

## **STERN CLAIMS AND ARTICLE III ADJUDICATION— THE BANKRUPTCY JUDGE KNOWS BEST?**

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In *Stern v. Marshall*<sup>1</sup> the Supreme Court concluded that, because bankruptcy judges are not appointed under Article III of the U.S. Constitution, they lack “constitutional authority to enter a final judgment on a state law counterclaim [constituting a core proceeding under 28 U.S.C. § 157(b)(2)(C)<sup>2</sup>] that is not resolved in the process of ruling on a creditor’s proof of claim.”<sup>3</sup> The Court stated that, in deciding whether the bankruptcy court had constitutional authority to hear and decide a core proceeding, “the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process.”<sup>4</sup> The decision created two immediate questions. First, how should a bankruptcy judge deal with a proceeding that is a core proceeding but which the bankruptcy judge has no power to hear and determine? Second, can the litigants consent to final adjudication of such a core proceeding (a “*Stern* claim”) by the bankruptcy court?

The Judicial Code authorizes bankruptcy judges to “hear and determine” core proceedings under 28 U.S.C. § 157(b)(1). The bankruptcy judge is statutorily authorized to “hear” non-core proceedings and “submit proposed findings of fact and conclusions of law to the district court” for entry of a final order or judgment under 28 U.S.C. § 157(c)(1).<sup>5</sup> After the Supreme Court decision in *Stern*, most courts took the position that *Stern* claims could be treated as if they were non-core proceedings, and that bankruptcy courts could submit proposed findings of fact and conclusions of law to the district court for those claims despite the lack of statutory authority.<sup>6</sup> The Supreme Court ultimately

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<sup>1</sup> *Stern v. Marshall*, 564 U.S. 462 (2011).

<sup>2</sup> 28 U.S.C. 157(b)(2)(C) identifies as a “core proceeding” “counterclaims by the estate against persons filing claims against the estate.”

<sup>3</sup> *Stern*, 564 U.S. at 503.

<sup>4</sup> *Id.* at 499.

<sup>5</sup> 28 U.S.C. § 157(c)(1).

<sup>6</sup> *See, e.g.*, Exec. Benefits Ins. Agency v. Arkison (*In re Bellingham Ins. Agency*), 702 F.3d 553, 566–70 (9th Cir. 2012), *aff’d*, 134 S. Ct. 2165 (2014); RES-GA Four LLC v. Avalon Builders of Ga. LLC, 10-CV-463, 2012 WL 13544 (M.D. Ga. Jan. 4, 2012); Paloian v. Am. Express Co. (*In re Canopy Fin., Inc.*), 464 B.R. 770 (N.D. Ill. 2011); Heller Ehrman LLP v. Arnold & Porter LLP (*In re Heller Ehrman*), 464 B.R. 348 (N.D. Cal. 2011); McCarthy v. Wells Fargo Bank, N.A. (*In re El-Atari*), No. 11-1090, 2011 WL 5828013 (E.D. Va. 2011); Tolliver v. Bank of Am. (*In re Tolliver*), 464 B.R. 720 (Bankr. E.D. Ky. 2012); *In re Am. Hous. Found.*, 469 B.R. 257 (Bankr. N.D. Tex. 2012); Cifelli v. Blue Star Residential LLC (*In re Miles*), 477 B.R. 266 (Bankr. N.D. Ga. 2012); D & B Swine Farms, Inc. v. Murphy–Brown, L.L.C. (*In re D & B. Swine Farms, Inc.*), No. 09-

validated this approach in *Executive Benefits Insurance Agency v. Arkison*,<sup>7</sup> concluding that “when, under *Stern*’s reasoning, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy-related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed de novo by the district court.”<sup>8</sup>

Whether litigants in a proceeding involving a *Stern* claim could constitutionally consent to the final adjudication of the claim by a bankruptcy judge, just as litigants could do with respect to non-core proceedings under 28 U.S.C. § 157(c)(2), divided the courts.<sup>9</sup> Again, the Supreme Court resolved the dispute in *Wellness International Network Ltd. v. Sharif*,<sup>10</sup> holding that “litigants may validly consent to adjudication by bankruptcy courts”<sup>11</sup> so long as that consent is “knowing and voluntary.”<sup>12</sup>

In this Article, I attempt to ascertain how *Stern* claims have been treated since the Supreme Court decisions in *Arkison* and *Wellness*. My first conclusion is that bankruptcy courts find very few core proceedings that they determine are governed by *Stern* and therefore are beyond their constitutional power to decide. With respect to those few proceedings that they find are *Stern* claims, most are heard and determined by the bankruptcy judge by litigant consent. Even if the bankruptcy judge concludes it is unable to determine the matter without consent and submits proposed findings of fact and conclusions of law to the district court, the district court almost always adopts those findings of fact and conclusions of law, making the non-Article III bankruptcy court the final decision-maker in substance, while allowing the district court the formal task of entering judgment.

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02813, 2011 WL 6013218 (Bankr. E.D.N.C. Dec. 2, 2011); *Burns v. Dennis (In re Se. Materials, Inc.)*, 467 B.R. 337 (Bankr. M.D.N.C. 2012). *But see* *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906 (7th Cir. 2011).

<sup>7</sup> *Exec. Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014).

<sup>8</sup> *Id.* at 2168.

<sup>9</sup> *Compare In re Bellingham Ins. Agency*, 702 F.3d at 566–70 (holding litigants could consent to final adjudication by the bankruptcy court) with *Wellness Int’l Network Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), *rev’d*, 135 S. Ct. 1932 (2015); *Frazin v. Haynes & Boone, L.L.P. (In re Frazin)*, 732 F.3d 313, 320 n. 3 (5th Cir. 2013); *BP RE L.P. v. RML Waxahachie Dodge, L.L.C. (In re BP RE, L.P.)*, 735 F.3d 279, 286–91 (5th Cir. 2013) (holding that litigants could not consent to final adjudication by bankruptcy court). *See generally* Geoffrey K. McDonald, *The Question of Consent in Executive Benefits: Can Bankruptcy Courts Exercise the Judicial Power of the United States Under Article III Based on Litigant Consent Alone?*, 87 AM. BANKR. L.J. 271 (2013); Ralph Brubaker, *The Constitutionality of Litigant Consent to Non-Article III Bankruptcy Adjudications*, 32 No. 12 BANKR. L. LETTER 1 (2012); Laura B. Bartell, *Bankruptcy Court Adjudication by Consent After Stern*, 2012 ANN. SURV. OF BANKR. L. 5 (2012).

<sup>10</sup> *Wellness Int’l Network Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

<sup>11</sup> *Id.* at 1942.

<sup>12</sup> *Id.* at 1948.

Therefore, for almost all proceedings for which *Stern* held that the litigants are constitutionally entitled to a final decision by an Article III judge, the substantive decision is made by the bankruptcy judge, although formally entered by the district court.

#### A. *Scope of the Study*

For purposes of my investigation, I first searched in Westlaw for all cases in bankruptcy court<sup>13</sup> which mentioned “*Stern v. Marshall*” from May 26, 2015, the date the Supreme Court decided *Wellness*, through the end of calendar year 2017. There were 495 such cases. Although many courts were dealing with so-called *Stern* claims during the four years before *Wellness* was decided (and the three years before *Arkison*), they were still grappling with the issues of whether bankruptcy courts had the statutory authority to enter proposed findings of fact and conclusions of law,<sup>14</sup> and whether consent permitted them to hear and determine claims they were otherwise constitutionally precluded from deciding.<sup>15</sup> Therefore, to obtain a manageable sample, I confined my inquiry to cases decided after those issues were put to rest.<sup>16</sup> I then searched for all bankruptcy court cases citing *Arkison* but not *Stern* (an additional sixteen cases), or *Wellness* but not *Arkison* or *Stern* (another seventy-five cases), in each case during the same period.

Because many adversary proceedings that may present a claim beyond the bankruptcy court’s constitutional power to decide are unreported, I also searched Westlaw for reported decisions of district courts during the same period in which the court was considering a bankruptcy matter, and was reviewing “proposed findings of fact” or a “report and recommendation.” I then searched the docket of the bankruptcy court proceeding giving rise to the district court decision and looked at any proposed findings of fact and conclusions of law issued during the period of the study.

I looked for those cases in which the court discussed whether it had the constitutional authority to decide a core matter. There have been conflicting views of the scope of the *Stern* decision. Many courts adopt the “narrow” view, interpreting *Stern* as invalidating only 28 U.S.C. § 157(b)(2)(C), leaving all

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<sup>13</sup> I excluded cases decided by the bankruptcy appellate panels, which are included in the bankruptcy court library on Westlaw.

<sup>14</sup> See, e.g., cases in note 6 *supra*.

<sup>15</sup> See, e.g., cases in note 9 *supra*.

<sup>16</sup> There may be cases in which the bankruptcy court considered whether it could constitutionally decide disputes after *Wellness* in which the court did not cite *Stern*, *Arkison*, or *Wellness*, but those cases would be difficult to find.

other “core” proceedings listed in § 157(b) unaffected.<sup>17</sup> Other courts conclude that *Stern* cast doubt on the constitutionality of other provisions of § 157(b), and absent consent, the bankruptcy court may not constitutionally decide any matter that is based on state law and that is not necessarily resolved in connection with the allowance of an asserted claim.<sup>18</sup> For example, some courts take the position that proceedings seeking to recover preferential transfers, also core proceedings under 28 U.S.C. § 157(b)(2)(F), constitute *Stern* claims,<sup>19</sup> while other courts disagree.<sup>20</sup> Whichever view a court adopts, I have examined those cases in which that court treats the particular dispute as if it is, or might be, governed by *Stern*, even if other courts would disagree and would hear and determine the same dispute.

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<sup>17</sup> See, e.g., *Deitz v. Ford (In re Deitz)*, 760 F.3d 1038, 1045–46 (9th Cir. 2014); *Badami v. Sears (In re AFY, Inc.)*, 461 B.R. 541, 547–48 (8th Cir. B.A.P. 2012); *Tanguy v. West (In re Davis)*, 538 Fed. Appx. 440, 443 (5th Cir. 2013), cert. denied sub nom., *Tanguy v. West*, 134 S. Ct. 1002 (2014); *In re 9 Hous. LLC*, 578 B.R. 600 (Bankr. S.D. Tex. 2017); *In re Irasel Sand, LLC*, 569 B.R. 433 (Bankr. S.D. Tex. 2017); *Tyler v. Banks (In re Tyler)*, 493 B.R. 905 (N.D. Ga. 2013); *Burtch v. Seaport Cap., LLC (In re Direct Response Media, Inc.)*, 466 B.R. 626 (Bankr. D. Del. 2013). To support this view, courts cite Chief Justice Roberts’s statements in *Stern* that the question presented there was a “narrow” one; that Congress had violated Article III of the Constitution “in one isolated respect”; and that removal of state law counterclaims that are not resolved in the process of ruling on a creditor’s proof of claim from the definition of core does not “meaningfully” change “the division of labor in the current statute.” *Stern*, 564 U.S. at 502.

<sup>18</sup> See e.g., *In re Bellingham Ins. Agency, Inc.*, 702 F.3d 553, 565 (9th Cir.2012), *aff’d sub nom.* Exec. Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165 (2014); *In re Renaissance Hosp. Grand Prairie Inc.*, 713 F.3d 285, 294 n.12 (5th Cir. 2013); *Pension Fin. Servs., Inc. v. O’Connell (In re Arbco Cap. Mgmt. LLC)*, 479 B.R. 254, 261 (Bankr. S.D.N.Y. 2012).

<sup>19</sup> See, e.g., *Nisselson v. Salim*, No. 12-92, 2013 WL 1245548, at \*4 (S.D.N.Y. Mar. 25, 2013); *Sol. Tr. v. 2100 Grand LLC (In re AWTR Liquidation Inc.)*, 547 B.R. 831, 840–41 (Bankr. C.D. Cal. 2016) (holding that preference actions are *Stern* claims).

<sup>20</sup> See, e.g., *Pantazelos v. Benjamin (In re Pantazelos)*, No. 15-08916, 2017 WL 1330311, at \*1 (Bankr. N.D. Ill. Apr. 10, 2017), 562 B.R. 723, 733 (Bankr. N.D. Ill. 2016), 543 B.R. 864, 873 (Bankr. N.D. Ill. 2016); *Tow v. Exxon Mobil Corp. (In re ATP Oil & Gas Corp.)*, 553 B.R. 557, 581 (Bankr. S.D. Tex. 2016); *AFA Inv. Inc. v. Trade Source, Inc. (In re AFA Inv. Inc.)*, 538 B.R. 237, 240 (Bankr. D. Del. 2015); *Krol v. Key Bank N.A. (In re MCK Millennium Ctr. Parking, LLC)*, 532 B.R. 716, 719 (Bankr. N.D. Ill. 2015); *Dots, LLC v. Capstone Media (In re Dots, LLC)*, 533 B.R. 432, 433 (Bankr. D.N.J. 2015); *KHI Liquidation Tr. v. Wisenbaker Builder Servs., Inc. (In re Kimball)*, 480 B.R. 894 (Bankr. N.D. Ill. 2012); *First Choice Drywall, Inc. v. Presbitero (In re First Choice Drywall, Inc.)*, No. 12-00625, 2012 WL 4471570 (Bankr. N.D. Ill. Sept. 25, 2012); *Nanodynamics, Inc. v. Rothstein (In re Nanodynamics, Inc.)*, 474 B.R. 422, 429 (Bankr. W.D.N.Y. 2012); *Appalachian Fuels, LLC v. Energy Coal Res., Inc. (In re Appalachian Fuels, LLC)*, 472 B.R. 731, 744 (E.D. Ky. 2012); *In re Am. Hous. Found.*, 469 B.R. 257, 265 (Bankr. N.D. Tex. 2012); *In re DBSI, Inc.*, 467 B.R. 767, 773 (Bankr. D. Del. 2012); *West v. Freedom Med., Inc. (In re Apex Long Term Acute Care–Katy, LP.)*, 465 B.R. 452, 463 (Bankr. S.D. Tex. 2011); *Burtch v. Huston (In re USDigital, Inc.)*, 461 B.R. 276, 285 (Bankr. D. Del. 2011); *Olsen v. PG Design/Build, Inc. (In re Smeltzer Plumbing Sys., Inc.)*, No. 08-96001, 2011 WL 6176213 (Bankr. N.D. Ill. Dec. 12, 2011) (holding that the bankruptcy court can hear and determine preference actions).

