the statutes").

B. A Presumptive Finality Rule Will Promote Judicial Economy

Nor would an immediate appeal of an order denying stay relief interfere with the bankruptcy judge's management of ongoing proceedings, any more than an appeal at the end of the case does. Rather, recognizing that such orders are final promotes judicial economy.

Stay-relief motions often present threshold questions that will affect how the overall bankruptcy case will proceed. For example, if there is a dispute as to whether a lender is entitled to take its collateral, it is better to resolve that dispute conclusively at the outset, so that the debtor and all creditors understand what assets will be available for purposes of crafting a workable plan of reorganization. The need to finalize the shape of the estate is one reason why "expedition is always an important consideration in bankruptcy." *Bullard*, 135 S. Ct. at 1694.

IV. A Presumptive Rule Will Promote Clarity And Improve The Bankruptcy System

Jurisdictional rules need to be clear, predictable, and simple to administer, particularly in the fast-paced world of bankruptcy practice. The court of appeals' rule is clear and readily administrable: Orders denying stay relief are final, unless the bankruptcy judge indicates that the ruling is interlocutory by denying relief without prejudice. That rule would ensure prompt appeals of stay-relief decisions and would respect the roles of bankruptcy courts and appellate courts alike. By contrast, petitioner's proposed standard will promote confusion and wasteful collateral litigation.

A. A Rule Of Presumptive Finality Respects The Role Of Bankruptcy Courts And Appellate Courts Alike

The court of appeals' rule allows bankruptcy courts the flexibility to resolve stay-relief disputes as the circumstances require, through either a final or an interlocutory order. The court can finally deny a motion for stay relief, in which case the movant must appeal immediately and the issue will be resolved expeditiously, or the bankruptcy court can deny a stay-relief motion without prejudice, for example, "because the record [is] incomplete, discovery [is] ongoing, or the court require[s] further research on the issue before it." *In re West Elecs. Inc.*, 852 F.2d 79, 82 (3d Cir. 1988). In such cases, the bankruptcy court can retain its ability to manage the process without interference or second-guessing from the appellate courts until it has finally disposed of the stay-relief motion.

Furthermore, a rule that orders denying stay relief are presumed final unless expressly made without prejudice would benefit all parties and appellate courts by making clear when the time to appeal begins to run. *See Sears, Roebuck & Co.* v. *Mackey*, 351 U.S. 427, 434-436 (1956) (noting Rule 54(b)'s provision that orders adjudicating less than all claims are interlocutory absent "express" entry of final judgment "has lent welcome certainty to the appellate procedure").

At the same time, a presumptive finality rule would promote the development of binding appellate precedent in the bankruptcy context. Bankruptcy appeals have an unusual two-tier structure: Normally, a litigant must appeal first to a district court or bankruptcy appellate panel (BAP) and only afterwards to the court of appeals. But decisions by the district courts and

BAPs are not generally considered binding on other courts. *See, e.g*, *Threadgill* v. *Armstrong World Indus., Inc.*, 928 F.2d 1366, 1371 (3d Cir. 1991) ("[T]here is no such thing as 'the law of the district.'").

As a result of this structure, bankruptcy law is "less settled than ... other areas of law," McKenna & Wiggins, *Alternative Structures for Bankruptcy Appeals*, 76 Am. Bankr. L.J. 625, 655 (2002), and has been described (by this Court) as "unruly," *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 649 (2012). Indeed, in 2005 Congress added some avenues for direct appeal to the court of appeals (at the court of appeals' discretion) due to "widespread unhappiness at the paucity of settled bankruptcy-law precedent." *Weber* v. *U.S. Trustee*, 484 F.3d 154, 158 (2d Cir. 2007).

Although appeals can be taken from interlocutory orders of bankruptcy courts (whether through the two-tier structure or by direct appeal to the circuit), such review is discretionary and cannot substitute for an appeal as of right. A clear rule that orders denying stay relief are presumptively final would permit timely appeals (before they become practically or legally moot) and thereby promote the development of uniform bankruptcy precedent.

B. Petitioner's Proposed Standard Is Unworkable And Will Harm Consumer Debtors And Other Parties By Increasing The Cost, Uncertainty, And Burden Of Appellate Litigation

If this Court deems some or all orders denying stay-relief motions to be interlocutory, it will leave courts and parties with the unenviable task of trying to figure out *when* exactly a stay-relief denial becomes

appealable. Petitioner's approach could require parties to identify some other, broader bankruptcy "proceeding" whose completion would allow the affected party to appeal. That approach is unworkable in the real world, as petitioner's attempt to articulate a standard illustrates.

