Bankruptcy Law—First Circuit Rejects Automatic Appealability of Denial of Relief from Stay—*Pinpoint IT Services, LLC v. Rivera* (*In re Atlas IT Export Corp.*), 761 F.3d 177 (1st Cir. 2014)

After the filing of a bankruptcy petition, all pending civil actions involving the debtor are stayed pursuant to the automatic stay provision of 11 U.S.C. § 362.[1] Creditors may seek relief by moving for the court to lift the automatic stay.[2] An order granting stay-relief is considered a "final" order from the bankruptcy court and therefore appealable as of right pursuant to 28 U.S.C. § 158(a); similarly, a majority of the federal courts of appeals recognize denials of stay-relief as final, appealable orders.[3] In *In re Atlas IT Export Corp.*,[4] the First Circuit created a circuit split when it held it lacked jurisdiction to hear the appeal from a bankruptcy court's denial of stay-relief because the bankruptcy court's decision did not amount to a "final order."[5]

Prior to the First Circuit's decision, the debtor, Atlas IT Export Corporation (Atlas), sent a letter to Pinpoint IT Services, LLC (Pinpoint), asking it to preserve evidence in anticipation of litigation related to a purported breach of contract by Pinpoint.[6] Pinpoint responded by filing a complaint in the United States District Court for the Eastern District of Virginia (first action) accusing Atlas of breaching the same contract.[7] Atlas moved to change venue to the United States District Court for the District of Puerto Rico, but, while its motion was pending, Atlas initiated a separate action in the District of Puerto Rico (second action) alleging Pinpoint breached the same contract at issue in the first action.[8] Pinpoint answered Atlas's complaint in the second action and

1. *See* 11 U.S.C. § 362(a)(1) (2012); *see also In re* Atrium High Point Ltd. P'ship, 189 B.R. 599, 605 (Bankr. M.D.N. Cal. 1995) (describing purpose and scope of automatic stay).

2. *See* 11 U.S.C. § 362(d) (2012). The court may grant or deny relief from the automatic stay depending on the circumstances. *See* Prudential Ins. Co. of Am. v. SW Bos. Hotel Venture, LLC (*In re* SW Bos. Hotel Venture, LLC), 748 F.3d 393, 399 (1st Cir. 2014) (indicating grant of relief from stay required "unless certain creditor safeguards are met"); Disciplinary Bd. of the Supreme Court v. Feingold (*In re* Feingold), 730 F.3d 1268, 1277 (11th Cir. 2013), *cert. denied*, 134 S. Ct. 1880 (2014) (noting "case-specific factors" guiding courts in § 362(d) motions).

3. *See* 28 U.S.C. § 158(a)(1) (2012) (outlining types of lower court orders over which district courts have appellate jurisdiction). All of the federal courts recognize that an order granting stay-relief is a final, appealable order. *See infra* note 28 (describing recognition of blanket rule by all circuits for orders granting stay-relief). Most of the federal courts of appeals also consider orders denying stay-relief final and appealable as of right. *See infra* note 29 (indicating seven federal appellate jurisdictions recognize automatic finality of orders denying stay-relief).

4. Pinpoint IT Servs., LLC v. Rivera (*In re* Atlas IT Exp. Corp.), 761 F.3d 177 (1st Cir. 2014).

5. *See* 761 F.3d at 183-86 (rejecting blanket rule and holding order denying stay-relief nonfinal).

6. *Id.* at 178-79 (recounting relationship between parties in 2010 prior to start of litigation).

7. *Id.* (summarizing start of Pinpoint's action in Eastern District of Virginia).

8. *Id*. (describing inception of second action). After the filing of the second action, the United States

responded with counterclaims "'incorporat[ing] by reference'" its complaint in the first action.[9] Atlas then answered Pinpoint's complaint in the first action, responding with a counterclaim that was duplicative of its claim in the second action.[10] Pinpoint asked the Eastern District of Virginia to enjoin the second action, but Atlas petitioned for Chapter 7 bankruptcy relief before the court could act.[11]

Atlas's bankruptcy triggered an automatic stay of proceedings in both the first and second actions.[12] Atlas, represented in the bankruptcy proceeding by the United States Trustee, moved for a modification of the automatic stay to allow the second action to move forward.[13] The bankruptcy court granted the motion, allowing the second action to proceed while the first action remained stayed.[14] Pinpoint asked the court to lift the stay on the first action, arguing the first-filed rule required the first action to be the primary venue for the underlying contract dispute.[15] Ultimately, the bankruptcy court denied

District Court for the Eastern District of Virginia determined that the factors clearly weighed in favor of keeping the Eastern District of Virginia as the forum of choice and denied Atlas's motion to transfer the action to the District of Puerto Rico. *See* Pinpoint IT Servs., L.L.C. v. Atlas IT Exp. Corp., 812 F. Supp. 2d 710, 720-22 (E.D. Va. 2011) (analyzing seven factors in determining proper venue for claims); *see also* 761 F.3d at 178-79 (acknowledging decision by Eastern District of Virginia to deny motion to change venue).

9. 761 F.3d at 179.

10. *Id.*

11. *Id.*

12. *Id.* (summarizing immediate effect of automatic stay on first and second actions); *see also* 11 U.S.C. § 362(a) (2012) (imposing automatic stay on collateral litigation); *infra* note 21 and accompanying text (explaining effect of § 362(a) orders on litigation).

13. *See* 761 F.3d at 179 (discussing reopening of second action).