In most cases, the bankruptcy court transmitted the case to the district court because it determined that the matter before it was non-core.<sup>21</sup> In other cases the

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<sup>21</sup> See, e.g., Trs. of Conneaut Lake Park, Inc. v. Park Restoration, LLC (*In re* Trs. of Conneaut Lake Park, Inc.), 577 B.R. 474, 475 n.1 (Bankr. W.D. Pa. 2017); Cramer v. Palm Ave. Partners, LLC (*In re* Palm Ave. Partners, LLC), 576 B.R. 239 (Bankr. M.D. Fla. 2017); WTE-S & S Ag. Enters., LLC v. GHD, Inc. (*In re* WTE-S & S Ag. Ents., LLC), 575 B.R. 397, 405 (Bankr. N.D. Ill. 2017); Patek v. Alfaro (*In re* Primera Energy, LLC), 579 B.R. 75, 90 (Bankr. W.D. Tex. 2017); *In re* HomeBanc Mortg. Corp., 573 B.R. 495, 503 (Bankr. D. Del. 2017); Core Litig. Tr. v. Apollo Glob. Mgmt., LLC (*In re* AOG Entm't, Inc.), 569 B.R. 563, 577–78 (Bankr. S.D.N.Y. 2017); Glob. Comput. Enters., Inc. v. Steese, Evans & Frankel P.C. (*In re* Glob. Comput. Enters., Inc.), No. 14-13290, 2017 WL 3580171, at \*18 (Bankr. E.D. Va. Aug. 15, 2017); Dev. Specialists, Inc. v. Montravers (*In re* Coudert Bros. LLP), No. 06-12226, 2017 WL 2911589, at \*3 (Bankr. S.D.N.Y. July 6, 2017); Scott v. Am. Sec. Ins. Co. (*In re* Scott), 572 B.R. 492 (Bankr. S.D.N.Y. 2017); Sicherman v. World Auto Network Inc. (*In re* McZeal), No. 14-15947, 2017 WL 2372375, at \*1 (Bankr. N.D. Ohio May 31, 2017); Lofton v. Beneficial Fin. I Inc. (*In re* Lofton), 569 B.R. 747 (Bankr. W.D. Wis. 2017); Prithvi Catalytic, Inc. v. Microsoft Corp. (*In re* Prithvi Catalytic, Inc.), 571 B.R. 105, 118 (Bankr. W.D. Pa. 2017); ECN Cap. (Aviation) Corp. v. Airbus Helicopters SAS (*In re* CHC Grp. Ltd.), No. 16-31854, 2017 WL 1380514, at \*6 (Bankr. N.D. Tex. Mar. 28, 2017); BBeautiful v. Rieke-Arminak Corp. (*In re* BBeautiful), No. 16-10799, 2017 WL 932945, at \*14 (Bankr. C.D. Cal. Mar. 8, 2017); Bavelis v. Doukas (*In re* Bavelis), 571 B.R. 278, 287–88 (Bankr. S.D. Ohio 2017); Trs. of Conneaut Lake Park, Inc. v. Park Restoration, LLC (*In re* Trs. of Conneaut Lake Park, Inc.), 564 B.R. 495, 497 n.1 (Bankr. W.D. Pa. 2017); *In re* Thorpe, 563 B.R. 576, 594 (Bankr. E.D. Pa. 2017); Ross v. Bartle (*In re* Skyline Manor, Inc.), No. 14-80934, 2017 WL 629249, at \*1 (Bankr. D. Neb. Feb. 15, 2017); Kelly v. D. Realty Invs., Inc. (*In re* Kelly), 568 B.R. 19, 20–21 (Bankr. N.D. Tex. 2017); Hackman v. Nationstar Mortg., LLC (*In re* Hackman), 563 B.R. 812, 815 (Bankr. E.D. Va. 2017); N.J. Dept. of Envtl. Prot. v. Occidental Chem. Corp. (*In re* Maxus Energy Corp.), 560 B.R. 111, 122 (Bankr. D. Del. 2016); Ogle v. Comcast Corp., Inc. (*In re* Hous. Reg'l Sports Network, L.P.), 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016); Sharp v. Evanston Ins. (*In re* C.M. Meiers Co., Inc.), No. 12-10229, 2016 WL 9458553, at \*1 (Bankr. C.D. Cal. Dec. 20, 2016); Gallinghouse & Assoc., Inc. v. Black (*In re* Black), No. 15-11935, 2016 WL 5376182, at \*3 (Bankr. E.D. La. Sept. 26, 2016); Dev. Specialists, Inc. v. Li (*In re* Coudert Bros. LLP), No. 06-12226, 2016 WL 5361195 (Bankr. S.D.N.Y. Sept. 23, 2016); Batiste v. Sun Kona Fin. I, LLC (*In re* 1250 Oceanside Partners), No. 13-00353, 2016 WL 7367761, at \*3 (Bankr. D. Haw. Nov. 2, 2016); Int'l Elec., Inc. v. Anthony & Gordon Constr. Co., Inc. (*In re* Int'l Elec., Inc.), 557 B.R. 204, 211 (Bankr. D. Kan. 2016); OHA Inv. Corp. v. Bennu Oil & Gas, LLC (*In re* ATP Oil & Gas Corp.), No. 12-36187, 2016 WL 6247613 (Bankr. S.D. Tex. Aug. 19, 2016); Robinson v. JH Portfolio Debt Equities, LLC (*In re* Robinson), 554 B.R. 800, 806 (Bankr. W.D. La. 2016); Horowitz v. Sulla (*In re* Horowitz), No. 16-00239, 2016 WL 3765781, at \*6 (Bankr. D. Haw. July 8, 2016); Lee v. Ahne L., P.C. (*In re* Basic Food Grp., LLC), No. 15-10892, 2016 WL 3677673, at \*6 (Bankr. S.D.N.Y. July 1, 2016); Anderson v. Celco P'ship (*In re* Anderson), No. 09-33431, 2016 WL 3549103, at \*3 (Bankr. W.D.N.C. June 21, 2016); *In re* Breland, No. 09-11139, 2016 WL 3193819, at \*2 (Bankr. S.D. Ala. May 27, 2016); The Containership Co. v. U.S. Pac. Transp., Inc. (*In re* The Containership Co.), No. 11-12622, 2016 WL 2341363, at \*2 (Bankr. S.D.N.Y. Apr. 29, 2016); Supreme Serv. & Specialty Co, Inc. v. Bennu Oil & Gas, LLC (*In re* ATP Oil & Gas Corp.), 550 B.R. 110, 114 (Bankr. S.D. Tex. 2016); Hornbeck Offshore Servs., LLC v. ATP Oil & Gas Corp. (*In re* ATP Oil & Gas Corp.), 550 B.R. 325, 329 (Bankr. S.D. Tex. 2016); Smith-Boughan, Inc. v. SunTrust Bank (*In re* GOE Lima, LLC), No. 08-35508, 2016 WL 1183650, at \*2 (Bankr. N.D. Ohio Mar. 25, 2016); Tow v. Gemini Ins. Co. (*In re* ATP Oil & Gas Corp.), No. 12-36187, 2016 WL 270049, at \*2 (Bankr. S.D. Tex. Jan. 20, 2016), 2015 WL 5965600 (Bankr. S.D. Tex. Oct. 9, 2015); Turner Grain Merch., Inc. v. LTD Farms P'ship (*In re* Turner Grain Merch., Inc.), 545 B.R. 261, 270 (Bankr. E.D. Ark. 2016); 11 E. 36th LLC v. First Cent. Sav. Bank (*In re* 11 E. 36th LLC), No. 13-11506, 2016 WL 152924, at \*5 (Bankr. S.D.N.Y. Jan. 12, 2016); Ball v. Soundview Composite Ltd. (*In re* Soundview Elite Ltd.), 543 B.R. 78, 98 (Bankr. S.D.N.Y. 2016); Herbert v. PHH Mortg. Corp. (*In re* Herbert), No. 13-60193, 2015 WL 6769120, at \*2 (Bankr. D. Mont. Nov. 5, 2015); Depaola v. Sleepy's LLC (*In re* Prof'l Facilities Mgmt. Inc.), No. 14-31095, 2015 WL 6501231, at \*3 (Bankr. M.D. Ala. Oct. 27, 2015); Palm Energy Grp., LLC v. Greenwich Ins. Co. (*In re* Tri-Union Dev. Corp.), No. 13-44908, 2015 WL 5730745, at \*5 (Bankr. S.D. Tex. Sept. 28, 2015); Merhav Ampal Grp., Ltd. v. Merhav (M.N.F.) Ltd.

plaintiff sought relief other than a final adjudication of the *Stern* claim (such as a dismissal under Federal Rule of Civil Procedure Rule 12(b)(6), or ordering remand, or denying summary judgment, or enforcing arbitration, or other interlocutory relief), and therefore the bankruptcy court concluded that it was not subject to the constitutional prohibition of *Stern*.<sup>22</sup> Some cases citing *Stern*, *Arkison*, or *Wellness* did so for reasons other than final determination of a claim

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(*In re Ampal-American Isr. Corp.*), No. 12-13689, 2015 WL 5176395, at \*7 (Bankr. S.D.N.Y. Sept. 2, 2015); *Gainsborough v. Lutfak (In re Lutfak)*, 536 B.R. 765, 767 (Bankr. S.D. Tex. 2015); *Howard v. LVNV Funding, LLC (In re Howard)*, No. 13-44200, 2015 WL 4574847, at \*2 (Bankr. N.D. Ill. July 29, 2015); *Murff v. LVNV Funding LLC (In re Murff)*, No. 13-44431, 2015 WL 4585167, at \*2 (Bankr. N.D. Ill. July 29, 2015), 2015 WL 3690994, at \*1 (N.D. Ill. June 15, 2015); *Ali v. Merchant (In re Ali)*, No. 13-50724, 2015 WL 4611343 (Bankr. W.D. Tex. July 23, 2015); *UFCW & Emp'rs Benefit Tr. Fund v. Belli (In re PW Supermarkets, Inc.)*, No. 15-02615, 2015 WL 4456213, at \*3 (Bankr. N.D. Cal. July 20, 2015); *Bennu Oil & Gas LLC v. Bluewater Indus., L.P. (In re ATP Oil & Gas Corp.)*, No. 12-36187, 2015 WL 4381068, at \*3 (Bankr. S.D. Tex. July 15, 2015); *Perkins v. LVNV Funding, LLC (In re Perkins)*, 533 B.R. 242, 247 (Bankr. W.D. Mich. 2015); *SNMP Res. Int'l, Inc. v. Nortel Networks, Inc. (In re Nortel Networks Inc.)*, No. 09-10138, 2015 WL 3506697, at \*2 (Bankr. D. Del. June 2, 2015); *Davis v. M & M Developer, LLC (In re MBM Entm't, LLC)*, 531 B.R. 363, 379–81 (Bankr. S.D.N.Y. 2015).

<sup>22</sup> See, e.g., *Tex. v. Briseno (In re Briseno)*, 571 B.R. 214 (Bankr. S.D. Tex. 2017); *Bavaria Yachts USA, LLLP v. Bavaria Yachtbau GmbH (In re Bavaria Yachts USA, LLLP)*, 575 B.R. 540 (Bankr. N.D. Ga. 2017); *The Culture Project, Inc. v. The Bertha Found. & SubCulture, LLC (In re The Culture Project, Inc.)*, No. 16-11874, 2017 WL 2963373 (Bankr. S.D.N.Y. July 11, 2017); *Louviere v. Thompson (In re Thompson)*, 572 B.R. 638 (Bankr. S.D. Tex. 2017); *Bennu Oil & Gas, LLC v. Bluewater Indus., L.P. (In re ATP Oil & Gas Corp.)*, No. 12-36187, 2017 WL 2602335, at \*3 (Bankr. S.D. Tex. June 15, 2017); *Tow v. Bulmahn (In re ATP Oil & Gas Corp.)*, No. 12-36187, 2017 WL 2123867 (Bankr. S.D. Tex. May 16, 2017); *Branch v. Wakemed (In re Branch)*, 569 B.R. 657 (Bankr. E.D.N.C. 2017); *In re Briseno*, 571 B.R. at 219; *In re Turcotte*, 570 B.R. 773 (Bankr. S.D. Tex. 2017); *Wright v. Csabi (In re Wright)*, 568 B.R. 770, 780 (Bankr. S.D. Tex. 2017); *Trevino v. Caliber Home Loans, Inc. (In re Trevino)*, 564 B.R. 890 (Bankr. S.D. Tex. 2017); *In re Sierra*, 560 B.R. 296, 300 (Bankr. S.D. Tex. 2016); *Montalvo v. Vela (In re Montalvo)*, 559 B.R. 825, 835 (Bankr. S.D. Tex. 2016); *Spohn v. Carney (In re Carney)*, 558 B.R. 250, 253 (Bankr. N.D. Ill. 2016); *Petroleum Prods. & Servs., Inc. v. Kana Energy Servs., Inc. (In re Petroleum Prods. & Servs., Inc.)*, 557 B.R. 918 (Bankr. S.D. Tex. Sept. 14, 2016); *Ries v. Ardinger (In re Adkins Supply, Inc.)*, 556 B.R. 285, 286 n.1 (Bankr. N.D. Tex. 2016); *In re Hernandez*, No. 16-70093, 2016 WL 4144125, at \*2 (Bankr. S.D. Tex. July 29, 2016); *Villareal v. N.Y. Marine & Gen. Ins. Co. (In re OGA Charters, LLC)*, 554 B.R. 415, 427 (Bankr. S.D. Tex. 2016); *In re Divine Ripe, L.L.C.*, 554 B.R. 395, 404 (Bankr. S.D. Tex. 2016); *Jones v. Brand (In re Belmonte)*, 551 B.R. 723, 726 (Bankr. E.D.N.Y. 2016); *Richardson v. Green (In re THR & Assocs., Inc.)*, No. 12-72022, 2016 WL 3134653, at \*3 (Bankr. C.D. Ill. May 26, 2016); *DiOrio v. Davis Griffin (In re Vision Adventures, LLC)*, 544 B.R. 277, 288 n.15 (Bankr. D.R.I. 2016); *Guffy v. Brown (In re Brown Med. Ctr., Inc.)*, 578 B.R. 590 (Bankr. S.D. Tex. 2016); *O'Cheskey v. CitiGroup Glob. Mkts., Inc. (In re Am. Hous. Found.)*, 543 B.R. 245 (Bankr. N.D. Tex. 2015); *Goldstein v. Wilmington Sav. Fund Soc'y (In re Universal Mktg., Inc.)*, 541 B.R. 259 (Bankr. E.D. Pa. 2015); *Messer v. Bentley Manhattan Inc. (In re Madison Bentley Assocs., LLC)*, No. 09-15479, 2015 WL 6125893 (Bankr. S.D.N.Y. Oct. 16, 2015); *SurfaceMax, Inc. v. Precision 2000, Inc. (In re SurfaceMax, Inc.)*, No. 14-05896, 2015 WL 5676776 (Bankr. E.D.N.C. Sept. 25, 2015); *Trevino v. HSBC Mortg. Servs., Inc. (In re Trevino)*, 535 B.R. 110, 125–26 (Bankr. S.D. Tex. 2015); *Trevino v. HSBC Mortg. Servs., Inc. (In re Trevino)*, 533 B.R. 176, 191 (Bankr. S.D. Tex. 2015); *Forman v. Kelly Cap., LLC (In re Nat'l Serv. Indus., Inc.)*, No. 12-12057, 2015 WL 3827003 (Bankr. D. Del. June 19, 2015); cf. *In re AWTR Liquidation Inc.*, 547 B.R. 831; *Zellers v. Gomoll (In re Gomoll)*, 580 B.R. 875 (Bankr. N.D. Ohio 2015) (deciding whether the court had the authority to hear and determine adversary proceeding seeking avoidance of preferential transfers and fraudulent conveyances, among other claims).

(such as considerations of motions for withdrawal, arbitration, abstention, dismissal for lack of jurisdiction, request for jury trial, and other relief), and I did not include those cases.