Petitioner urges (at 30-31) that jurisdiction should be determined under a highly detailed case-specific approach. Courts and parties must first ask "for what purpose" stay relief is sought, and then, using the answer to that question, ascertain the particular "larger substantive bankruptcy process" that is "implicated" by the identified purpose.

Respectfully, that test is a recipe for disaster. Consider, for example, a secured creditor that files a motion to lift the stay. Petitioner suggests that if the creditor's purpose is to foreclose, the motion "implicates" the "property-disposition process," but that if the creditor's purpose is to prevent the debtor from diminishing the collateral's value, then the motion "implicates" the "adequate-protection lien-preservation process" instead. Pet. Br. 31 n.3. And it is not difficult to posit other, alternative "bankruptcy processes" that might also be "implicated" by the secured creditor's motion, such as the "plan-confirmation process" addressing how the creditor's secured claim and collateral will be treated, or the "claims-allowance process" determining the amount and priority of the creditor's secured claim and any deficiency claim. Such an approach will make appealability contested and unpredictable,

pointing to multiple different points in the case when the time to appeal arguably begins to run.[6]

Petitioner's rule would force courts and parties to determine appealability by applying uncertain and malleable factors. Moreover, when it is unclear or contested which "bankruptcy process" is "implicated" by the movant's "purpose" (as it invariably will be), then the question will be litigated, before the bankruptcy court and before the appellate court whose jurisdiction will rest on the question. Coming to an answer "will necessarily require a full briefing of all issues and consume as much judicial resources as an appeal." *Sonnax*, 907 F.2d 1280, 1285. "Jurisdictional rules ought to be simple and precise so that judges and lawyers are spared having to litigate over not the merits of a legal dispute but where and when those merits shall be litigated." *In re Lopez*, 116 F.3d 1191, 1194 (7th Cir. 1997) (Posner, J.). Petitioner's rule flouts that principle.

On top of all that, the murkiness of petitioner's rule will make it harder for attorneys to advise their clients on when to file a notice of appeal. The various "bankruptcy processes" that might tie back to a stay-relief motion are typically resolved at different points in the bankruptcy case. File too early, and the notice of appeal is ineffective; file too late, and the client may have

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[6] Petitioner appears to have difficulty applying its own test to the facts of this case. At times, petitioner's brief suggests the "bankruptcy process" "implicated" by its stay-relief motion was the adjudication of its contract claim, which was resolved by the order disallowing its claim; at other times, petitioner suggests the underlying issue "implicated" by its stay-relief motion was the debtor's alleged bad faith in filing for bankruptcy—an issue petitioner asserts remains open throughout the case, including through the confirmation of any plan (or dismissal of the case). Pet. Br. 30, 45.

lost its appellate rights. The result would inevitably be an abundance of precautionary appeals raising collateral disputes over jurisdiction. *See Gelboim* v. *Bank of Am. Corp.*, 135 S. Ct. 897, 905 (2015) (rejecting argument that order dismissing action in multi-district litigation was not final and noting contrary rule would leave parties "in a quandary about the proper timing of their appeals"; "what event or order would start the [appeal] clock?").

No one would suggest bankruptcy litigation would benefit from additional complexity and sources of delay. But making the bankruptcy process more costly in this manner would be especially problematic in the consumer bankruptcy context. Consumer debtors have limited financial resources, and their lawyers typically work on modest fixed retainers. Even if consumer debtors are more likely to be the party opposing relief from stay, debtors still have a strong interest in having a clear, simple rule that orders denying stay-relief are final orders. Indeed, consumer debtors (like other parties) would benefit from this Court's articulation of clear principles governing the finality of bankruptcy orders in general, based on the statutory text and structure and the effect that such orders have in adjudicating the substantive rights of parties to discrete disputes in bankruptcy cases. Consumer debtors can ill afford the added expense, complication, and delay that would be necessitated by a murky rule of finality and the inevitable proliferation of precautionary appeals and side disputes that rule would engender. Nor are consumer debtors' interests served by a rule that delays appellate review of denials of stay-relief (or other discrete disputes resolved by bankruptcy courts) only to have the denial reversed *after* the debtor has expended signifi-

cant time and expense pursuing bankruptcy relief that is then undercut by eleventh-hour changes.

The more sensible result—the one that promotes certainty and expedition in the bankruptcy process, and that comports with the text, structure, and purposes of the statutory scheme—is to apply a uniform and categorical approach: A decision on a stay-relief motion is final and appealable unless the decision expressly says otherwise.

CONCLUSION

The court of appeals should be affirmed.

Respectfully submitted.

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