14. *See id.* (indicating modification of § 362(a) order removed stay on second action). Pinpoint appealed the modification issued by the bankruptcy court to the First Circuit's Bankruptcy Appellate Panel arguing that a modification of the stay allowed for duplicitous litigation in Virginia and Puerto Rico. *See id.* at 179 & n.1 (describing Pinpoint's reasons why first action should control). The appellate panel dismissed the appeal for lack of standing on the basis that Pinpoint was not harmed by the bankruptcy court's ruling, and the First Circuit subsequently affirmed. *See id.* at 179 n.1 (noting litigants' first trip to First Circuit).

15. *See id*. at 180 (describing filing of motion for stay-relief by Pinpoint). In its motion, Pinpoint argued that the first-filed doctrine, or first-filed rule, would be perverted if the second action was allowed to proceed while the first action was not because of the automatic stay. *See id.* The first-filed doctrine stands for the general proposition that the forum in which a claim is first brought will be the forum that hears the case ahead of courts in which there are pending related or overlapping claims that were filed after the initial claim. *See* Emp'rs Ins. of Wausau v. Fox Entm't Grp., Inc., 522 F.3d 271, 274-75 (2d Cir. 2008) (indicating rule honors plaintiff's choice of forum and prioritizes first court); EMC Corp. v. Parallel Iron, LLC, 914 F. Supp. 2d 125, 127 (D. Mass. 2012) (noting two-hundred-year-old history of first-filed rule); *see also* Sandra L. Potter, *The First-Filed 'Rule' and Moving To Dismiss Duplicative Federal Litigation*, 33 REV. LITIG. 603, 605 (2014) (stating usual function of first-filed doctrine but noting "significant exceptions"). The first-filed rule is discretionary and is founded "on principles of comity between federal courts, judicial economy, equitable principles, and efficiency for parties." Potter, *supra*, at 608 (highlighting rule's flexible nature); *see also* Coady v. Ashcraft & Gerel, 223 F.3d 1, 11 (1st Cir. 2000) (applying equitable factors to first-filed issue raised by venue-transfer motion). Under the first-filed doctrine, the first court is given wide latitude in retaining the case, but the doctrine dictates that circumstances surrounding the initiation of proceedings in the first court may allow the second court to be the primary venue. *See* Anheuser-Busch, Inc. v. Supreme Int'l Corp., 167 F.3d 417, 419 (8th Cir. 1999) (indicating "compelling circumstances" allowed second court to retain case ahead of first court); *see also* Potter, *supra*, at 611-12 (responding to demand letter with complaint constitutes

Pinpoint's motion for relief from the automatic stay.[16]

Pinpoint appealed the bankruptcy court's decision denying its motion for stay-relief to the Bankruptcy Appellate Panel for the First Circuit (BAP).[17] The BAP determined that it lacked jurisdiction to hear Pinpoint's appeal because the bankruptcy court's order was not final.[18] Pinpoint appealed to the First Circuit, arguing that the bankruptcy court's order was final and that the motion for stay-relief should be decided on the merits.[19] The First Circuit affirmed the BAP's decision, holding the court lacked jurisdiction to hear the appeal because the order denying stay-relief was not final.[20]

A bankruptcy petition stays all judicial actions concerning a debtor until the bankruptcy court decides otherwise.[21] Parties in interest to the bankruptcy may

inequitable race-to-courthouse conduct); Julie Vanneman, Note, *Procedural Fencing in Retiree Benefits Disputes: Applications of the First-Filed Rule in Federal Courts*, 69 U. PITT. L. REV. 123, 157-61 (2007) (articulating natural-plaintiff concept as equitable standard for first-filed issue analysis). "The crucial question regarding the first-filed action is whether the manner in which it was filed was inequitable." Potter, *supra*, at 613. Issues related to the first-filed doctrine are typically brought to a court's attention by way of a motion to change venue, a motion to enjoin, or a motion to dismiss the second-filed action. *See id.* at 609-20. When it comes to which court decides the first-filed issue, the courts of appeals are mixed, with some agreeing that it is preferred to have the first court decide whether or not to retain the case. *See* EMC Corp. v. Parallel Iron, LLC, 914 F. Supp. 2d 125, 128-29 (D. Mass. 2012) (recognizing court in first-filed action generally decides ultimate forum for underlying case); *see also* Potter, *supra*, at 634-36 (providing overview of how courts decide which court will determine jurisdiction).

16. *See* 761 F.3d at 180 (recognizing bankruptcy court's denial of stay-relief). The bankruptcy court denied Pinpoint's motion on the basis that Pinpoint could litigate the first-filed issue in the District of Puerto Rico without being harmed. *See id*. "[T]he bankruptcy court expressly avoided taking a position on [the first-filed] issue" and instead determined that Pinpoint failed to show cause for stay-relief. *Id.* The bankruptcy court further stated that the debtor's estate would be harmed by hiring separate counsel in Virginia to pursue the duplicitous first action while the second action was already underway. *See id.*

17. *See id*. at 181 (explaining first stage of appeal).

18. *See* Pinpoint IT Servs., LLC v. Atlas IT Exp., LLC (*In re* Atlas IT Exp., LLC), No. PR 12-090, 2013 WL 8695914, at *3 (B.A.P. 1st Cir. Jan. 29, 2013) (holding bankruptcy order not final, appealable order), *appeal dismissed*, 761 F.3d 177 (1st Cir. 2014). The BAP reasoned that the order denying Pinpoint relief from the automatic stay did not amount to a final order because it did not "resolve completely all issues between Pinpoint and [Atlas]." *Id.*; *see also* 761 F.3d at 181 (describing BAP's dismissal of Pinpoint's appeal for lack of jurisdiction).

19. *See* 761 F.3d at 181 (tracing appeal of denial of stay-relief).