### B. *The Problem of Finding Stern Claims*

After eliminating non-core matters, interlocutory matters, and cases in which an analysis of *Stern* was not at issue, I then looked at all the remaining cases to see if any of them involved *Stern* claims. I found that in almost all the remaining cases, hundreds of them, the bankruptcy court concluded that the matter before it was constitutionally core, i.e., statutorily core under 28 U.S.C. § 157(b)(2), and the bankruptcy court had the constitutional power to hear and decide it without litigant consent. The vast majority of those cases involved dischargeability of a debt under 28 U.S.C. § 157(b)(2)(I);<sup>23</sup> or allowance or

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<sup>23</sup> See *All. Shippers, Inc. v. Choez (In re Choez)*, No. 15-45404, 2017 WL 5604109, at \* 2 (Bankr. E.D.N.Y. Nov. 20, 2017); *Hiner v. Koukhtiev (In re Koukhtiev)*, 576 B.R. 107, 121 (Bankr. S.D. Tex. 2017); *Fridman v. Rixham (In re Rixham)*, 578 B.R. 287, 307 (Bankr. D. Md. 2017); *Est. of Wayne Marshall Coleman v. Mladek (In re Mladek)*, No. 17-10948, 2017 WL 5198152, at \*3-4 (Bankr. D.N.M. Nov. 9, 2017); *In re Maiers*, No. 17-70869, 2017 WL 5033660, at \*1 (Bankr. C.D. Ill. Oct. 31, 2017); *NextGear Cap., Inc. v. Nozary (In re Nozary)*, No. 14-20664, 2017 WL 4411250, at \*2 (Bankr. D. Md. Sept. 29, 2017); *Ward v. Decret (In re Decret)*, No. 16-11356, 2017 WL 4097813, at \*1 n.1 (Bankr. C.D. Cal. Sept. 13, 2017); *Clayton v. Simon (In re Simon)*, No. 14-51602, 2017 WL 4118284, at \*1 (Bankr. W.D. La. Aug. 3, 2017); *Davis v. Shachove (In re Shachove)*, No. 15-30012, 2017 WL 3220472, at \*1 (Bankr. D.V.I. July 26, 2017); *Kozec v. Murphy (In re Murphy)*, 569 B.R. 402, 413 (Bankr. E.D.N.C. 2017); *Conestoga Title Ins. Co. v. Patchell (In re Patchell)*, 569 B.R. 635, 647 (Bankr. D. Md. 2017); *Roest v. Roest (In re Roest)*, 569 B.R. 277, 279 (Bankr. W.D. Mich. 2017); *Husky Int'l Elects., Inc. v. Ritz (In re Ritz)*, 567 B.R. 715, 736-37 (Bankr. S.D. Tex. 2017); *Johnson v. Antoine (In re Johnson)*, No. 099-00240, 2017 WL 1839159, at \*7 (Bankr. N.D. Ala. May 5, 2017); *Hill v. Fritz (In re Fritz)*, No. 15-34795, 2017 WL 1229706, at \*1 (Bankr. N.D. Tex. Apr. 3, 2017); *Argyle v. Harkin (In re Harkin)*, No. 16-80220, 2017 WL 1229624, at \*1 (Bankr. N.D. Ill. Mar. 31, 2017); *Chapman v. Chlad (In re Chlad)*, No. 13-40141, 2017 WL 1102894, at \*2 (Bankr. N.D. Ill. Mar. 23, 2017); *Carter v. Carter (In re Carter)*, 565 B.R. 849, 850 n.1 (Bankr. S.D. Ohio 2017); *Lopez v. Hernandez (In re Hernandez)*, 565 B.R. 367, 372 (Bankr. W.D. Tex. 2017); *Salehipour v. Jahedi (In re Jahedi)*, No. 13-16457, 2017 WL 1034681, at \*1 (Bankr. C.D. Cal. Mar. 16, 2017); *Schubert v. Arredondo (In re Arredondo)*, 568 B.R. 271, 274-75 (Bankr. S.D. Tex. 2017); *Smith v. McCants-Johnson (In re McCants-Johnson)*, No. 16-10455, 2017 WL 835165, at \*1 (Bankr. N.D. Ohio Mar. 2, 2017); *Ford Motor Credit Co. v. Fleckenstein (In re Fleckenstein)*, No. 15-90922, 2017 WL 835160, at \*3 (Bankr. C.D. Ill. Mar. 2, 2017); *DeWine v. Scott (In re Scott)*, 566 B.R. 471, 474 (Bankr. N.D. Ohio 2017); *Williams v. Nat'l Collegiate Student Loan Tr. 2004-1 (In re Williams)*, No. 16-10625, 2017 WL 665050, at \*2 (Bankr. W.D. Wash. Feb. 17, 2017); *Oliver v. Zimmerman (In re Zimmerman)*, 567 B.R. 521, 524 (Bankr. N.D. Ohio 2017); *Sequatchie Mountain Creditors v. Lile (In re Detweiler)*, No. 09-63377, 2017 WL 650062, at \*1 (Bankr. N.D. Ohio Feb. 16, 2017); *Frank v. Ward (In re Ward)*, No. 14-32939, 2017 WL 377947, at \*1 (Bankr. N.D. Tex. Jan. 26, 2017); *Americash Loans, LLC v. Marquardt (In re Marquardt)*, 561 B.R. 715, 721 (Bankr. C.D. Ill. 2016); *Milosevic v. Vujic (In re Vujic)*, No. 16-2689, 2016 WL 7388287, at \*1 (Bankr. N.D. Ill. Dec. 20, 2016); *Gomez v. Saenz (In re Saenz)*, No. 13-70423, 2016 WL 9021733, at \*4 (Bankr. S.D. Tex. Dec. 19, 2016); *Gulamali v. Dinh (In re Dinh)*, 562 B.R. 122, 129 (Bankr. S.D. Tex. 2016); *Van Dettum v. Wease (In re Wease)*, No. 15-71431, 2016 WL 8078316, at \*2 (Bankr. C.D. Ill. Nov. 28, 2016); *Nat'l Credit Union Admin. Bd. v. Zovik*, 564 B.R. 291, 294 (Bankr. N.D. Ohio 2016), *vacated*, No. 15-16860, 2016 WL 8309019 (Bankr. N.D. Ohio Mar. 22, 2017); *Korrub v. Cohn (In re Cohn)*, 561 B.R. 476, 481 (Bankr. N.D. Ill. 2016); *Vikshori*

claims or exemptions under 28 U.S.C. § 157(b)(2)(B);<sup>24</sup> matters on which there cannot be any controversy about the ability of a bankruptcy court to hear and

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L. Grp., APLC v. Henriquez (*In re Henriquez*), 559 B.R. 900, 902 (Bankr. C.D. Cal. 2016); Dixon v. Bellard (*In re Bellard*), No. 15-20310, 2016 WL 6088133, at \*1 (Bankr. N.D. Tex. Oct. 18, 2016); Chapman v. Chlad (*In re Chlad*), No. 13-40141, 2016 WL 6092642, at \*3 (Bankr. N.D. Ill. Oct. 17, 2016); Shrock v. Meier (*In re Meier*), No. 14-10105, 2016 WL 5942309, at \*8 (Bankr. N.D. Ill. Oct. 11, 2016); Jadallah v. Carroll (*In re Carroll*), 549 B.R. 375, 378 (Bankr. N.D. Cal. 2016); Dig. Signs Wizards, Inc. v. Buerger (*In re Buerger*), No. 16-03102, 2016 WL 5400987, at \*1 (Bankr. S.D. Tex. Sept. 26, 2016); Capuccio v. Capuccio (*In re Capuccio*), 558 B.R. 461, 464 (Bankr. W.D. Okla. 2016); Hoffman v. Educ. Credit Mgmt. Corp. (*In re Hoffman*), 557 B.R. 177, 184 (Bankr. D. Colo. 2016); Chi. Reg'l Council of Carpenters Pension Fund v. Van Der Laan (*In re Van Der Laan*), 556 B.R. 366, 376 (Bankr. N.D. Ill. 2016); Shetty v. Katchtourian (*In re Katchtourian*), No. 14-10668, 2016 WL 4267937, at \*1 (Bankr. C.D. Cal. Aug. 11, 2016); Mich. v. Green (*In re Green*), 556 B.R. 853, 858 (Bankr. W.D. Mich. 2016); Henry v. U.S. Dept. of Educ. (*In re Henry*), No. 14-70113, 2016 WL 3681201, at \*3 (Bankr. C.D. Ill. July 5, 2016); Pausch v. DiPiero (*In re DiPiero*), 553 B.R. 122, 128 (Bankr. N.D. Ill. 2016); Farahani v. Bastanipour (*In re Bastanipour*), 553 B.R. 111, 114 (Bankr. N.D. Ill. 2016); All. Shippers, Inc. v. Choez (*In re Choez*), No. 15-45404, 2016 WL 3244861, at \*1 (Bankr. E.D.N.Y. June 3, 2016); Int'l Christian Broad., Inc. v. Koper (*In re Koper*), 552 B.R. 208, 210 (Bankr. E.D.N.Y. 2016); Marcus v. Marcus (*In re Marcus*), No. 12-12397, 2016 WL 2963426, at \*4 (Bankr. C.D. Cal. May 16, 2016); Bush v. Heimer (*In re Heimer*), 549 B.R. 881, 884 (Bankr. N.D. Ill. 2016); Jones v. Owens (*In re Owens*), 549 B.R. 337, 347 (Bankr. D. Md. 2016); Hardin v. Alewelt (*In re Alewelt*), No. 14-70578, 2016 WL 1313382, at \*4 (Bankr. C.D. Ill. Mar. 31, 2016); Gasunas v. Yotis (*In re Yotis*), 548 B.R. 485, 494 (Bankr. N.D. Ill. 2016); First Am. Title Ins. Co. v. Moses (*In re Moses*), 547 B.R. 21, 26 (Bankr. E.D.N.Y. 2016); Smith v. Saden (*In re Saden*), No. 10-35051, 2016 WL 9414137, at \*3 (Bankr. S.D. Tex. Mar. 7, 2016); Parkway Bank & Tr. Co., v. Casali (*In re Casali*), 547 B.R. 263, 269 (Bankr. N.D. Ill. 2016); *In re RnD Eng'g, LLC*, 546 B.R. 738, 744–45 (Bankr. E.D. Mich. 2016); Carter v. Reid (*In re Reid*), No. 14-50721, 2016 WL 595275, at \*1 (Bankr. M.D.N.C. Feb. 11, 2016); Butler v. Educ. Credit Mgmt. Corp. (*In re Butler*), No. 14-71585, 2016 WL 3606997, at \*3 (Bankr. C.D. Ill. Jan. 27, 2016); Raridon v. Carlson (*In re Carlson*), 545 B.R. 229, 231 (Bankr. N.D. Ill. Jan. 25, 2016); Galati v. Yolanda Naverette, Esq., LLC (*In re Galati*), No. 14-73159, 2016 WL 238552, at \*1 (Bankr. E.D.N.Y. Jan 19, 2016); Sneed v. Muhammad (*In re Sneed*), 543 B.R. 848, 851–52 (Bankr. N.D. Ill. 2015); Muhammad v. Reed (*In re Reed*), 542 B.R. 808, 815 (Bankr. N.D. Ill. 2015); Am. Eagle Bank v. Friedman (*In re Friedman*), 543 B.R. 833, 837 (Bankr. N.D. Ill. 2015); Taylor v. Snyder (*In re Taylor*), 542 B.R. 429, 431 (Bankr. N.D. Ill. 2015); MT Tech. Enters., LLC v. Nolte (*In re Nolte*), 542 B.R. 185, 188 (Bankr. E.D. Va. 2015); Coles v. Alejandro (*In re Alejandro*), No. 15-09728, 2015 WL 7572409, at \*2 (Bankr. N.D. Ill. Nov. 24, 2015); Lack's Valley Stores, Ltd. v. Smith (*In re Smith*), 541 B.R. 629, 636 (Bankr. S.D. Tex. 2015); NQS Inspection, Ltd. V. Cong Nguyen (*In re Cong Nguyen*), No. 13-20563, 2015 WL 6941301, at \*4 (Bankr. S.D. Tex. Nov. 9, 2015); Gilbert v. Anh Van Dang (*In re Anh Van Dang*), Nos. 14-36790 & 14-36791, 2015 WL 6689316, at \*4 (Bankr. S.D. Tex. Oct. 30, 2015), *rev'd*, 560 BR. 287 (S.D. Tex. 2016); Gambrell v. Auerbach (*In re Auerbach*), No. 14-16264, 2015 WL 6601776, at \*4 (Bankr. N.D. Ohio Oct. 29, 2015); Douglass v. Douglass (*In re Douglass*), No. 13-42079, 2015 WL 6446305, at \*2 n.5 (Bankr. E.D. Tex. Oct. 23, 2015); Jackson v. Spencer (*In re Spencer*), 539 B.R. 770, 772 (Bankr. W.D. Mich. 2015); Ryt v. Peace (*In re Peace*), 546 B.R. 65, 69 n.1 (Bankr. S.D. Ohio 2015); Morris v. Charron (*In re Charron*), 541 B.R. 656, 659 (Bankr. S.D. Mich. 2015); Jones v. Hurtado (*In re Hurtado*) No. 09-16160, 2015 WL 5731273, at \*2 (Bankr. E.D. Cal. Sept. 28, 2015); Loucks v. Smith (*In re Smith*), 537 B.R. 1, 9 (Bankr. M.D. Ala. 2015); Murphy v. U.S. Dept. of Educ. (*In re Murphy*), 535 B.R. 97, 100 n.1 (Bankr. W.D. Pa. 2015); Milwaukee Builders Supply, Inc. v. St. Antoine (*In re St. Antoine*), 533 B.R. 743, 746 (Bankr. E.D. Wis. 2015); Nguyen v. Nguyen (*In re Phan*), No. 12-16821, 2015 WL 4183493, at \*1 (Bankr. C.D. Cal. July 10, 2015); Frankfurt v. Friedman (*In re Friedman*), 531 B.R. 741, 745 (Bankr. N.D. Ill. 2015).

