Under 28 U.S.C. § 158(d)(1), litigants in bankruptcy cases may appeal "final decisions, judgments, orders, and decrees" of district courts and bankruptcy appellate panels. Last Friday, at the urging of both petitioner and respondent, the Supreme Court granted certiorari in *Bullard v. Hyde Park Savings Bank*, No. 14-116, to decide whether an order denying confirmation of a bankruptcy plan is a final order appealable under § 158(d)(1).

Petitioner Louis Bullard filed a petition for Chapter 13 bankruptcy in 2010. Two years later, the bankruptcy court rejected Bullard's initial plan, because he had proposed a "hybrid" repayment scheme. A hybrid plan reduces the balance owed on a secured loan to the underlying asset's fair market value. The debtor may then pay off the revised balance over a period longer than the usual five-year term of a Chapter 13 plan. The additional balance of the secured loan—the portion above the asset's fair market value—is lumped into the borrower's unsecured debts, and the borrower makes payments on these debts only within the five years of a typical Chapter 13 plan. In rejecting Bullard's plan, the bankruptcy court noted that courts have disagreed on the legality of hybrid proposals.

The bankruptcy appellate panel affirmed the bankruptcy court's ruling. The appellate panel determined that the bankruptcy court's denial of Bullard's plan was not "final," and therefore not appealable to the appellate panel under 28 U.S.C. § 158(a)(1), because Bullard still had the option of returning to bankruptcy court and proposing a different plan. The appellate panel nevertheless proceeded to hear Bullard's appeal under 28 U.S.C. § 158(a)(3), which allows appeals "with leave of the court, from other interlocutory orders and decrees." On the merits, the appellate panel ruled that Bullard's hybrid plan was not acceptable.

Bullard appealed to the First Circuit, which dismissed the appeal for lack of jurisdiction. The court of appeals found that Bullard's case presented a significant and unsettled question of law regarding hybrid bankruptcy plans. It agreed with the bankruptcy appellate panel, however, that Bullard had the right to return to bankruptcy court and propose a different plan, which meant that the decision was not final under § 158(d)(1).

The petition for certiorari argued that there is a deep circuit conflict on the appealability of an order denying confirmation of a bankruptcy plan. The petition also asserted that the First Circuit's resolution of that issue is incorrect, both because an order denying confirmation of a plan resolves a discrete legal dispute and because the notion of "finality" in bankruptcy proceedings is broader and more flexible than in other areas of law. In its response to the petition, respondent Hyde Park Savings Bank, which holds a mortgage on petitioner's property, agreed that there is a circuit conflict on the question presented and that certiorari should be granted to resolve it, but argued that the First Circuit correctly held that the denial of plan confirmation is not a final and appealable order.

The issue in this case is of significant interest to the business community because it may arise when a business is a debtor as well as when it is a creditor: in addition to governing appeals in individual persons' bankruptcy cases, § 158(d)(1) governs appeals of corporate reorganization plans filed under Chapter 11. The Supreme Court's decision will determine whether that provision authorizes an immediate appeal of right of a denial of plan confirmation in either situation.

Absent extensions, amicus briefs in support of petitioner will be due on February 2, 2015, and amicus briefs in support of respondent will be due on March 4, 2015. Any questions about this case should be directed to Brian Trust (+1 212 506 2570) in our New York office, Thomas S. Kiriakos (+1 312 701 7275) in our Chicago office orCharles Rothfeld (+1 202 263 3233) in our Washington DC office.