20. *See id.* (dismissing appeal for lack of jurisdiction). Atlas subsequently petitioned for a writ of certiorari, arguing the First Circuit's decision conflicted with the majority of circuits and Congress on an issue of "national importance," and that its decision would only serve to complicate future bankruptcy proceedings. *See* Petition for a Writ of Certiorari, Pinpoint IT Servs., LLC v. Rivera, No. 14-1418, 2014 WL 5075086, at *6-10 (U.S. Oct. 8, 2014). The parties ultimately agreed to dismiss Pinpoint's petition before the issue could be taken up by the Supreme Court of the United States. Pinpoint IT Servs., LLC v. Rivera, No. 14-1418, 2015 WL 1757640 (U.S. Apr. 17, 2015).

21. *See* 11 U.S.C. § 362(a) (2012) (delineating automatic stay and conduct to which stay applies). The purpose of an automatic stay is to ensure a debtor's assets remain unaffected, allowing the bankruptcy court to manage the assets for creditors. 1 COLLIER ON BANKRUPTCY ¶ 1.05 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014) (commenting automatic stay "maintains the status quo and prevents dismemberment" of debtor's assets); *see also* Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 114 (1st Cir. 1994) (noting stay's alternate purpose). The automatic stay is exactly that—automatic, requiring no court action to go into effect. *See* Sunshine Dev., Inc. v. FDIC, 33 F.3d 106, 114 (1st Cir. 1994) (commenting on immediate effect of stay);

seek relief from the automatic stay by filing the appropriate motion with the bankruptcy court.[22] The bankruptcy court's decision on that motion may be appealed so long as there is appellate jurisdiction pursuant to 28 U.S.C. § 158.[23]

The federal courts of appeals have jurisdiction to hear appeals from "all final decisions, judgments, orders, and decrees" originating from the bankruptcy court level.[24] In some circuits, the issue of whether an order is "final" depends

Berton J. Maley, *"Oh, Won't You Stay Just a Little Bit Longer": Duration and Extension of the Automatic Stay in Bankruptcy*, DCBA BRIEF, Dec. 2008, at 8 (pointing out stay's immediate effect even without notice to creditors). Action taken in violation of the stay is void ab initio and is punishable by contempt or sanctions. *See* Constitution Bank v. Tubbs, 68 F.3d 685, 692 & n.6 (3d Cir. 1995) (noting conduct while stay in effect void unless granted retroactive relief by court); Borg-Warner Acceptance Corp. v. Hall, 685 F.2d 1306, 1308 (11th Cir. 1982) ("Actions taken in violation of the automatic stay are void and without effect."); 1 COLLIER ON BANKRUPTCY, *supra*, ¶ 1.05 (noting potential penalties for action violative of § 362(a)); Harry A. Perrin & Justin T. Toth, *Litigating the Motion for Relief from the Automatic Stay*, 4 J. BANKR. L. & PRAC. 459, 494-96 (1995) (describing penalties).

22. *See* 11 U.S.C. § 362(d) (2012) (indicating court shall grant relief by "terminating, annulling, modifying, or conditioning [automatic] stay . . . for cause"); Perrin & Toth, *supra* note 21, at 486-89 (describing procedure when motioning court for relief). "[T]he court . . . must grant relief from the stay unless the creditor is adequately protected or the debtor has no equity in the property and it is not needed for an effective reorganization." 1 COLLIER ON BANKRUPTCY, *supra* note 21, ¶ 1.05; *see also* Margaret M. Anderson, *Bankruptcy and the Impact of the Automatic Stay*, 65 CONSUMER FIN. L. Q. REP. 333, 337 (2011) (pointing out party seeking relief carries burden of proof); Perrin & Toth, *supra* note 21, at 464-68 (describing debtor's abuse of bankruptcy process as necessary to prove "for cause"). "Courts are reluctant to lift the stay to allow litigation to proceed, thereby diverting the debtor's attention from the bankruptcy case." Anderson, *supra*, at 337. Bankruptcy courts have broad discretion in determining a relief-from-stay remedy. *See* Sonnax Indus., Inc. v. Tri Component Prods. Corp. (*In re* Sonnax Indus., Inc.), 907 F.2d 1280, 1285-88 (2d Cir. 1990) (describing latitude given to lower court and factors considered in inquiry); *see also* Perrin & Toth, *supra* note 21, at 463 (characterizing bankruptcy court's review of stay-relief motions as discretionary).

23. *See* 28 U.S.C. § 158 (2012) (describing appellate jurisdiction over bankruptcy court orders). Conn. Nat'l Bank v. Germain, 503 U.S. 249, 252-53 (1992) (recognizing § 158(d) bestows most appellate jurisdiction over bankruptcy action); *see also* David S. Kupetz, *Basic Issues and Alternatives Facing Litigators When Bankruptcy Interrupts the Litigation Process*, 99 COM. L.J. 401, 401-02, 406-07 (1994) (discussing structure of bankruptcy courts and appellate jurisdiction over bankruptcy court action). Parties may appeal a bankruptcy court's decision to the United States District Court for the district in which the bankruptcy court sits, to a three-judge panel of bankruptcy judges, or directly to the appellate court for that district. *See* 28 U.S.C. § 158 (2012); *see also* 1 COLLIER ON BANKRUPTCY, *supra* note 21, ¶ 5.02 (describing same process).