<sup>24</sup> See *In re Hager* 579 B.R. 823 (Bankr. W.D. Mich. 2017); O2Cool, LLC v. TSA Stores, Inc. (*In re TSAWD Holdings, Inc.*), 574 B.R. 482, 485 (Bankr. D. Del. 2017); *In re Johnson*, 580 B.R. 742, 744 (Bankr. S.D. Ohio 2017); Baroni v. OneWest Bank, FSB (*In re Baroni*), No. 12-10986, 2017 WL 4404141, at \*1 (Bankr. C.D. Cal. Sept. 29, 2017); Montalvo v. Vela (*In re Montalvo*), No. 16-70186, 2017 WL 4621704, at \*2 (Bankr.



determine the dispute. Other issues that were frequently analyzed under the *Stern* doctrine included core matters listed in almost all the other provisions of 28 U.S.C. § 157(b)(2), including motions for turnover of property of the estate under 28 U.S.C § 157(b)(2)(E);<sup>25</sup> motions to avoid preferential transfer under 28

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S.D. Tex. Oct. 13, 2017); *In re Linn Energy, LLC*, 576 B.R. 532, 535 (Bankr. S.D. Tex. 2017); Herrera-Edwards v. Moore (*In re Herrera-Edwards*), 578 B.R. 853, 861 (Bankr. M.D. Fla. 2017); Frazin v. Haynes & Boone, LLC (*In re Frazin*), No. 02-32351, 2017 WL 7050632 (Bankr. N.D. Tex. Dec. 22, 2017); *In re Ruebling*, No. 15-71627, 2016 WL 6877796, at \*3 (Bankr. C.D. Ill. Nov. 21, 2016); *In re King*, 559 B.R. 158, 162 (Bankr. S.D. Tex. 2016); Baroni v. Wells Fargo Bank, N.A. (*In re Baroni*), 558 B.R. 916, 918 (Bankr. C.D. Cal. 2016); *In re Ultra Petroleum Corp.* No. 16-32202, 2017 WL 4863015, at \*7 (Bankr. S.D. Tex. Oct. 26, 2017); *In re Kite*, No. 13-20270, 2017 WL 4404283, at \*1 (Bankr. W.D. La. Oct. 2, 2017) (erroneously citing § 157(b)(2)(I) & (J)); *In re Ultra Petroleum Corp.*, 575 B.R. 361, 366 (Bankr. S.D. Tex. 2017); *In re Heft*, 564 B.R. 389, 394 (Bankr. C.D. Ill. 2017); *In re Awan*, No. 13-71508, 2017 WL 4179816, at \*2 (Bankr. C.D. Ill. Sept. 20, 2017); *In re Canal Asphalt, Inc.*, No. 15-23094, 2017 WL 1956849, at \*1 (Bankr. S.D.N.Y. May 10, 2017); Kraz, LLC v. Branch Banking & Tr. Co. (*In re Kraz, LLC*), 570 B.R. 389, 399–400 (Bankr. M.D. Fla. 2017); Mahon v. IRS. (*In re Mahon*), No. 14-11575, 2017 WL 598466, at \*4 (Bankr. D. Mass. Feb. 14, 2017); Huffman v. Gollersrud (*In re Westby*), No. 15-60090, 2017 WL 1365999, at \*6 n.13 (Bankr. D. Ore. Feb. 13, 2017); *In re Kennedy*, 568 B.R. 367, 370 (Bankr. D. Kan. 2017); *In re Sinclair*, 563 B.R. 554, 564–65 (Bankr. E.D. Cal. 2017); *In re Rodriguez*, 567 B.R. 275, 278 (Bankr. S.D. Tex. 2017); Windmill Run Assocs., Ltd. v. Fed. Nat'l Mortg. Ass'n (*In re Windmill Run Assocs., Ltd.*), 566 B.R. 396, 443 (Bankr. S.D. Tex. 2017); *In re Earl Guardio & Son, Inc.*, No. 13-90942, 2017 WL 377918, at \*2 (Bankr. Jan. 25, 2017); Hyundai-Wia Machine Am. Corp. v. Rouette (*In re Rouette*), 564 B.R. 157, 162 (Bankr. D. Conn. 2017); *In re High Standard Manuf. Co., Inc.*, No. 15-33794, 2016 WL 5947244, at \*1 (Bankr. S.D. Tex. Oct. 13, 2016); *In re Rexford Props., LLC*, No. 15-12116, 2016 WL 4608127, at \*1 (Bankr. C.D. Cal. Sept. 2, 2016); *In re Raygoza*, 556 B.R. 813, 819 (Bankr. S.D. Tex. 2016); *In re Reichhold Holdings U.S., Inc.*, 556 B.R. 107, 109 (Bankr. D. Del. 2016); GSE Envtl., Inc. v. Sorrentino (*In re GSE Envtl., Inc.*), No. 14-11126, 2016 WL 3963978, at \*1 (Bankr. D. Del. July 18, 2016); *In re Liao*, 553 B.R. 584, 597 (Bankr. S.D. Tex. 2016); *In re McCollom Ints., LLC*, 551 B.R. 292, 299 (Bankr. S.D. Tex. 2016); Prillaman v. First Cmty. Bk. Of Galena (*In re Minton*), No. 14-91293, 2016 WL 1554995, at \*2 (Bankr. C.D. Ill. Apr. 14, 2016); FDIC v. Vista Mktg. Grp., Ltd. (*In re Vista Mktg. Grp., Ltd.*), 548 B.R. 502, 512 (Bankr. N.D. Ill. 2016); *In re Inner City Props., LLC*, No. 13-11552, 2016 WL 5498688, at \*1 (Bankr. S.D. Ohio Mar. 25, 2016); *In re King*, 546 B.R. 682, 691 (Bankr. S.D. Tex. 2016); Gremillion v. Healthedge Inv. Fund, L.P. (*In re Gremillion*), No. 15-13063, 2016 WL 890038, at \*4 (Bankr. E.D. La. Mar. 8, 2016); *In re Coyle*, No. 14-90026, 2016 WL 828459, at \*2 (Bankr. C.D. Ill. Mar. 2, 2016); *In re Stone & Webster, Inc.*, 547 B.R. 588, 596 (Bankr. D. Del. 2016); *In re Conrad*, 544 B.R. 568, 570 (Bankr. D. Md. 2016); *In re Buccaneer Res., LLC*, No. 14-60041, 2015 WL 8527424, at \*6 (Bankr. S.D. Tex. Dec. 10, 2015); *In re Espinosa*, 542 B.R. 403, 410 (Bankr. S.D. Tex. 2015); *In re The Budd Co., Inc.*, 540 B.R. 353, 359 (Bankr. N.D. Ill. 2015); *In re Hart*, 540 B.R. 363, 367 (Bankr. C.D. Ill. 2015); *In re Ideal Mortg. Bankers, Ltd.*, 539 B.R. 409, 416 (Bankr. E.D.N.Y. 2015); Gerevich v. Li Sun (*In re Gerevich*), No. 13-31018, 2015 WL 6150912, at \*1 (Bankr. N.D. Cal. Oct. 19, 2015); *In re Otworth*, No. 15-01586, 2015 WL 5781512, at \*1 (Bankr. W.D. Mich. Oct. 2, 2015); *In re Simpson*, No. 14-13126, 2015 WL 5604240, at \*2 (Bankr. W.D. Wis. Sept. 23, 2015); *In re Ali*, 2015 WL 4611343, at \*56; *In re Meier*, 537 B.R. 880, 881 (Bankr. N.D. Ill. 2015) & No. 14-10105, 2015 WL 4035311, at \*1 (Bankr. N.D. Ill. June 26, 2015) & 532 B.R. 78 (Bankr. N.D. Ill. 2015); Wiggains v. Reed (*In re Reed*), 535 B.R. 700, 707 n.26 (Bankr. N.D. Tex. 2015); *In re Residential Cap., LLC*, No. 12-12020, 2015 WL 4747785, at \*15 (Bankr. S.D.N.Y. Aug. 4, 2015); *In re Dreamplay, Inc.*, 534 B.R. 106, 114 (Bankr. D. Md. 2015); *In re Thompson*, No. 15-28262, 2015 WL 4484238, at \*1 (Bankr. E.D. Wis. July 22, 2015); *In re Kelco Metals, Inc.*, 532 BR. 912, 914 (Bankr. N.D. Ill. 2015); *In re Clark*, No. 12031850, 2015 WL 3745282, at \*7 (Bankr. S.D. Tex. June 12, 2015); *In re MBM Entm't, LLC*, 531 B.R. at 378–79.

<sup>25</sup> See *In re HomeBanc Mortg. Corp.*, 573 B.R. at 503; Gold v. Harper (*In re Ambrose-Burbank*), 563 B.R. 820, 824 (Bankr. E.D. Mich. 2017); Gelzer v. Brizinova (*In re Brizinova*), 554 B.R. 64, 68 (Bankr. E.D.N.Y. 2016); O'Neil v. Bahre (*In re Holmes & Bahre Paint & Body, Inc.*), 558 B.R. 58, 60 (Bankr. D. Conn.

U.S.C. § 157(b)(2)(F);<sup>26</sup> motions with respect to the automatic stay under 28 U.S.C. § 157(b)(2)(G);<sup>27</sup> proceedings involving fraudulent transfers under 28 U.S.C. § 157(b)(2)(H);<sup>28</sup> objections to discharge and actions seeking revocation of discharge under 28 U.S.C. § 157(b)(2)(J);<sup>29</sup> determinations with respect to

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2016); Fort v. Cilwa (*In re Cilwa*), No. 15-00263, 2016 WL 1576242, at \*2 (Bankr. D.S.C. Apr. 15, 2016); Fort v. Cilwa (*In re Cilwa*), No. 15-00263, 2016 WL 1579081, at \*2 (Bankr. D.S.C. Apr. 15, 2016); Schlossberg v. Abell (*In re Abell*), No. 13-13847, 2016 WL 1556024, at \*2 (Bankr. D. Md. Apr. 14, 2016); Romo v. Montemayor (*In re Montemayor*), 547 B.R. 684, 692 (Bankr. S.D. Tex. 2016); *In re Daher*, No. 10-17252, 2015 WL 4555394, at \*1 (Bankr. N.D. Ohio July 28, 2015).

<sup>26</sup> See *Martin v. JPMorgan Chase Bank, N.A.* (*In re Martin*), No. 17-51507, 2017 WL 6803550, at \*1 (Bankr. S.D. Miss. Dec. 28, 2017); *Weisfelner v. LR2 Mgmt.* (*In re Lyondell Chem. Co.*), No. 09-10023, 2015 WL 5560283, at \*1 n.1 (Bankr. S.D.N.Y. Sept. 18, 2017); *Viper Servs., LLC v. Fora Fin. Business Loans, LLC* (*In re Viper Servs., LLC*), No. 15-11259, 2017 WL 5499155, at \*2 (Bankr. D.N.M. Nov. 15, 2017); *Pantazelos v. Benjamin* (*In re Pantazelos*), No. 15-08916, 2017 WL 1330311, at \*1 (Bankr. N.D. Ill. Apr. 10, 2017), 562 B.R. 723, 733 (Bankr. N.D. Ill. 2016), 543 B.R. 864, 873 (Bankr. N.D. Ill. 2016); *In re Windmill Run Assocs., Ltd.*, 566 B.R. at 443; *Dots, LLC v. Milberg Factors, Inc.* (*In re Dots, LLC*) 562 B.R. 286, 290 (Bankr. D.N.J. 2017); *Waldron v. FDIC* (*In re Venture Fin. Grp., Inc.*), 558 B.R. 386, 397 (Bankr. W.D. Wash. 2016); *Tow v. Exxon Mobil Corp.* (*In re ATP Oil & Gas Corp.*), 553 B.R. 577, 581 (Bankr. S.D. Tex. 2016); *AFA Inv. Inc. v. Dale T. Smith & Sons Meat Packing Co.* (*In re AFA Inv. Inc.*), No. 12-11127, 2016 WL 908212, at \*1 (Bankr. D. Del. Mar. 9, 2016); *Zucker v. Wesbanco Bank, Inc.* (*In re Fairmont Gen. Hosp., Inc.*), 546 B.R. 659, 661 (Bankr. N.D. W. Va. 2016); *Pantazelos v. Benjamin* (*In re Pantazelos*), 543 B.R. 864, 873 (Bankr. N.D. Ill. 2016); *Takada v. Libertyville Imaging Assocs.* (*In re Cornhusker RBM, LLC*), No. 13-26443, 2015 WL 5513554, at \*1 (Bankr. N.D. Ill. Sept. 17, 2015); *AFA Inv. Inc. v. Trade Source, Inc.* (*In re AFA Inv. Inc.*), 538 B.R. 237, 240 (Bankr. D. Del. 2015); *Byman v. Denson* (*In re Edwards*), 537 B.R. 797, 803 (Bankr. S.D. Tex. 2015); *Dots, LLC v. Capstone Media* (*In re Dots, LLC*), 533 B.R. 432, 433 (Bankr. D.N.J. 2015).

<sup>27</sup> See *In re Robinson*, 577 B.R. 294, 297 (Bankr. N.D. Ill. 2017); *In re Mosher*, 578 B.R. 765, 771 (Bankr. S.D. Tex. 2017); *Greenstein v. Wells Fargo Bank, N.A.* (*In re Greenstein*), 576 B.R. 139, 158 (Bankr. C.D. Cal. 2017); *In re Whitlock-Young*, 571 B.R. 795, 798 (Bankr. N.D. Ill. 2017); *In re Settlers' Hous. Serv., Inc.*, No. 13-28022, 2016 WL 3878000, at \*2 (Bankr. N.D. Ill. July 12, 2016); *Anderson v. Celco P'ship* (*In re Anderson*), No. 09-33431, 2016 WL 3549103, at \*3 (Bankr. W.D.N.C. June 21, 2016); *In re Roest*, 569 B.R. at 279; *In re Johnson*, 548 B.R. 770, 775 (Bankr. S.D. Ohio 2016); *In re Williams*, 545 B.R. 917, 923 (Bankr. S.D. Tex. 2016); *Lopez v. Portfolio Recovery Assocs., LLC* (*In re Lopez*), No. 09-70659, 2015 WL 7572097, at \*7 (Bankr. S.D. Tex. Nov. 24, 2015); *In re JCP Props., Ltd.*, 540 B.R. 596, 604 (Bankr. S.D. Tex. 2015); *In re Alvarado*, No. 15-70491, 2015 WL 6745734, at \*6 (Bankr. S.D. Tex. Nov. 4, 2015); *In re Ochoa*, 540 B.R. 322, 329 (Bankr. S.D. Tex. 2015); *In re Acosta*, 540 B.R. 308, 317 (Bankr. S.D. Tex. 2015); *In re Benanti*, No. 15-71018, 2015 WL 6460010, at \*2 (Bankr. C.D. Ill. Oct. 26, 2015); *In re Divine Ripe, L.L.C.*, 538 B.R. 300, 306 (Bankr. S.D. Tex. 2015); *In re McCann*, 537 B.R. 172, 176 (Bankr. S.D.N.Y. 2015); *In re Wright*, 533 B.R. 222, 232 (Bankr. S.D. Tex. 2015).

<sup>28</sup> See *In re Martin*, 2017 WL 6803550, at \*1; *Geltzer v. Lawrence Woodmere Acad.* (*In re Michel*), 572 B.R. 463, 466 (Bankr. E.D.N.Y. 2017); *Geltzer v. Trey Whitfield Sch.* (*In re Michel*), 572 B.R. 46, 49 (Bankr. E.D.N.Y. 2017); *King Ctr. Corp. v. City of Middletown* (*In re King Ctr. Corp.*), 573 B.R. 384, 386–87 (Bankr. E.D.N.Y. 2017); *In re Edwards*, 537 B.R. at 803; *Clay v. Milwaukee* (*In re Clay*), No. 14-27268, 2015 WL 3878454, at \*1 (Bankr. E.D. Wis. June 22, 2015).