24. *See* 28 U.S.C. § 158(d)(1) (2012) (establishing jurisdiction for federal courts of appeals). Sections 158(a) and 158(b) give the various district courts and the bankruptcy appellate panels appellate jurisdiction over "final judgments, orders, and decrees" of bankruptcy judges, while § 158(d)(1) bestows upon the federal courts of appeals the jurisdiction to hear and determine appeals from "final decisions, judgments, orders, and decrees entered under [§§ 158(a) and (b)]." 28 U.S.C. § 158(a), (b), (d) (2012); *see also* 6 COLLIER BANKRUPTCY PRACTICE GUIDE ¶ 117.03 (Alan N. Resnick & Henry J. Sommer eds., 2015) (describing bankruptcy appellate structure); Kupetz, *supra* note 23, at 406-07 (discussing appellate jurisdiction of bankruptcy action for district courts, bankruptcy appellate panels, and circuit courts). In this capacity, the circuit courts sit as second-level appellate courts for orders originating from the bankruptcy level, but appeals of final decisions, judgments, orders, and decrees may also be certified directly to the circuit courts. *See* 28 U.S.C. § 158(a), (b), (d) (2012) (delineating second-tier status of circuit courts and certification process); Laura B. Bartell, *The Appeal of Direct Appeal—Use of the New 28 U.S.C. § 158(d)(2)*, 84 AM. BANKR. L.J. 145, 146-47 (2010) (assessing optional direct appellate review of bankruptcy court action by courts of appeals); *see also* 28 U.S.C. § 1292(b) (2012) (creating alternative discretionary jurisdiction); Conn. Nat'l Bank v. Germain, 503 U.S. 249, 254 (1992) (concluding § 1292 provides separate branch of jurisdiction for federal courts of appeals); 6 COLLIER BANKRUPTCY PRACTICE GUIDE, *supra*, ¶ 117.03 (outlining when § 1292 provides jurisdiction).

on whether the bankruptcy court action ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment.[25] According to the First Circuit, the question of finality depends on whether the action finally disposed of discrete disputes within the larger case.[26] Regardless of the approach to the finality question, the circuit courts all agree that the standard needs to be flexible and pragmatic and should be structured to avoid piecemeal appeals.[27]

25. *See* Clay Cnty. Bank v. Culton (*In re* Culton), 111 F.3d 92, 93 (11th Cir. 1997) (applying test to § 158 finality question in Eleventh Circuit). "The concept of finality in bankruptcy cases is, in a word, 'complicated.'" Caterpillar Fin. Servs. Corp. v. Braunstein (*In re* Henriquez), 261 B.R. 67, 69 (B.A.P. 1st Cir. 2001) (quoting Brandt v. Wand Partners, 242 F.3d 6, 13 (1st Cir. 2001)). The Eighth Circuit, writing in *In re Olson*, set out a three-part test to determine finality of bankruptcy decisions, in which the court considers:

> (1) the extent to which the order leaves the Bankruptcy Court nothing to do but to execute the order; (2) the extent to which delay in obtaining review would prevent the aggrieved party from obtaining effective relief; and (3) the extent to which a later reversal on that issue would require recommencement of the entire proceeding.

730 F.2d 1109, 1109 (8th Cir. 1984) (internal citations omitted). The Third Circuit, in *In re West Electronics, Inc.*, wrote that a bankruptcy order is final when "there [is] nothing further for the bankruptcy court to do." 852 F.2d 79, 82 (3d Cir. 1988) (applying case-by-case approach). To determine the question of finality under § 158(d), the Ninth Circuit asks "whether [the] order finally determines an issue in such a way that addressing the issue later would not serve to prevent a party from suffering irreparable injury." Silver Sage Partners, Ltd. v. City of Desert Hot Springs (*In re* City of Desert Hot Springs), 339 F.3d 782, 790 (9th Cir. 2003). The Second Circuit noted that its "pragmatic approach to finality," which focused on whether the order "resolve[d] discrete disputes within the larger case," allowed appellate courts to expedite bankruptcy proceedings despite the potential for piecemeal appeals. *See* LTV Steel Co., Inc. v. United Mine Workers of Am. (*In re* Chateaugay Corp.), 922 F.2d 86, 90 (2d Cir. 1990) (applying standard followed by First Circuit). The question of finality, however, is not always clear-cut, and orders often result in different outcomes in the various circuits. *See* 6 COLLIER BANKRUPTCY PRACTICE GUIDE, *supra* note 24, ¶ 117.03 (warning one cannot always predict finality based on type of order). *But see infra* note 28 and accompanying text (explaining universal recognition of finality of orders granting stay-relief).

26. *See* United States v. Fleet Bank of Mass. (*In re* Calore Express Co., Inc.), 288 F.3d 22, 34 (1st Cir. 2002) (determining finality where "bankruptcy court's order clearly . . . decide[d] the relevant dispute between the parties"); *In re* Parque Forestal, Inc., 949 F.2d 504, 508 (1st Cir. 1991) (recognizing finality when "only remaining practical issue is one controlled by . . . appeal"); Tringali v. Hathaway Mach. Co., Inc., 796 F.2d 553, 557-58 (1st Cir. 1986) (stating trial court's lift of stay fully resolved discrete dispute); *In re* Saco Local Dev. Corp., 711 F.2d 441, 444-45 (1st Cir. 1983) (noting inquiry involved discrete dispute within bankruptcy case, rather than overarching litigation between parties); Raymond C. Green, Inc. v. DeGiacomo (*In re* Inofin Inc.), 466 B.R. 170, 174 (B.A.P. 1st Cir. 2012) (commenting finality determination requires "fact specific, case-by-case inquiry"); Caterpillar Fin. Servs. Corp. v. Braunstein (*In re* Henriquez), 261 B.R. 67, 70 (B.A.P. 1st Cir. 2001) (contending order final only when "discrete dispute has been *finally* determined").