<sup>29</sup> See *Richardson v. Swisher* (*In re Swisher*), No. 17-70310, 2017 WL 5634594, at \*2 (Bankr. C.D. Ill. Nov. 22, 2017); *Mustafa v. Dahleh* (*In re Dahleh*), No. 15-04203, 2017 WL 4792191, at \*6 (Bankr. N.D. Ill. Oct. 19, 2017); *Ward v. Decret* (*In re Decret*), No. 16-11356, 2017 WL 4097813, at \*1 n.1 (Bankr. C.D. Cal. Sept. 13, 2017); *Layng v. Jaime* (*In re Jaime*), No. 14-84356, 2017 WL 3908088, at \*1 (Bankr. N.D. Ill. Sept. 1, 2017); *Gargula v. Miner* (*In re Miner*), No. 16-7038, 2017 WL 2915341, at \*5 (Bankr. C.D. Ill. July 7, 2017); *Chapman v. Chlad* (*In re Chlad*), No. 13-40141, 2017 WL 2861104, at \*9 (Bankr. N.D. Ill. June 29, 2017); *Chapman v. Chlad* (*In re Chlad*), No. 13-40141, 2017 WL 1102894, at \*2 (Bankr. N.D. Ill. Mar. 23, 2017);

liens under 28 U.S.C. § 157(b)(2)(K);<sup>30</sup> disputes regarding plan confirmation, interpretation, or enforcement of a confirmed plan or revocation of confirmation under 28 U.S.C. § 157(b)(2)(L);<sup>31</sup> motions to use property of the estate under 28

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Salehipour v. Jahedi (*In re Jahedi*), No. 13-16457, 2017 WL 1034681, at \*1 (Bankr. C.D. Cal. Mar. 16, 2017); DeWine v. Scott (*In re Scott*), 566 B.R. 471, 474 (Bankr. N.D. Ohio 2017); Frank v. Ward (*In re Ward*), No. 14-32939, 2017 WL 377947, at \*1 (Bankr. N.D. Tex. Jan. 26, 2017); Lopez v. Hernandez (*In re Hernandez*), 565 B.R. 367, 372 (Bankr. W.D. Tex. 2017); Gargula v. Brown (*In re Brown*), No. 16-70699, 2016 WL 8078317, at \*2 (Bankr. C.D. Ill. Dec. 29, 2016); Korrub v. Cohn (*In re Cohn*), 561 B.R. 476, 481 (Bankr. N.D. Ill. 2016); Chapman v. Chlad (*In re Chlad*), No. 13-40141, 2016 WL 6092642, at \*3 (Bankr. N.D. Ill. Oct. 17, 2016); Ruter v. Schryver (*In re Schryer* [sic]), 558 B.R. 856, 859 (Bankr. N.D. Ill. 2016); Spohn v. Carney (*In re Carney*), 558 B.R. 250, 253 (Bankr. N.D. Ill. 2016); *In re Sinclair*, 556 B.R. 801, 807 (Bankr. S.D. Tex. 2016); *In re Abell*, 2016 WL 1556024, at \*2; Steege v. Johnsson (*In re Johnsson*), 551 B.R. 384, 389 (Bankr. N.D. Ill. 2016); Pergament v. Thilman (*In re Thilman*), 548 B.R. 1, 4 (Bankr. E.D.N.Y. 2016); Muhammad v. Reed (*In re Reed*), 542 B.R. 808, 815 (Bankr. N.D. Ill. 2015); Inghram v. Henry (*In re Henry*), No. 14-70113, 2015 WL 7731429, at \*2 (Bankr. C.D. Ill. Nov. 30, 2015); McDermott v. Davis (*In re Davis*), 538 B.R. 368, 370 (Bankr. S.D. Ohio 2015); Layng v. Urbonas (*In re Urbonas*), 539 B.R. 533, 536 (Bankr. N.D. Ill. 2015); Miller v. Popovich (*In re Hunt*), No. 11-582222, 2015 WL 5749794, at \*5 (Bankr. C.D. Cal. Sept. 30, 2015); Coyle v. Coyle (*In re Coyle*), 538 B.R. 753, 761 (Bankr. C.D. Ill. 2015); Res-TX One, LLC v. Hawk (*In re Hawk*), 534 B.R. 697, 703 (Bankr. S.D. Tex. 2015).

<sup>30</sup> See Walden Invs. Grp., LLC v. First Nations Bank (*In re Montemurro*), 580 B.R. 490 (Bankr. N.D. Ill. 2017); *In re Linn Energy, LLC*, 576 B.R. 532, 535 (Bankr. S.D. Tex. 2017); Maplethorpe v. Citimortgage, Inc. (*In re Maplethorpe*), 569 B.R. 157, 159 (Bankr. E.D. Mich. 2017); TSA Stores, Inc. v. Soffe (*In re TSAWD Holdings, Inc.*), 565 B.R. 292, 297 (Bankr. D. Del. 2017); *In re Heft*, 564 B.R. 389, 394 (Bankr. C.D. Ill. 2017); Johnson v. RFF Fam. P'ship, L.P. (*In re Johnson*), 554 B.R. 448, 450-51 (Bankr. S.D. Ohio 2016); Prillaman v. First Cmty. Bk. Of Galena (*In re Minton*), No. 14-91293, 2016 WL 1554955, at \*2 (Bankr. C.D. Ill. Apr. 14, 2016); FDIC v. Vista Mktg. Grp., Ltd. (*In re Vista Mktg. Grp., Ltd.*), 548 B.R. 502, 512 (Bankr. N.D. Ill. 2016); Huffman v. Gollersrud (*In re Westby*), No. 15-60090, 2017 WL 1365999, at \*6 n.13 (Bankr. D. Ore. Feb. 13, 2017); *In re Fairmont Gen. Hosp., Inc.*, 546 B.R. at 661; Douglass v. FirstMerit Bank (*In re Douglass*), No. 13-32823, 2015 WL 5813365, at \*2 (Bankr. E.D. Mich. Sept. 28, 2015); Agin v. Green Tree Servicing, LLC (*In re Shubert*), 535 B.R. 488, 491 (Bankr. D. Mass. 2015); Ghiles v. U.S. Bank Nat'l Assoc. (*In re Ghiles*), No. 14-153111, 2015 WL 3963260, at \*1 (Bankr. N.D. Ill. June 29, 2015); Nuriega v. Nat'l Mortg., LLC (*In re Huriega*), No. 12-53080, 2015 WL 4130866, at \*1 (Bankr. W.D. Tex. June 1, 2015).

<sup>31</sup> See *In re Davis*, No. 17-70784, 2017 WL 4898166, at \* 2 (Bankr. C.D. Ill. Oct. 30, 2017); *In re Millennium Lab Holdings II, LLC*, 575 B.R. 252, 262 (Bankr. D. Del. 2017); *In re Garza*, 575 B.R. 736, 745 (Bankr. S.D. Tex. 2017); La Fuente Home Health Servs., Inc. v. Burwell (*In re La Fuente Home Health Servs., Inc.*), No. 14-70265, 2017 WL 1173599, at \*8 (Bankr. S.D. Tex. Mar. 28, 2017); *In re Relativity Fashion, OOC*, 565 B.R. 50, 65 (Bankr. S.D.N.Y. 2017); *In re Durov*, No. 16-71699, 2017 WL 977026, at \*3 (Bankr. C.D. Ill. Mar. 10, 2017); *In re Villarreal*, 566 B.R. 859, 866 (Bankr. S.D. Tex. 2017); *In re Heft*, 564 B.R. at 394; *In re McPhilamy*, 566 B.R. 382, 389-90 (Bankr. S.D. Tex. 2017); *In re City Homes Nat'l LLC*, 564, B.R. 827, 864 (Bankr. D. Md. 2017); *In re Bros. Materials, Ltd.*, No. 14-50121, 2016 WL 7338409, at \*7 (Bankr. S.D. Tex. Nov. 28, 2016); *In re Rexford Props. LLC*, 558 B.R. 352, 355 (Bankr. C.D. Cal. 2016); *In re Rexford Props., LLC*, 557 B.R. 788, 792 (Bankr. C.D. Cal. 2016); *In re Sabbun*, 556 B.R. 383, 387 (Bankr. C.D. Ill. 2016); *In re Relativity Fashion, LLC*, No. 15-11989, 2016 WL 3212493, at \*16 (Bankr. S.D.N.Y. June 1, 2016); Hinojosa Eng'g, Inc. v. Lopez (*In re Treyson Dev., Inc.*), No. 14-70256, 2016 WL 1604347, at \*9 (Bankr. S.D. Tex. Apr. 19, 2016); *In re Hrubec*, 544 B.R. 397, 398 (Bankr. N.D. Ill. 2016); *In re Shea, Ltd.*, 545 B.R. 529, 534 (Bankr. S.D. Tex. 2016); *In re Hardeman Cty. Hosp. Dist.*, 540 B.R. 229, 232 n.3 (Bankr. N.D. Tex. 2015); *In re Montreal Me. & Atl. Ry., Ltd.*, No. 13-10670, 2015 WL 7431192, at \*6 (Bankr. D. Me. Oct. 9, 2015); *In re Hart*, 540 B.R. 363, 367 (Bankr. C.D. Ill. 2015); *In re Currie*, 537 B.R. 884, 887 (Bankr. C.D. Ill. 2015); *In re Star Ambulance Serv., LLC*, 540 B.R. 251, 254 (Bankr. S.D. Tex. 2015); *In re CTLI, LLC*, 534 B.R. 895, 904 (Bankr. S.D. Tex. 2015); *In re David*, No. 14-34382, 2015 WL 4600383, at \*1 (Bankr. N.D. Ill. July 30, 2015); *In re*

U.S.C. § 157(b)(2)(M);<sup>32</sup> motions regarding sale of property of the estate under 28 U.S.C. § 157(b)(2)(N);<sup>33</sup> and various other disputes that would certainly qualify as core under 28 U.S.C. § 157(b)(2)(A) and (O).<sup>34</sup> Even with respect to

Ware, 533 B.R. 701, 703 (Bankr. N.D. Ill. 2015); *In re Edelson*, 533 B.R. 651, 654 (Bankr. N.D. Ill. 2015); *In re Gaetje*, No. 15-30130, 2015 WL 3825972, at \*4 (Bankr. S.D. Tex. June 18, 2015); *Davis v. M & M Developer, LLC (In re MBM Entm't, LLC)*, 531 B.R. 363, 378–79 (Bankr. S.D.N.Y. 2015).

<sup>32</sup> See *In re Tanner*, No. 17-70325, 2017 WL 2623773, at \*2 (Bankr. C.D. Ill. June 16, 2017); *In re Benanti*, 2015 WL 6460010, at \*2.

<sup>33</sup> See *In re 9 Hous. LLC*, 578 B.R. 600, 609—10 (Bankr. S.D. Tex. 2017); *In re Vista Mktg. Grp. Ltd.*, 557 B.R. 630, 634 (Bankr. N.D. Ill. 2016); *Ross v. Hardy (In re Hardy)*, No. 16-00280, 2016 WL 6802982, at \*1 (Bankr. D.D.C. Nov. 15, 2016); *Angel v. Tauch (In re Chiron Equities, LLC)*, 552 B.R. 674, 685 (Bankr. S.D. Tex. 2016); *In re Vista Mktg. Grp., Ltd.*, 548 B.R. at 512; *In re Spoor*, No. 08-06061, 2015 WL 8108739, at \*1 (Bankr. W.D. Mich. Dec. 6, 2015).

<sup>34</sup> Among the other matters found to be constitutionally core were the following:

- estimation of claims under 11 U.S.C. § 502(c). See *In re POC Props., LLC*, 580 B.R. 504, 509 (Bankr. E.D. Wis. 2017).

- motion to convert case from one chapter to another. See *In re Hurtado*, No. 17-10074, 2017 WL 5153567, at \*5 (Bankr. S.D. Tex. Nov. 6, 2017); *In re Lucas*, No. 16-71878, 2017 WL 2623767, at \*3 (Bankr. D.N.J. June 16, 2017); *In re Adamo*, No. 14-73640, 2016 WL 859349, at \*2 (Bankr. E.D.N.Y. Mar. 4, 2016); *In re Johnson*, 546 B.R. 83, 90 (Bankr. S.D. Ohio 2016).

- motion to close or reopen the case under 11 U.S.C. § 350. See *In re Newberry*, No. 12-52072, 2017 WL 4564704, at \*1 (Bankr. W.D. Tex. Oct. 11, 2017); *In re Odin Demolition & Asset Recovery, LLC*, 544 B.R. 615, 623 (Bankr. SD. Tex. 2016); *In re DeRosa-Grund*, 544 B.R. 339, 363 (Bankr. S.D. Tex. 2016); *In re JCP Props., Ltd.*, 540 B.R. 596, 604 (Bankr. S.D. Tex. 2015).

- whether property is included in debtor's estate. See *In re Ramirez*, 575 B.R. 159, 166 (Bankr. S.D. Tex. 2017); *JCF AFFM Debt Holdings, L.P v. Affirmative Ins. Holdings, Inc. (In re Affirmative Ins. Holdings, Inc.)*, 565 B.R. 566, 583 (Bankr. D. Del. 2017); *Waldron v. FDIC (In re Venture Fin. Grp., Inc.)*, 558 B.R. 386, 397 (Bankr. W.D. Wash. 2016); *Feingerts v. D'Anna (In re D'Anna)*, 548 B.R. 155, 164 n.24 (Bankr. E.D. La. 2016); *Specialty Labs., Inc. v. Advanced Biomedical, Inc. (In re Advanced Biomedical, Inc.)*, 547 B.R. 337, 339 (Bankr. C.D. Cal. 2016); *In re Wright*, 545 B.R. 541, 550 (Bankr. S.D. Tex. 2016); *In re Abell*, 2016 WL 1556024, at \*2; *Blackhawk Network, Inc. v. Alco Stores, Inc. (In re Alco Stores, Inc.)*, 536 B.R. 383, 386 (Bankr. N.D. Tex. 2015).

- motion to disqualify counsel for claimant. See *In re MCK Millennium Ctr. Retail, LLC*, 571 B.R. 783, 784 (Bankr. N.D. Ill. 2017).

- motion to dismiss case. See *In re Arndt*, No. 17-30226, 2017 WL 5164141 (Bankr. N.D. Ohio Nov. 6, 2017); *In re Planck*, No. 17-70023, 2017 WL 3575651, at \*3 (Bankr. C. D. Ill. Aug. 3, 2017); *In re Buoy*, No. 16-33780, 2017 WL 3194755, at \*1 (Bankr. N.D. Ohio July 26, 2017); *In re Irsael Sand, LLC*, 569 B.R. 433, 438 (Bankr. S.D. Tex. 2017); *In re Durov*, 2017 WL 977026, at \*3; *In re Chovev*, 559 B.R. 339, 341 (Bankr. E.D.N.Y. 2016); *In re Victor & Stacy Watts*, 557 B.R. 640, 644 (Bankr. N.D. Ill. 2016); *In re JCP Props., Ltd.*, 540 B.R. at 604; *In re Wilcox*, 539 B.R. 137, 145 (Bankr. S.D. Tex. 2015); *In re MBM Entm't, LLC*, 531 B.R. at 378–79.

- motion for chapter 13 discharge. See *In re Shank*, 569 B.R. 238, 255 (Bankr. S.D. Tex. 2017); *In re Gonzales*, 570 B.R. 788, 794 (Bankr. S.D. Tex. 2017).

- approval and interpretation of settlement under Fed. R. Bankr. P. 9019. See *In re Derosa-Grund*, 567 B.R. 773, 782 (Bankr. S.D. Tex. 2017); *In re Junk*, 566 B.R. 897, 904 (Bankr. S.D. Ohio 2017); *In re Acadian Elevator, Inc.*, No. 15-50743, 2017 WL 1364975, at \*1 (Bankr. W.D. La. Apr. 11, 2017); *In re Bird*, 565 B.R. 382, 393 (Bankr. S.D. Tex. 2017); *In re Wright*, 545 B.R. at 550; *In re Palacios*, No. 14-70076, 2016 WL 361569, at \*11 (Bankr. S.D. Tex. Jan. 27, 2016); *In re CS Dip, LLC*, Nos. 12-01573, 12-01574, 12-01575, 2015 WL 5920892, at \*1 (Bankr. M.D. Tenn. Oct. 9, 2015).

counterclaims by the estate against persons filing claims against the estate, defined as core under 28 U.S.C. § 157(b)(2)(C), which was the section found constitutionally infirm in *Stern* to the extent that the counterclaim would not “necessarily be resolved in the claims allowance process,”<sup>35</sup> the bankruptcy courts found, in most cases, that they could constitutionally decide the

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- proceeding to equitably subordinate claim. *See* *Settlers’ Hous. Serv., Inc. v. Schaumburg Bank & Tr. Co.* (*In re* *Settlers’ Hous. Serv., Inc.*) 568 B.R. 40, 48 (Bankr. N.D. Ill. 2017).
  - motion to approve disclosure statement. *See In re* *Moshe*, 567 B.R. 438, 441 (Bankr. E.D.N.Y. 2017).
  - motion for substantive consolidation. *See* *SE Prop. Holdings, LLC v. Steward* (*In re* *Steward*), 571 B.R. 460, 464 (Bankr. W.D. Okla. 2017); *Yaquinto v. Ward* (*In re* *Ward*), 558 B.R. 771, 778 (Bankr. N.D. Tex. 2016).
  - modification of chapter 13 plan after confirmation. *See In re* *Velazquez*, 570 B.R. 251, 264 (Bankr. S.D. Tex. 2017); *In re* *Tavares*, 547 B.R. 204, 211 (Bankr. S.D. Tex. 2016); *In re* *Jones*, 538 B.R. 844, 846 (Bankr. W.D. Okla. 2015); *In re* *Lightfoot*, No. 13-32970, 2015 WL 3956211, at \*2 (Bankr. S.D. Tex. June 22, 2015).
  - motion for contempt or sanctions. *See* *Lopez v. Portfolio Recovery Assocs., LLC* (*In re* *Lopez*), 576 B.R. 84, 95 (Bankr. S.D. Tex. 2017); *Wright v. Csabi* (*In re* *Wright*), 578 B.R. 570, 577 (Bankr. S.D. Tex. 2017); *Geltzer v. Brizinova* (*In re* *Brizinova*), 565 B.R. 488, 493 (Bankr. E.D.N.Y. 2017); *In re* *Hardy*, No. 16-00280, 2017 WL 2491497, at \*5 (Bankr. D.D.C. June 8, 2017); *In re* *Wright*, No. 13-10472, 2016 WL 4734316, at \*6 (Bankr. S.D. Tex. Sept. 9, 2016); *In re* *Perales*, No. 96-21401, No. 12-70012, No. 05-70268, No. 15-70326, No. 10-70359, 2016 WL 4444311, at \*6 (Bankr. S.D. Tex. Aug. 23, 2016); *In re* *Daher*, 546 B.R. 393, 395 (Bankr. N.D. Ohio 2016); *In re* *Sanders*, 544 B.R. 463, 465 (Bankr. S.D. Fla. 2016); *In re* *Nicole Gas Prod. Ltd.*, 542 B.R. 204, 206 (Bankr. S.D. Ohio 2015); *In re* *Daher*, 546 B.R. 386, 387 (Bankr. N.D. Ohio 2015); *In re* *Lopez*, No. 09-70659, 2015 WL 5438850, at \*2 (Bankr. S.D. Tex. Sept. 14, 2015); *In re* *Dobbs*, 535 B.R. 675, 679 n.1 (Bankr. N.D. Miss. 2015); *Bavelis v. Doukas* (*In re* *Bavelis*), 535 B.R. 228, 231 (Bankr. S.D. Ohio 2015).
  - motion to transfer venue under 28 U.S.C. § 157(b)(2)(A). *See* *Walker v. Directory Distrib. Assocs., Inc.* (*In re* *Directory Distrib. Assocs., Inc.*), 566 B.R. 869, 876 (Bankr. S.D. Tex. 2017).
  - matters involving assumption or rejection of executory contracts. *See* *BMA Ventures, LLC v. Prillaman*, No. 14-91293, 2017 WL 354319, at \*1 (Bankr. C.D. Ill. Jan. 24, 2017); *Barbara Cap. Lofts, LLC v. Jaytee LLC* (*In re* *Jaytee LLC*), No. 16-29327, 2017 WL 1653153, at \*3 (Bankr. N.D. Ill. May 1, 2017); *In re* *Bluberi Gaming Techs., Inc.*, 554 B.R. 841, 849–50 (Bankr. N.D. Ill. 2016).
  - motion for stay pending appeal under Fed. R. Bankr. P. 8007. *See* *Int’l Christian Broad., Inc. v. Koper* (*In re* *Koper*), 560 B.R. 68, 71 (Bankr. E.D.N.Y. 2016).
  - motion seeking relief for violation of the discharge injunction. *See* *Mejia v. Partners for Payment Relief LLC* (*In re* *Mejia*), 559 B.R. 431, 433 (Bankr. D. Md. 2016); *Sprague v. Williams* (*In re* *Winkle*), No. 13-11743, 2016 WL 196981, at \*4 (Bankr. D.N.M. Jan. 14, 2016); *In re* *Alexander*, No. 12-50707, 2015 WL 5168375, at \*1 (Bankr. S.D. Tex. Sept. 1, 2015); *Torrence v. Comcast Corp.* (*In re* *Torrence*), No. 14-34470, 2015 WL 3962529, at \*2 (Bankr. N.D. Ill. June 26, 2015).
  - determination of eligibility for chapter 13. *See In re* *Shukla*, 550 B.R. 204, 206 (Bankr. E.D.N.Y. 2016); *In re* *Pantazelos*, 540 B.R. 347, 349 (Bankr. N.D. Ill. 2015).
  - contested election of a permanent trustee under 11 U.S.C. § 702. *See In re* *Barkany*, 542 B.R. 699, 701 and 542 B.R. 662, 667 (Bankr. E.D.N.Y. 2015).
  - suit against trustee for post-confirmation malfeasance. *See* *Est. of Frances Maddox v. O’Cheskey* (*In re* *Am. Hous. Found.*), No. 09-20232, 2015 WL 5781396, at \*18 (Bankr. N.D. Tex. Sept. 30, 2015).
  - motion to enjoin proceedings in other courts under 11 U.S.C. § 105(a). *See* *Caesars Entm’t Operating Co., Inc. v. BOKF, N.A.* (*In re* *Caesars Entm’t Operating Co., Inc.*), 533 B.R. 714, 719 (Bankr. N.D. Ill. 2015), *aff’d*, 2015 WL 5920882 (N.D. Ill. 2015), *vacated*, 808 F.3d 1186 (7th Cir. 2015).

<sup>35</sup> *Stern*, 564 U.S. at 499.

counterclaim because it was in fact necessary to the resolution of the claim filed by the defendant.<sup>36</sup>

Although one might expect a bankruptcy court to discuss *Stern* when presented with a counterclaim described in 28 U.S.C. § 157(b)(2)(C), it is more surprising that bankruptcy courts found it necessary to discuss *Stern* in connection with other core matters. In fact, most bankruptcy courts rarely do so. Of the 495 cases citing *Stern* during the period of the survey, only ten districts had ten or more bankruptcy cases citing the case.<sup>37</sup>

But certain districts seem to fixate on *Stern* far more than others. For example, of those 495 cases, 102 of them were in the Southern District of Texas, a remarkable number for a district with a relatively small caseload. The Southern District of Texas shows a similar focus on *Wellness*, citing that decision eighty-one times through the end of 2017. The district with the second most cases citing *Stern* and *Wellness* was the Northern District of Illinois, with sixty-nine citations of *Stern* and thirty-one citations to *Wellness* during the same period. The others had thirty-two or fewer cases citing *Stern* and fifteen or fewer cases citing *Wellness* during the period of the survey. (Citations to *Arkison* were relatively rare in all districts.)

Many of the bankruptcy courts that concluded that the core matter before them was within their constitutional powers to decide also relied on consent of the litigants to confer adjudicative power<sup>38</sup> (an approach that appears to be

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<sup>36</sup> See *Kraz, LLC v. Branch Banking & Tr. Co. (In re Kraz, LLC)*, 570 B.R. 389, 399–400 (Bankr. M.D. Fla. 2017); *Mahon v. Internal Rev. Serv. (In re Mahon)*, No. 14-11575, 2017 WL 598466, at \*4 (Bankr. D. Mass. Feb. 14, 2017); *Charles St. Afr. Methodist Episcopal Church of Bos. v. Oneunited Bank (In re Charles St. Afr. Methodist Episcopal Church of Bos.)* No. 12-12292, 2016 WL 7167910, at \*3 (Bankr. D. Mass. Nov. 2, 2016), *vacated in part*, 253 F.Supp.3d 374 (D. Mass. 2017); *In re Venture Fin. Grp., Inc.*, 558 B.R. at 397; *In re MBM Entm't, LLC*, 531 B.R. at 380.

<sup>37</sup> These districts were the Central District of California, the Northern and Central District of Illinois, the District of Maryland, the Southern and Eastern District of New York, the Northern and Southern District of Ohio, and the Northern and Southern District of Texas.

<sup>38</sup> See *Geltzer v. Lawrence Woodmere Acad. (In re Michel)*, 572 B.R. 463, 466 (Bankr. E.D.N.Y. 2017); *Geltzer v. Trey Whitfield Sch. (In re Michel)*, 572 B.R. 46, 49 (Bankr. E.D.N.Y. 2017); *In re 9 Hous. LLC*, 578 B.R. at 610; *Fridman v. Rixham (In re Rixham)*, 578 B.R. 287, 307 (Bankr. D. Md. 2017); *All. Shippers, Inc. v. Choez (In re Choez)*, No. 15-45404, 2017 WL 5604109, at \* 2 (Bankr. E.D.N.Y. Nov. 20, 2017); *Herrera-Edwards v. Moore (In re Herrera-Edwards)*, 578 B.R. 853, 861 (Bankr. M.D. Fla. 2017); *Hiner v. Koukhiev (In re Koukhiev)*, 576 B.R. 107, 121 (Bankr. S.D. Tex. 2017); *In re Linn Energy, LLC*, 576 B.R. 532, 535 (Bankr. S.D. Tex. 2017); *In re Mosher*, 578 B.R. 765, 771 (Bankr. S.D. Tex. 2017); *In re Ultra Petroleum Corp.* No. 16-32202, 2017 WL 4863015, at \* 7 (Bankr. S.D. Tex. Oct. 26, 2017); *Montalvo v. Vela (In re Montalvo)*, No. 16-70186, 2017 WL 4621704, at \*2 (Bankr. S.D. Tex. Oct. 13, 2017); *King Ctr. Corp. v. City of Middletown (In re King Ctr. Corp.)*, 573 B.R. 384, 386 (Bankr. E.D.N.Y. 2017); *In re Whitlock-Young*, 571 B.R. 795, 798 (Bankr. N.D. Ill. 2017); *Kozec v. Murphy (In re Murphy)*, 569 B.R. 402, 419 (Bankr. E.D.N.C. 2017); *Conestoga Title Ins. Co. v. Patchell (In re Patchell)*, 569 B.R. 635, 647 (Bankr. D. Md. 2017); *Roest v. Roest (In re Roest)*,

adopted most often by bankruptcy judges in the Southern District of Texas<sup>39</sup>). As discussed in Part (C)(1) *infra*, if the parties have consented to a determination

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569 B.R. 277, 279–80 (Bankr. W.D. Mich. 2017); *Maplethorpe v. Citimortgage, Inc.* (*In re Maplethorpe*), 569 B.R. 157, 159 (Bankr. E.D. Mich. 2017); *In re Kennedy*, 568 B.R. 367, 370 (Bankr. D. Kan. 2017); *In re Derosa-Grund*, 567 B.R. at 782; *Williams v. Nat'l Collegiate Student Loan Tr. 2004-1* (*In re Williams*), No. 16-10625, 2017 WL 665050, at \*2 (Bankr. W.D. Wash. Feb. 17, 2017); *Huffman v. Gollersrud* (*In re Westby*), No. 15-60090, 2017 WL 1365999, at \*6 n.13 (Bankr. D. Ore. Feb. 13, 2017); *Husky Int'l Elects., Inc. v. Ritz* (*In re Ritz*), 567 B.R. 715, 736–37 (Bankr. S.D. Tex. 2017); *In re Bird*, 565 B.R. at 393; *Smith v. McCants-Johnson* (*In re McCants-Johnson*), No. 16-10455, 2017 WL 835165, at \*1 (Bankr. N.D. Ohio Mar. 2, 2017); *In re Directory Distrib. Assocs., Inc.*, 566 B.R. at 876; *Windmill Run Assocs., Ltd. v. Fed. Nat'l Mortg. Ass'n* (*In re Windmill Run Assocs., Ltd.*), 566 B.R. 396, 443 (Bankr. S.D. Tex. 2017); *Sequatchie Mountain Creditors v. Lile* (*In re Detweiler*), No. 09-63377, 2017 WL 650062, at \*1 (Bankr. N.D. Ohio Feb. 16, 2017); *BMA Ventures, LLC v. Prillaman*, 2017 WL 354319, at \*1; *Hyundai-Wia Machine Am. Corp. v. Rouette* (*In re Rouette*), 564 B.R. 157, 162 (Bankr. D. Conn. 2017); *Gomez v. Saenz* (*In re Saenz*), No. 13-70423, 2016 WL 9021733, at \*6 (Bankr. S.D. Tex. Dec. 19, 2016); *Gold v. Harper* (*In re Ambrose-Burbank*), 563 B.R. 820, 824 (Bankr. E.D. Mich. 2017); *Gulamali v. Dinh* (*In re Dinh*), 562 B.R. 122, 129 (Bankr. S.D. Tex. 2016); *In re King*, 559 B.R. 158, 162 (Bankr. S.D. Tex. 2016); *Vikshori L. Grp., APLC v. Henriquez* (*In re Henriquez*), 559 B.R. 900, 902 (Bankr. C.D. Cal. 2016); *Capuccio v. Capuccio* (*In re Capuccio*), 558 B.R. 461, 465 (Bankr. W.D. Okla. 2016); *In re Vista Mktg. Grp. Ltd.*, 557 B.R. at 634; *In re Sinclair*, 556 B.R. 801, 808 (Bankr. S.D. Tex. 2016); *In re Liao*, 553 B.R. 584, 597 (Bankr. S.D. Tex. 2016); *In re Bluberi Gaming Techs., Inc.*, 554 B.R. at 849–50; *Henry v. U.S. Dept. of Educ.* (*In re Henry*), No. 14-70113, 2016 WL 3681201, at \*3 (Bankr. C.D. Ill. July 5, 2016); *In re McCollom Ints., LLC*, 551 B.R. 292, 300 (Bankr. S.D. Tex. 2016); *Marcus v. Marcus* (*In re Marcus*), No. 12-12397, 2016 WL 2963426, at \*4 n.4 (Bankr. C.D. Cal. May 16, 2016); *Fort v. Cilwa* (*In re Cilwa*), No. 15-00263, 2016 WL 1576242, at \*2 (Bankr. D.S.C. Apr. 15, 2016); *Fort v. Cilwa* (*In re Cilwa*), No. 15-00263, 2016 WL 1579081, at \*2 (Bankr. D.S.C. Apr. 15, 2016); *In re Advanced Biomedical, Inc.*, 547 B.R. at 339; *In re King*, 546 B.R. 682, 691 (Bankr. S.D. Tex. 2016); *In re RnD Eng'g, LLC*, 546 B.R. 738, 745 (Bankr. E.D. Mich. 2016); *In re Odin Demolition & Asset Recovery, LLC*, 544 B.R. at 623; *In re DeRosa-Grund*, 544 B.R. at 363–64; *MT Tech. Enters., LLC v. Nolte* (*In re Nolte*), 542 B.R. 185, 188 (Bankr. E.D. Va. 2015); *In re Wilcox*, 539 B.R. at 146; *Gerevich v. Li Sun* (*In re Gerevich*), No. 13-31018, 2015 WL 6150912, at \*1 (Bankr. N.D. Cal. Oct. 19, 2015); *Jones v. Hurtado* (*In re Hurtado*) No. 09-16160, 2015 WL 5731273, at \*3 (Bankr. E.D. Cal. Sept. 28, 2015); *Byman v. Denson* (*In re Edwards*), 537 B.R. 797, 803 (Bankr. S.D. Tex. 2015); *In re Digerati Techs., Inc.*, 537 B.R. 317, 330 (Bankr. S.D. Tex. 2015); *In re Dobbs*, 535 B.R. at 679 n.1; *In re CTLI, LLC*, 534 B.R. 895, 904 (Bankr. S.D. Tex. 2015); *In re Alco Stores, Inc.*, 536 B.R. at 386; *Res-TX One, LLC v. Hawk* (*In re Hawk*), 534 B.R. 697, 703 (Bankr. S.D. Tex. 2015); *Milwaukee Builders Supply, Inc. v. St. Antoine* (*In re St. Antoine*), 533 B.R. 743, 746 (Bankr. E.D. Wis. 2015); *Nguyen v. Nguyen* (*In re Phan*), No. 12-16821, 2015 WL 4183493, at \*1 (Bankr. C.D. Cal. July 10, 2015); *In re Wright*, 533 B.R. 222, 232 (Bankr. S.D. Tex. 2015).