27. *See* 6 COLLIER ON BANKRUPTCY, *supra* note 24, ¶ 117.03 (stressing flexible approach to finality). Finality should have a "'practical rather than a technical construction.'" *In re* Parque Forestal, Inc., 949 F.2d 504, 508 (1st Cir. 1991) (quoting Gillespie v. U.S. Steel Corp., 379 U.S. 148, 152 (1964)) (describing general view regarding finality); *see also* Liquidators of Lehman Bros. Austl. Ltd. v. Lehman Bros. Special Fin. Inc. (*In re* Lehman Bros. Holdings Inc.), 697 F.3d 74, 77 (2d Cir. 2012) (explaining "standard for finality [in bankruptcy proceedings] is more flexible than in other civil litigation"). In *In re Parque Forestal, Inc.*, the First Circuit held the bankruptcy court's order under review was final when it determined the "only remaining practical issue [was] one controlled by [the] appeal[]" and "it would be senseless to dismiss [the] appeal on the supposition that the [disputed] order continued to lack finality." 949 F.2d 504, 506-10 (1st Cir. 1991) (reviewing bankruptcy court order on motion to protect debtor's assets). In *In re Lehman Brothers Holdings*

The federal courts of appeals all recognize orders granting stay-relief final and appealable.[28] Seven of the federal courts of appeals also apply the "blanket rule" to orders denying stay-relief, considering such orders final and automatically appealable.[29] The First Circuit does not recognize the blanket rule but has determined that orders denying stay-relief are final because those orders clearly decide a dispute between the parties.[30] Notably, in *In re Calore*, the First Circuit posed, but declined to address, the question of whether an order denying stay-relief could ever be considered nonfinal.[31]

Inc., the Second Circuit reasoned functionality and pragmatic concerns are the focus of the finality question in bankruptcy proceedings. *See* Liquidators of Lehman Bros. Austl. Ltd. v. Lehman Bros. Special Fin. Inc. (*In re* Lehman Bros. Holdings Inc.), 697 F.3d 74, 77 (2d Cir. 2012). The Second Circuit determined that the bankruptcy court's denial of motions to intervene without prejudice resulted, in effect, in a denial with prejudice. *See id*.

28. *See In re* BancTexas Dallas, N.A. v. Chateaugay Corp. (*In re* Chateaugay Corp.), 880 F.2d 1509, 1511 (2d Cir. 1989) (describing uniform holding on orders lifting automatic stay); Tringali v. Hathaway Mach. Co., Inc., 796 F.2d 553, 557 (1st Cir. 1986) (holding order final because after stay-relief "nothing remains to be done" by lower court); *see also* 1 COLLIER ON BANKRUPTCY, *supra* note 21, ¶ 5.09 (summarizing circuit-wide recognition of bright-line rule for grants of stay-relief). An order lifting a § 362(a) stay exposes the debtor's assets to creditor action, and thus, it must be automatically appealable. *See* Moxley v. Comer (*In re* Comer), 716 F.2d 168, 172 (3d Cir. 1983) (explaining reason for automatic finality and appealability of stay-relief order). As the Third Circuit observed in *In re Comer*, appellate review of an order granting stay-relief cannot wait until the final resolution of the bankruptcy proceedings because of the adverse effect on the debtor's assets. *See id.*

29. *See* 1 COLLIER ON BANKRUPTCY, *supra* note 21, ¶ 5.09 (noting courts of appeals "almost unanimous[]" in this area). The Second, Fourth, Fifth, Eighth, Ninth, Tenth, and Eleventh circuits agree that orders denying stay-relief are always final. *See* 761 F.3d at 182 n.8 (listing representative case law from circuits recognizing automatic appealability). The court in *In re Sonnax Industries, Inc.* recognized the blanket rule for denials of stay-relief. Sonnax Indus., Inc. v. Tri Component Prods. Corp. (*In re* Sonnax Indus., Inc.), 907 F.2d 1280, 1283-85 (2d Cir. 1990). In doing so, it likened an order denying stay-relief to an order instituting a permanent injunction, reasoning that such an order denying stay-relief enjoined a creditor's judicial remedies involving the debtor until the bankruptcy court determined otherwise. *See id*. In *In re Taddeo*, the Second Circuit went further when it wrote "Congress manifestly intended to treat final denial of relief from the automatic stay as a final order." *See* Di Pierro v. Taddeo (*In re* Taddeo), 685 F.2d 24, 26 n.4 (2d Cir. 1982) (discussing reasons for adoption of blanket rule). The Third Circuit, however, did not adopt the blanket rule, and it instead analyzed the circumstances of the lower court's decision in order to determine finality. *See In re* W. Elecs. Inc., 852 F.2d 79, 82 (3d Cir. 1988). In *In re West Electronics Inc.*, the court held an order denying stay-relief final because the bankruptcy court rejected the movant's legal positions, the record was complete, and there was no need for further discovery. *See id.*

30. *See* United States v. Fleet Bank of Mass. (*In re* Calore Express Co., Inc.), 288 F.3d 22, 34-35 (1st Cir. 2002) (concluding finality of stay-relief denial based on circumstances and ultimate effect of order). *But see* Cong. Fin. Corp. (New England) v. Shepard Clothing Co., Inc. (*In re* Shepard Clothing Co., Inc.), 280 B.R. 786, 789 (D. Mass. 2002) (holding order denying stay-relief not final).