<sup>39</sup> An example of a typical discussion of *Stern v. Marshall* in a case before Judge Bohm of the bankruptcy court for the Southern District of Texas follows:

**C. Constitutional Authority to Enter a Final Order**

In the wake of the Supreme Court's issuance of *Stern v. Marshall*, — U.S. —, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), this Court is required to determine whether it has the constitutional authority to enter a final order in any dispute brought before it. In *Stern*, which involved a core proceeding brought by the debtor under 28 U.S.C. § 157(b)(2)(C), the Supreme Court held that a bankruptcy court “lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor’s proof of claim.” *Id.* at 2620. The pending dispute before this Court is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O) because whether or not to dismiss this case concerns the administration of this estate and also affects the adjustment of the relationship between the Debtor and his creditors. Because *Stern* is replete with language emphasizing that the ruling is limited to the one specific type of core proceeding involved in that dispute, this Court concludes that the limitation imposed by *Stern* does not prohibit this Court from entering a final order here. A core proceeding under § 157(b)(2)(A)

by the bankruptcy court, the court does not have to decide whether the matter before it is constitutionally core, a *Stern* claim, or a non-core matter.

Out of the hundreds of cases I looked at during the period of the survey, I found only forty-two cases in which the bankruptcy court indicated that it might be dealing with a core claim the court could not constitutionally decide.<sup>40</sup>

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and (O) is entirely different than a core proceeding under § 157(b)(2)(C). *See, e.g., Badami v. Sears (In re AFY, Inc.)*, 461 B.R. 541, 547–48 [*sic*] (8th Cir. B.A.P. 2012) (“Unless and until the Supreme Court visits other provisions of §157(b)(2), we take the Supreme Court at its word and hold that the balance of the authority granted to bankruptcy judges by Congress in 28 U.S.C. § 157(b)(2) is constitutional.”); *see also In re Davis*, 538 Fed.Appx. 440, 443 (5th Cir.2013) *cert. denied sub nom. Tanguy v. W.*, — U.S. —, 134 S.Ct. 1002, 187 L.Ed.2d 851 (2014) (“[W]hile it is true that *Stern* invalidated 28 U.S.C. § 157(b)(2)(C) with respect to ‘counterclaims by the estate against persons filing claims against the estate,’ *Stern* expressly provides that its limited holding applies only in that ‘one isolated respect.’ . . . We decline to extend *Stern* ‘s limited holding herein.”).

Alternatively, even if *Stern* applies to all of the categories of core proceedings brought under § 157(b)(2), *see In re Renaissance Hosp. Grand Prairie Inc.*, 713 F.3d 285, 294 n. 12 (5th Cir.2013) (“*Stern*’s ‘in one isolated respect’ language may understate the totality of the encroachment upon the Judicial Branch posed by § 157(b)(2) . . .”), this Court still concludes that the limitation imposed by *Stern* does not prohibit this Court from entering a final order in the dispute at bar. In *Stern*, the debtor filed a counterclaim based *solely* on state law; whereas, here, the Motion brought by the UST is based solely on express Code provisions (§§ 706(b) and 707(a)) and judicially-created bankruptcy law interpreting these provisions; there is no state law involved whatsoever. This Court is therefore constitutionally authorized to enter a final order on the Motion. *See In re Airhart*, 473 B.R. 178, 181 (Bankr.S.D.Tex.2012) (noting that the court has constitutional authority to enter a final order when the dispute is based upon an express provision of the Code and no state law is involved).

Finally, in the alternative, this Court has the constitutional authority to enter a final order on the Motion because all the parties in this contested matter have consented, impliedly if not explicitly, to adjudication of this dispute by this Court. *Wellness Int’l Network, Ltd. v. Sharif*, — U.S. —, 135 S.Ct. 1932, 1947, 135 S.Ct. 1932 (2015) (“Sharif contends that to the extent litigants may validly consent to adjudication by a bankruptcy court, such consent must be expressed. We disagree. Nothing in the Constitution requires that consent to adjudication by a bankruptcy court be expressed. Nor does the relevant statute, 28 U.S.C. § 157, mandate express consent. . . .”). Indeed, the UST filed the Motion in this Court, [Finding of Fact No. 4]; the Debtor filed the Response opposing the Motion, [Finding of Fact No. 5], and the parties proceeded to make a record in a multi-day hearing without ever objecting to this Court’s constitutional authority to enter a final order on the Motion, [Finding of Fact No. 6]. If these circumstances do not constitute consent, nothing does.

*In re Wilcox*, 539 B.R. at 145–46. Almost identical language appears in all of the cases from the bankruptcy court for the Southern District of Texas listed in note 38 *supra* decided by Judge Bohm, modified only to reflect the core proceeding in the particular case, and the evidence of consent.

<sup>40</sup> *See Slobodian v. Penn. St. Univ. (In re Fisher)*, 575 B.R. 640, 641–42 (Bankr. M.D. Penn. 2017); *Reinbold v. Morton Cmty. Bank (In re Mid-Illini Hardwoods, LLC)*, 576 B.R. 598, 603 (Bankr. C.D. Ill. 2017); *Lofstedt v. Oletski-Behrends (In re Behrends)*, No. 13-22392, 2017 WL 4513071, at \*1 (Bankr. D. Colo. Apr. 10, 2017); *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 14-11335, 2017 WL 1281871, at \*1 (Bankr. C.D. Cal. Feb. 1, 2017); *Field v. Mirikitani (In re Mirikitani)*, No. 05-03693, 2016 WL 7367760, at \*2 (Bankr. D. Haw. Dec. 19, 2016); *Howell v. Fulford (In re S. Home & Ranch Supply, Inc.)*, 561 B.R. 810, 812 n.1 (Bankr. N.D. Ga. 2016); *Dev. Specialists, Inc. v. Varanese (In re Couder Bros.*



Despite the apocalyptic predictions after the Supreme Court’s decision in *Stern*,<sup>41</sup> it seems that the bankruptcy courts have in fact concluded that, as Chief Justice Roberts suggested in the opinion, *Stern* “does not change all that much.”<sup>42</sup>

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LLP), No. 06-12226, 2016 WL 6875900, at \*4 (Bankr. S.D.N.Y. Nov. 21, 2016); Ralph Roberts Realty, LLC v. Savoy (*In re* Ralph Roberts Realty, LLC), 562 B.R. 144, 147–48 (Bankr. E.D. Mich. 2016); Gillies v. JPMorgan Chase Bank, N.A. (*In re* Gillies), No. 16-07590, 2016 WL 6999506, at \*2 (Bankr. C.D. Cal. Oct. 12, 2016); Carswell v. Select Portfolio Servicing, Inc. (*In re* Carswell), No. 16-07589, 2016 WL 5937954, at \*2 (Bankr. C.D. Cal. Sept. 15, 2016); Burkart v. Brack (*In re* Brack), No. 10-26347, 2016 WL 5793655, at \*1 (Bankr. E.D. Cal. Sept. 30, 2016); Weil v. United States (*In re* Tag Entm’t Corp.), No. 09-26982, 2016 WL 1239519, at \*1 (Bankr. C.D. Cal. Mar. 29, 2016); Stillwater Liquidating LLC v. Net Five at Palm Pointe, LLC (*In re* Stillwater Asset Backed Offshore Fund Ltd.), 559 B.R. 563, 575 (Bankr. S.D.N.Y. 2016); Weisfelner v. Fund 1 (*In re* Lyondell Chem. Co.), 554 B.R. 655, 674 (Bankr. S.D.N.Y. 2016); Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, No. 10-04311, 2016 WL 1695296, at \*3 (Bankr. S.D.N.Y. Apr. 25, 2016); Hutson v. Jones Fam. Holdings, LLC (*In re* Daniel), 556 B.R. 722, 724 (Bankr. M.D.N.C. 2016); Lassman v. Sergio (*In re* Sergio), 552 B.R. 9, 16 (Bankr. D. Mass. 2016); Glob. Comput. Enters., Inc. v. Steese, Evans & Frankel P.C. (*In re* Glob. Comput. Enters., Inc.), 561 B.R. 651, 657–58 (Bankr. E.D. Va. 2016); Doctor’s Assocs. Inc. v. Desai (*In re* Patwari), No. 08-26178, 2016 WL 1577842, at \*1 (Bankr. D.N.J. Apr. 7, 2016); Madden v. Morelli (*In re* Energy Conversion), 548 B.R. 208, 215 (Bankr. E.D. Mich. 2016); Chatz v. Stepaniants (*In re* Fatoorehchi), 546 B.R. 786, 788 (Bankr. N.D. Ill. 2016); Nisselson v. Salim (*In re* Big Apple Volkswagen, LLC), No. 11-11388, 2016 WL 1069303, at \*2 (Bankr. S.D.N.Y. Mar. 17, 2016); Wilkins v. AmeriCorp Inc. (*In re* Allegro L. LLC), 545 B.R. 675, 699 (Bankr. M.D. Ala. 2016); Richardson v. JPMorgan Chase Bank, N.A. (*In re* Jordan), 543 B.R. 878, 882 (Bankr. C.D. Ill. 2016); Flatau v. Barry Switzer Fam., LLC (*In re* Donnan), No. 11-31083, 2016 WL 1085499, at \*1 (Bankr. M.D. Ga. Mar. 17, 2016); Krasnoff v. Roberts (*In re* Messingham), No. 14-10910, 2016 WL 8736835, at \*1 (Bankr. C.D. Cal. Mar. 16, 2016); Conti v. Perdue Bioenergy, LLC (*In re* Clean Burn Fuels, LLC), 540 B.R. 195, 199 (Bankr. M.D.N.C. 2015); Gocha v. Credit Advocs. L. Firm, LLC (*In re* Werkmeister), No. 14-03464, 2016 WL 758234, at \*1 (Bankr. W.D. Mich. Feb. 22, 2016); Johns v. Brown (*In re* Fannon), No. 12-10075, 2015 WL 9594302, at \*3 n.1 (Bankr. S.D. W. Va. Dec. 31, 2015); Johns v. Frye (*In re* Frye), No. 13-20078, 2015 WL 9593606, at \*4 n.2 (Bankr. S.D. W. Va. Dec. 31, 2015); Hopkins v. M & A Ventures (*In re* Hoku Corp.), No. 13-40838, 2015 WL 8488949, at \*1 (Bankr. D. Idaho Dec. 10, 2015); West v. High Desert, LLC (*In re* Fisher), No. 13-26460, 2015 WL 9999216, at \*1 (Bankr. D. Utah Dec. 4, 2015); Mosher v. Willett (*In re* Willett), No. 14-11123, 2015 WL 8975218, at \*4 (Bankr. C.D. Cal. Dec. 14, 2015); Whittaker v. Groves Venture, LLC (*In re* Bolon), 538 B.R. 391, 394 (Bankr. S.D. Ohio 2015); Official Comm. of Unsecured Creditors v. The Fountainhead Grp., Inc. (*In re* Bridgeview Aerosol, LLC), 538 B.R. 477, 483–84 (Bankr. N.D. Ill. 2015); Stapleton v. Newkey Grp., LLC (*In re* SGK Ventures, LLC), No. 13-37603, 2015 WL 7755525, at \*2 (Bankr. N.D. Ill. Nov. 30, 2015), *rev’d in part*, 2017 WL 2683686 (N.D. Ill. June 20, 2016); Alexander v. Carrington Mortg. Servs., Inc. (*In re* Alexander), No. 15-40264, 2015 WL 6689243, at \*2 (Bankr. N.D. Tex. Oct. 8, 2015); Fox v. Hathaway (*In re* Chi. Mgmt. Consulting Grp., Inc.), No. 12-18129, 2015 WL 5177969, at \*1 (Bankr. N.D. Ill. Sept. 3, 2015); Silva v. Bollag Fam. Tr. (*In re* Silva), 539 B.R. 172, 175 (Bankr. C.D. Cal. 2015); Himmelfarb v. First Int’l Diamond (*In re* Himmelfarb), No. 13-00229, 2015 WL 3879401, at \*2 (Bankr. D. Haw. June 22, 2015); Faith v. Inline Distrib. Co. (*In re* Newton Enters.), No. 13-12388, 2015 WL 3524603, at \*2 (Bankr. C.D. Cal. June 3, 2015).

<sup>41</sup> See, e.g., Jolene Tanner, *Stern v. Marshall: The Earthquake That Hit the Bankruptcy Courts and the Aftershocks That Followed*, 45 LOY. L.A. L. REV. 587 (2012); Christopher S. Lockman, *Makalidung’s Post: How Stern v. Marshall is Shaking Bankruptcy Court Jurisdiction to its Core*, 50 DUQUESNE L. REV. 125 (2012), 587 (2012).

<sup>42</sup> *Stern*, 564 U.S. at 502.

What claims have the courts found to be governed by *Stern*? They generally fall into one of two categories. First, courts have concluded that counterclaims by the trustee against a claimant that are statutorily core under 28 U.S.C. § 157(b)(2)(C) but seek an affirmative recovery beyond the amount of a filed claim (if any) are *Stern* claims.<sup>43</sup> These are the claims that were at issue in *Stern*, and the Supreme Court there decided that they are beyond the power of a bankruptcy court to hear and determine.

For example, in *Global Computer Enterprises*, the debtor filed an adversary proceeding objecting to a proof of claim filed by the defendant law firm, but also seeking recovery of attorneys' fees paid to the law firm before the bankruptcy filing and alleging legal malpractice.<sup>44</sup> *Patwari* involved the bankruptcy of a franchisee who made prepetition claims against the franchisor (and others) in response to an arbitration award against the franchisee.<sup>45</sup> (The case was referred to the bankruptcy court after the franchisee filed for bankruptcy protection). In both these cases, the parties consented to adjudication by the bankruptcy court.

However, the litigants did not consent in the other case in which counterclaims were asserted by the debtor against a claimant. In *Alexander*, the plaintiff filed a proceeding alleging wrongful foreclosure against a mortgagee who had obtained a judgment awarding possession of the debtor's house prior to the bankruptcy filing and did not file a proof of claim for its deficiency.<sup>46</sup> The bankruptcy court issued proposed findings of fact and conclusions of law to the district court recommending dismissal of the plaintiff's proceeding.

The second (and much larger) category of cases in the study in which courts found themselves potentially constrained by *Stern* from entering final decisions involves avoidance actions under 28 U.S.C. § 157(b)(2)(F) (preferences)<sup>47</sup> and (H) (fraudulent conveyances).<sup>48</sup>

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<sup>43</sup> See *In re Glob. Comput. Enters., Inc.*, 561 B.R. at 658; *In re Patwari*, 2016 WL 1577842, at \*1; *In re Alexander*, 2015 WL 6689243, at \*2.

<sup>44</sup> *In re Glob. Comput. Enters., Inc.*, 561 B.R. 651.