31. *See* United States v. Fleet Bank of Mass. (*In re* Calore Express Co., Inc.), 288 F.3d 22, 34 (1st Cir. 2002) (recognizing question of automatic appealability of stay-relief denials remained unsettled in First Circuit). In *In re Calore*, the First Circuit determined it did not have to reach the question of whether orders denying stay-relief could ever be considered nonfinal. *See id.* at 34-35. The court did not adopt or reject the blanket rule recognized in other circuits and instead determined finality based on other factors. *See id.*; *see also* United States v. Shaughnessy (*In re* Shaughnessy), No. MW 06-068, 06-42478-JBR, 2007 WL 2403280, at *2 (B.A.P. 1st Cir. Aug. 17, 2007) (adopting *In re Calore*'s approach and holding order final based on its effect on litigation); Cong. Fin. Corp. (New England) v. Shepard Clothing Co., Inc. (*In re* Shepard Clothing Co., Inc.), 280 B.R. 786, 789 (D. Mass. 2002) (relying on *In re Calore*'s approach and holding order denying stay-relief

This same question presented itself to the First Circuit in *In re Atlas IT Export Corp.*, when the court created a circuit split by declaring that denials of motions for stay-relief may be nonappealable, nonfinal orders.[32] The court recognized that bankruptcy appeals require a practical approach to the question of finality, which, in the First Circuit, turned on whether the order resolved all the issues of a discrete dispute within the larger case.[33] The court reiterated that a bankruptcy court order lifting a stay always decides a discrete dispute and is thus final and appealable as of right.[34] The court then moved its focus to bankruptcy court orders denying stay-relief, but it rejected the blanket rule recognized by the majority of circuits, which would have recognized finality of the order based solely on the fact that the order before it was an order denying stay-relief.[35] The *Atlas* court instead determined that the Third Circuit's case-by-case approach to the finality question was more in-tune with First Circuit precedent.[36] That precedent, the court said, determined finality by "keep[ing]

not final). This case-by-case approach is a form of decisional minimalism that stands opposed to bright-line rules. *See* Cass. R. Sunstein, *Foreword: Leaving Things Undecided*, 110 HARV. L. REV. 4, 16-21, 42-43 (1996) (advocating for minimalism rather than rulemaking in constitutional issues). Decisional minimalism is the notion that a judge only needs to decide the case before him or her and nothing more, which leads to narrowly defined precedent rather than broad, all-encompassing rules. *Id.* at 6-7, 15-16 (defining and describing decisional minimalism). "A predetermined rule may not be well-suited to new circumstances, and case-by-case decisionmaking [sic] maintains flexibility for the future." *Id.* at 36 (arguing decisional minimalism curtails risk of judicial error and adverse effect of decisions).

32. *See* 761 F.3d at 184-85 (determining orders denying stay-relief not always final).

33. *See id.* at 181-82 (reaffirming finality question requires practical approach). The court noted that bankruptcy matters are distinct from actions residing in most federal courts, which are often litigated as "'single judicial unit[s]' from which only one appeal can be made." *See id.* (quoting *In re* Saco Local Dev. Corp., 711 F.2d 441, 443 (1st Cir. 1983)); *see also supra* note 27 (discussing practicality and flexibility concerns as to finality inquiry). The court pointed out the significance of the layered structure of bankruptcy proceedings, commenting that "final," in the § 158 context, does not refer to the end of the entire case, but rather, it refers to bankruptcy orders that decide all of the issues of a "'discrete dispute within a larger case.'" *See* 761 F.3d at 182 (quoting Tringali v. Hathaway Mach. Co., 796 F.2d 553, 558 (1st Cir. 1986)).

34. *See* 761 F.3d at 182 (recognizing uniformity among courts of appeals on issue of finality for orders lifting automatic stay); *see also supra* note 28 and accompanying text (discussing circuit-wide recognition of finality for orders granting stay-relief).

35. *See* 761 F.3d at 182-83 (rejecting blanket rule as to orders denying stay-relief). While it recognized that the majority of circuits had adopted the blanket rule, the First Circuit stated there was "nothing inherently troubling about contributing to a circuit split" and admonished other circuits for herding with the majority. *Id.* at 182-83. The court commented on and rejected the widely recognized analogies comparing automatic stays to injunctions and denials of stay-relief to permanent injunctions. *Id.* at 184-85. The First Circuit reasoned that denial of stay-relief is not like an injunction because a stay is the "default position" for litigants postpetition and only a lift of the stay changes that position. *Id.* Conversely, in nonbankruptcy matters, there is no stay by default and conduct can only be stopped when an injunction is imposed by a court. *See id.*

36. *See id.* at 183-84 (analyzing Third Circuit's approach and reaffirming First Circuit's case-by-case approach). The *Atlas* court also commented on the uniformity and judicial economy factors stressed by courts that adopted the blanket rule, concluding judicial economy would best be served by the litigants' self-policing rather than by potential piecemeal appellate review that could stem from treating all denials of stay-relief as final orders. *See id.* at 185. In dissent, Judge William J. Kayatta, Jr., wrote that the majority's opinion in *In re Atlas IT Export Corp.* focused too much on "abstraction borne of theory rather than pragmatism borne of experience," suggesting the blanket rule was the more practical and efficient approach to the finality determination for orders denying stay-relief. *See id.* at 189-91 (Kayatta, J., dissenting). Judge Kayatta

in mind the uniqueness of bankruptcy litigation" and by searching for "finality indicators, like whether the disputed order conclusively decided a discrete, fully developed issue."[37]

According to the First Circuit, the discrete issue that would indicate finality was the first-filed rule because that was the issue which gave rise to Pinpoint's motion for relief in the first place.[38] But the bankruptcy court avoided the first-filed rule and decided the motion for relief based on the movant's failure to carry its burden to show cause for stay-relief, leaving the discrete issue not fully developed and still reviewable elsewhere.[39] Because the catalyst to Pinpoint's stay-relief motion had not yet been determined by the bankruptcy

commented that uniformity in bankruptcy should be paramount, and he suggested that the majority's creation of a circuit split harmed this unique attribute of bankruptcy law. *See id*. at 188. The dissent further suggested that the majority's holding would only "add expense and delay while likely never altering the practical outcome of even a single case." *Id.* at 191.

37. *See id.* at 184 (majority opinion) (defining First Circuit's approach to determination of finality question). The *Atlas* court directly reaffirmed the First Circuit's holding in *In re Calore* by determining that the precedent showed that finality is based on the circumstances and the effect of the order at issue. *See id.*; *supra* notes 30-31 and accompanying text (discussing *In re Calore* and other cases adopting circumstantial, case-by-case approach). The approach to finality, according to the First Circuit, needed to take into account the uniqueness of this avenue of litigation because bankruptcy litigation can span multiple layers of proceedings and jurisdictions at the same time. *See* 761 F.3d at 184 (describing policy reason for establishment of case-by-case approach). Likewise, anything other than a case-by-case approach to finality of denials of stay-relief, the court reasoned, could give rise to piecemeal appeals and could lead to review of orders that could be changed or mooted at a later time. *See id.* at 185. The case-by-case approach is not based on whether the merits of the underlying litigation were decided. *See id.* Instead, the court stressed that for an order to be final it must "conclusively decide[] the fully-developed, unreviewable-elsewhere issue that triggered the stay-relief fight below." *See id.*

38. *See* 761 F.3d at 186 (defining underlying issue and stressing bankruptcy court "specifically *avoided* deciding the first-filed issue").

39. *See id.* (discussing bankruptcy court's avoidance of first-filed issue). The court noted two scenarios after the first-filed issue was decided elsewhere whereby the stay-relief motion could be litigated once more before the bankruptcy court. *See id.* The two scenarios in which Pinpoint could file another stay-relief request were based on the fact that the second action had been reopened as a result of the bankruptcy court's modification of the stay order. *See id.*; *see also supra* text accompanying note 14 (discussing reopening of second action). In one scenario, the first-filed issue could be decided in Pinpoint's favor, in which case Pinpoint could ask the bankruptcy court to lift the stay on the first action in order to give effect to the decision on the first-filed issue. *See* 761 F.3d at 186. In the other scenario, the first-filed issue could be decided in Atlas's favor, in which case Pinpoint could ask the bankruptcy court to lift the stay on the first action because it would have no other way to stop the duplicitous litigation in the second action. *See id.* "Either way, the bankruptcy court [would] get to decide the stay-relief question again." *Id.* The First Circuit posited that Pinpoint could still get to have the underlying contract issue litigated in the first action, but only after the second-filed court had the first say on the first-filed issue. *Id.* As the *Atlas* dissent pointed out, the bankruptcy court order determined conclusively which court would be the first to litigate the first-filed issue, even if it did not decide the first-filed issue itself. *See id.* at 188 n.23 (Kayatta, J., dissenting). The dissent argued that, even under the majority's case-by-case approach, the discrete issue giving rise to the motion for stay-relief was not, as the majority suggested, the first-filed issue. *See id.* at 189. Rather, the issue was which venue would be the most appropriate to decide the first-filed issue: the first action or the second action. *See id.* at 189-90. Nevertheless, the dissent ultimately acknowledged that Pinpoint was not entitled to stay-relief because it would suffer no real harm by litigating the first-filed issue in the second action. *See id.* at 191 (arguing for adoption of blanket rule and affirming bankruptcy court's order denying stay-relief).

court on a fully developed record and was reviewable elsewhere, the court held the order denying stay-relief was not final.[40]

In rejecting the blanket rule, the First Circuit relied on precedent indicating that the approach to finality is conditional and established a flexible method that considers the circumstances of a bankruptcy court order denying stay-relief and the effect that order has on the overall litigation.[41] By questioning the blanket rule, the First Circuit assured that its reasoning as to why that rule should not be recognized will be argued by future parties when appealing from denials of stay-relief.[42] While the First Circuit's method is not in line with other jurisdictions that have addressed the same question, its approach is a more practical solution than the bright-line, blanket rule.[43]

40. *See* 761 F.3d at 181 (majority opinion) (holding order denying stay-relief nonfinal and nonappealable).

41. *See id.* at 185-86 (rejecting blanket rule and holding order nonappealable due to lack of finality). The First Circuit's approach to finality, supported by *In re Calore* and other First Circuit precedent, allowed for a circumstantial analysis of bankruptcy court orders. *See id.* at 184-85 (citing decisions impliedly supporting rejection of blanket rule); *see also* United States v. Fleet Bank of Mass. (*In re* Calore Express Co., Inc.), 288 F.3d 22, 34-35 (1st Cir. 2002) (recognizing finality of order granting stay-relief because movant left without recourse against debtor); Caterpillar Fin. Servs. Corp. v. Braunstein (*In re* Henriquez), 261 B.R. 67, 70 (B.A.P. 1st Cir. 2001) (addressing circumstances in which order denying stay-relief held final). The case-by-case approach, which allows later courts to fine-tune the finality inquiry under new sets of facts, is a more flexible approach than the blanket rule that recognizes finality of stay-relief denial without any inquiry into whether the order affected the overall litigation. *See* Sunstein, *supra* note 31, at 36.

42. *See supra* notes 29 & 35 (reviewing injunction analogy and *Atlas* court's discussion of it). Other federal courts of appeals need to be prepared for more arguments concerning finality for all bankruptcy court orders related to stay-relief due to the First Circuit's decision in *In re Atlas*. *See* 761 F.3d at 185 (proffering flexible approach will require more than one sentence of analysis). Furthermore, because the parties agreed to dismiss Pinpoint's petition for a writ of certiorari, the potential problems raised by the First Circuit's rejection of the blanket rule will linger. *See supra* note 20 (noting potential issues raised by First Circuit's decision); *supra* note 36 (recognizing policy considerations for and against blanket rule); *see also* Petition for a Writ of Certiorari, Pinpoint IT Servs., LLC v. Rivera, No. 14-1418, 2014 WL 5075086, at *6-10 (U.S. Oct. 8, 2014) (presenting arguments against First Circuit's rejection of blanket rule).

43. *See* 761 F.3d at 184-85 (noting First Circuit's understanding of policy reasons behind flexible approach); *supra* note 36 (describing judicial economy reasons supporting flexible approach). While the First Circuit's decision created a circuit split, uniformity should not be equated with judicial efficiency. *See* Sunstein, *supra* note 31, at 16-21 (suggesting judicial economy not necessarily best served by bright-line rules of law). The *Atlas* court's approach to the finality of orders denying stay-relief, its argument for self-policing litigants, and its argument against the herding habits of the courts of appeals are consistent with precedent that exercised decisional minimalism and analyzed the circumstances and effect of bankruptcy court orders. *See* Sunstein, *supra* note 31, at 6-7 (defining decisional minimalism); *supra* note 36 (describing First Circuit's reasoning why case-by-case approach met economic concerns espoused by dissent). Dissenting, Judge Kayatta suggested that the majority's holding would only "add expense and delay while likely never altering the practical outcome of even a single case." *See* 761 F.3d at 191 (Kayatta, J., dissenting). If Judge Kayatta's prediction holds true, then the issue of whether to adopt the blanket rule would most certainly be considered again by the First Circuit, but in the interim, the finality of orders denying stay-relief will be more thoroughly fleshed-out. *See id.* at 185 (majority opinion) (commenting on savings in judicial economy because of self-policing and future analysis on issue). Further commentary on finality is worthwhile because of the unknown scenarios future courts could face when addressing orders denying stay-relief and because of the difficulty in attempting to change bright-line rules of law, even when required under the circumstances. *See* Sunstein, *supra* note 31, at 16-21 (addressing values of case-by-case analyses in general).

Nevertheless, even under the majority's case-by-case approach, the bankruptcy court order at issue should have been considered final and appealable.[44] The bankruptcy court order refusing to lift the stay on the first action did not decide which court was the primary forum for the underlying contract claims, but rather, it decided which court should decide which court was the primary forum.[45] But, if the order was held final based on the circumstances, then the First Circuit's review of the blanket rule was superfluous, and the court would have had to follow *In re Calore* and left the outright rejection of the blanket rule for a future decision when finality was not indicated by the circumstances.[46]

In *In re Atlas IT Export Corp.*, the First Circuit addressed whether it had appellate jurisdiction over the appeal of a bankruptcy court's denial of stay-relief. The First Circuit held it lacked appellate jurisdiction because the issue giving rise to the motion for stay-relief was not yet fully developed and was still reviewable in collateral courts. Relying on First Circuit precedent, the court rejected the blanket rule adopted by the majority of circuit courts, which would have automatically recognized finality of the order without inquiry as to the effect the order had on the overall litigation. The First Circuit's rejection of the blanket rule, while correct, was unnecessary in light of the dissent's argument that the discrete, fully developed issue that gave rise to the creditor's claim was conclusively decided by the bankruptcy court. In the end, the First Circuit manufactured an unnecessary, yet worthwhile, circuit split that should instigate a more fine-tuned analysis of the finality of bankruptcy court orders and should provide argument for future litigants challenging the blanket rule in other circuits.

Brandon R. Dillman

44. *See* 761 F.3d at 188 n.23 (Kayatta, J., dissenting) (criticizing majority's interpretation of issue giving rise to Pinpoint's motion for stay-relief). The bankruptcy court order at issue was final because the order disposed of a discrete dispute between the parties: which court would be the first to hear the first-filed issue. *See* 761 F.3d at 190 n.25 (recognizing effect of issue actually decided by bankruptcy court order).

45. *See id.* at 180 (majority opinion) (noting bankruptcy court order relegated movant to District of Puerto Rico); *see also id.* at 188 n.23 (Kayatta, J., dissenting) (redefining issue decided by bankruptcy court order based on effect of order). This issue, the dissent pointed out, was fully developed and unreviewable elsewhere after the bankruptcy court's order denying stay-relief was entered because the order determined that the only place in which Pinpoint could argue the first-filed issue was in the second action. *See id.* at 180 (majority opinion) (recognizing limitation on Pinpoint's choice of venue created by bankruptcy court's order); *see also* 1 COLLIER ON BANKRUPTCY, *supra* note 21, ¶ 1.05 (discussing penalties for action taken in stayed proceeding); Perrin & Toth, *supra* note 21, at 495-96 (discussing voidability of actions taken in stayed proceedings); Potter, *supra* note 15, at 634-36 (observing first-filed issue considered in second-filed court).

46. *See supra* note 31 and accompanying text (noting *Calore*'s restraint in not rejecting blanket rule when unnecessary to its holding). As noted by the *Atlas* dissent, if the majority had determined that the order was final based on the circumstances, then its rejection of the blanket rule would have been unnecessary to its holding. *See* 761 F.3d at 190 n.24 (Kayatta, J., dissenting) (analyzing issue with majority's case-by-case approach).