<sup>45</sup> *In re Patwari*, 2016 WL 1577842.

<sup>46</sup> *In re Alexander*, 2015 WL 6689243.

<sup>47</sup> See *Madden v. Morelli (In re Energy Conversion)*, 548 B.R. 208, 215 (Bankr. E.D. Mich. 2016); *Nisselson v. Salim (In re Big Apple Volkswagen, LLC)*, No. 11-11388, 2016 WL 1069303, at \*7 (Bankr. S.D.N.Y. Mar. 17, 2016); *Wilkins v. AmeriCorp Inc. (In re Allegro L. LLC)*, 545 B.R. 675, 700 (Bankr. M.D. Ala. 2016); *Conti v. Perdue Bioenergy, LLC (In re Clean Burn Fuels, LLC)*, 540 B.R. 195, 199 (Bankr. M.D.N.C. 2015); Official Comm. of Unsecured Creditors v. The Fountainhead Grp., Inc. (*In re Bridgeview Aerosol, LLC*), 538 B.R. 477, 484 (Bankr. N.D. Ill. 2015); *Faith v. Inline Distrib. Co. (In re Newton Enters.,)*, No. 13-12388, 2015 WL 3524603, at \*1-2 (Bankr. C.D. Cal. June 3, 2015).

<sup>48</sup> See *Slobodian v. Penn. St. Univ. (In re Fisher)*, 575 B.R. 640, 641-41 (Bankr. M.D. Penn. 2017); *Reinbold v. Morton Cmty. Bank (In re Mid-Illini Hardwoods, LLC)*, 576 B.R. 598, 603 (Bankr. C.D. Ill. 2017);

The decision to treat fraudulent transfer actions as *Stern* claims stems from the Supreme Court’s prior treatment of such claims in earlier decisions. In *Granfinanciera, S.A. v. Nordberg*,<sup>49</sup> the Court held that a defendant in a fraudulent conveyance action had a right to a jury trial because such an action is “more accurately characterized as a private rather than a public right” and fraudulent transfer suits “are quintessentially suits at common law that more nearly resemble state-law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do creditors’ hierarchically ordered claims to a pro rata share of the bankruptcy res.”<sup>50</sup> In *Stern*, the Court equated the state-law counterclaim at issue with a fraudulent conveyance action, suggesting that, “like the fraudulent conveyance claim at issue in *Granfinanciera*, [the counterclaim did] not fall within any of the varied formulations of the public rights exception in this Court’s cases.”<sup>51</sup> The counterclaim was created by common law, not by Congress, and therefore the Court held that it should be decided by an Article III court.<sup>52</sup> The Supreme Court has never held that a fraudulent transfer is a *Stern* claim, but in *Arkison* the Court

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Lofstedt v. Oletski-Behrends (*In re Behrends*), No. 13-22392, 2017 WL 4513071, at \*1 (Bankr. D. Colo. Apr. 10, 2017); Field v. Mirikitani (*In re Mirikitani*), No. 05-03693, 2016 WL 7367760, at \*2 (Bankr. D. Haw. Dec. 19, 2016); Howell v. Fulford (*In re S. Home & Ranch Supply, Inc.*), 561 B.R. 810, 812 n.1 (Bankr. N.D. Ga. 2016); Dev. Specialists, Inc. v. Varanese (*In re Coudert Bros. LLP*), No. 06-12226, 2016 WL 6875900, at \*4 (Bankr. S.D.N.Y. Nov. 21, 2016); Weil v. United States (*In re Tag Entm’t Corp.*), No. 09-26982, 2016 WL 1239519, at \*1 (Bankr. C.D. Cal. Mar. 29, 2016); Dev. Specialists, Inc. v. Sullivan (*In re Coudert Bros. LLP*), No. 06-12226, 2016 WL 5363687, at \*3 (Bankr. S.D.N.Y. Sept. 23, 2016); Stillwater Liquidating LLC v. Net Five at Palm Pointe, LLC (*In re Stillwater Asset Backed Offshore Fund Ltd.*), 559 B.R. 563, 574–75 (Bankr. S.D.N.Y. 2016); Hutson v. Jones Fam. Holdings, LLC (*In re Daniel*), 556 B.R. 722, 724 (Bankr. M.D.N.C. 2016); Lassman v. Sergio (*In re Sergio*), 552 B.R. 9, 16 (Bankr. D. Mass. 2016); Weisfelner v. Fund 1 (*In re Lyondell Chem. Co.*), 554 B.R. 655 (Bankr. S.D.N.Y. 2016); *In re Energy Conversion*, 548 B.R. at 215; Chatz v. Stepaniants (*In re Fatoorehchi*), 546 B.R. 786, 789 (Bankr. N.D. Ill. 2016); *In re Allegro L. LLC*, 545 B.R. at 700; Sec. Inv’r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, No. 10-04311, 2016 WL 1695296, at \*3 (Bankr. S.D.N.Y. Apr. 25, 2016); Flatau v. Barry Switzer Fam., LLC (*In re Donnan*), No. 11-31083, 2016 WL 1085499, at \*1 (Bankr. M.D. Ga. Mar. 17, 2016); Krasnoff v. Roberts (*In re Messingham*), No. 14-10910, 2016 WL 8736835, at \*8 (Bankr. C.D. Cal. Mar. 16, 2016); Gocha v. Credit Advocs. L. Firm, LLC (*In re Werkmeister*), No. 14-03464, 2016 WL 758234, at \*1 (Bankr. W.D. Mich. Feb. 22, 2016); Johns v. Brown (*In re Fannon*), No. 12-10075, 2015 WL 9594302, at \*3 n.1 (Bankr. S.D. W. Va. Dec. 31, 2015); Johns v. Frye (*In re Frye*), No. 13-20078, 2015 WL 9593606, at \*4 n.2 (Bankr. S.D. W. Va. Dec. 31, 2015); Hopkins v. M & A Ventures (*In re Hoku Corp.*), No. 13-40838, 2015 WL 8488949, at \*3 (Bankr. D. Idaho Dec. 10, 2015); Stapleton v. Newkey Grp., LLC (*In re SGK Ventures, LLC*), No. 13-37603, 2015 WL 7755525, at \*2 (Bankr. N.D. Ill. Nov. 30, 2015), *rev’d in part*, 2017 WL 2683686 (N.D. Ill. June 20, 2016); Whittaker v. Groves Venture, LLC (*In re Bolon*), 538 B.R. 391, 394 (Bankr. S.D. Ohio 2015); *In re Bridgeview Aerosol, LLC*, 538 B.R. at 484; Fox v. Hathaway (*In re Chi. Mgmt. Consulting Grp., Inc.*), No. 12-18129, 2015 WL 5177969, at \*1 (Bankr. N.D. Ill. Sept. 3, 2015); Himmelfarb v. First Int’l Diamond (*In re Himmelfarb*), No. 13-00229, 2015 WL 3879401, at \*2 (Bankr. D. Haw. June 22, 2015).

<sup>49</sup> *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989).

<sup>50</sup> *Id.* at 55–56.

<sup>51</sup> *Stern*, 564 U.S. at 493.

<sup>52</sup> *Id.* at 494.

noted that “[t]he Ninth Circuit held that the fraudulent conveyance claims at issue here are *Stern* claims—that is, proceedings that are defined as ‘core’ under §157(b) but may not, as a constitutional matter, be adjudicated as such (at least in the absence of consent, . . . . See 702 F. 3d, at 562[ ] ). Neither party contests that conclusion.”<sup>53</sup>

Preferences are arguably different matters, in that they do not exist outside of a bankruptcy case and, by definition, constitute transfers that occur within a specified period “before the date of the filing of the [bankruptcy] petition.”<sup>54</sup> Nevertheless, in *Granfinanciera* (in which no preference actions were at issue), the Supreme Court said that “actions to recover preferential or fraudulent transfers were often brought at law in late 18th-century England,”<sup>55</sup> before concluding that fraudulent transfer actions were suits at law rather than equity. However, the Supreme Court recognized in *Langenkamp v. Culp*<sup>56</sup> that the bankruptcy court has the constitutional authority to determine preference actions against a creditor who has filed a claim in the bankruptcy case because “the ensuing preference action by the trustee become[s] integral to the restructuring of the debtor-creditor relationship.”<sup>57</sup> Similarly, in *Katchen v. Landy*,<sup>58</sup> the Supreme Court allowed a bankruptcy referee to exercise summary jurisdiction over a voidable preference claim brought against a creditor who had filed a proof of claim because resolution of the preference action was a necessary prerequisite to a ruling on the proof of claim.<sup>59</sup>

After *Langenkamp* and *Katchen*—holdings that were endorsed by the Court in *Stern*<sup>60</sup>—if a fraudulent transfer or preference action is brought by the trustee against an entity that has filed a proof of claim in the bankruptcy case, the bankruptcy court has the constitutional power to hear and determine the action to the extent necessary to resolve the filed claim.<sup>61</sup> By contrast, the Supreme Court in *Stern* suggested that *Langenkamp* and *Katchen* would not allow a bankruptcy court to determine an avoidance action against a creditor that had not filed a proof of claim because resolution of the preference action would not

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<sup>53</sup> Arkison, 134 S. Ct. at 2172.

<sup>54</sup> 11 U.S.C. § 547(b)(4).

<sup>55</sup> *Granfinanciera*, 492 U.S. at 43.

<sup>56</sup> *Langenkamp v. Culp*, 498 U.S. 42 (1990) (*per curiam*).

<sup>57</sup> *Id.* at 45.

<sup>58</sup> *Katchen v. Landy*, 382 U.S. 323 (1966).

<sup>59</sup> *Id.* at 329–30.

<sup>60</sup> *Stern*, 564 U.S. at 495–97.

<sup>61</sup> This is why many courts find that these matters are constitutionally core, see cases in notes 26 and 28 *supra*.

be part of the claims allowance process.<sup>62</sup> Presumably, the same analysis would apply if the trustee seeks to recover an amount that exceeds the claim filed by the transferee.

Because, as discussed below,<sup>63</sup> the defendants in almost all of the preference and fraudulent transfer proceedings in cases in this survey consented to adjudication by the bankruptcy court, the court had no reason to discuss whether it would have had jurisdiction to decide the matter under *Langencamp* and *Katchen*. Indeed, most of the courts never mention whether the defendant had filed a proof of claim.<sup>64</sup>

The other cases in which courts found *Stern* to be implicated are more difficult to classify (or to understand why the court felt constrained by *Stern*). For example, in *Fisher*,<sup>65</sup> the bankruptcy court had “doubts”<sup>66</sup> about whether it could dismiss counterclaims against the bankruptcy trustee (who had sued the counterclaimants seeking declaratory relief about ownership of a deposit made by the debtor in connection with a prepetition real estate transaction) alleging malfeasance by the trustee. Such a counterclaim cannot exist outside a bankruptcy case, and cannot be subject to *Stern*.

Similarly, in *Jordan*,<sup>67</sup> the action was aimed at deciding whether a mortgage originated by an unlicensed lender and then sold to JPMorgan Chase Bank was valid. Although the court recognized that this was a core proceeding under 28 U.S.C. § 157(b)(2)(K) (one to determine the validity, extent, or priority of liens), because JPMorgan Chase did not file a proof of claim, the court believed it might be a *Stern* claim. Because all parties consented to final determination by the bankruptcy court, no further consideration of the issue was necessary, but the

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<sup>62</sup> *Stern*, 564 U.S. at 497.

<sup>63</sup> See Part (C)(1) *infra*.

<sup>64</sup> The only exceptions were *Dev. Specialists, Inc. v. Varanese (In re Coudert Bros. LLP)*, No. 06-12226, 2016 WL 6875900 (Bankr. S.D.N.Y. Nov. 21, 2016); *Chatz v. Stepaniants (In re Fatoorehchi)*, 546 B.R. 786, 789 (Bankr. N.D. Ill. 2016); *Gocha v. Credit Advocs. L. Firm, LLC (In re Werkmeister)*, No. 14-03464, 2016 WL 758234 (Bankr. W.D. Mich. Feb. 22, 2016); *Whittaker v. Groves Venture, LLC (In re Bolon)*, 538 B.R. 391 (Bankr. S.D. Ohio 2015) (noting that the defendants did not file proofs of claim); and *Wilkins v. AmeriCorp Inc. (In re Allegro L. LLC)*, 545 B.R. 675, 700 (Bankr. M.D. Ala. 2016) (finding “consent” when the receiver filed an administrative claim on behalf of the defendants). The bankruptcy court in *Nisselson v. Salim (In re Big Apple Volkswagen, LLC)*, No. 11-11388, 2016 WL 1069303 (Bankr. S.D.N.Y. Mar. 17, 2016), did not mention whether the defendants had filed proofs of claim, but was considering the adversary proceeding on remand from the district court which explicitly stated that they had not. See *Nisselson v. Salim*, No. 12-92, 2013 WL 1245548 (S.D.N.Y. Mar. 25, 2013).

<sup>65</sup> *West v. High Desert, LLC (In re Fisher)*, No. 13-26460, 2015 WL 9999216 (Bankr. D. Utah Dec. 4, 2015).

<sup>66</sup> *Id.* at \*1.

<sup>67</sup> *Richardson v. JPMorgan Chase Bank, N.A. (In re Jordan)*, 543 B.R. 878, 882 (Bankr. C.D. Ill. 2016).

claim should not have been governed by *Stern*. In another adversary proceeding against JPMorgan Chase with respect to foreclosure of a mortgage on the debtor's property, the court in *Gillies*<sup>68</sup> labelled the complaint by the debtor a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O), but still issued proposed findings because the parties did not consent to bankruptcy court adjudication. The debtor in *Carswell*<sup>69</sup> sought to prevent foreclosure on the property securing its debt and to declare the notes and deed of trust invalid. The court characterized the proceeding as core under 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O), but again issued proposed findings of fact and conclusions of law because the plaintiff did not consent. All these proceedings were in fact constitutionally core and should not have been taken to the district court.

Other proceedings treated as presenting potential *Stern* claims were most likely non-core. In *Willett*,<sup>70</sup> the dispute was one between neighbors (including the debtor) regarding water usage pursuant to a well agreement. Similar litigation began even before the bankruptcy case, and certainly did not “arise in” the case within the meaning of 28 U.S.C. § 1334(b). Nevertheless, the court suggested it was a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O), but had non-core claims as well and relied on the consent of the parties to adjudicate it. Similarly, in *Plaza Healthcare Center*,<sup>71</sup> the litigation involved the ability of the debtor to exercise an option to extend a lease agreement. The court stated that it had “elected to treat this adversary proceeding as a non-core matter” and was submitting proposed findings of fact and conclusions of law to the district court “[p]ursuant to *Stern v. Marshall*.”

Two cases, *Silva*<sup>72</sup> and *Brack*,<sup>73</sup> purported to be turnover proceedings, designated by the court as core under 28 U.S.C. § 157(b)(2)(E). The debtor in *Silva* claimed that she had acquired ownership of the defendant's property by adverse possession and therefore it should belong to the estate. In *Brack*, the trustee sought spousal support arrearages from the debtor's former spouse. These cases in fact present non-bankruptcy contract and statutory claims and were non-core rather than *Stern* claims. When the debtor is seeking property in

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<sup>68</sup> *Gillies v. JPMorgan Chase Bank, N.A. (In re Gillies)*, No. 16-07590, 2016 WL 6999506, at \*1 n.2 (Bankr. C.D. Cal. Oct. 12, 2016).

<sup>69</sup> *Carswell v. Select Portfolio Servicing, Inc. (In re Carswell)*, No. 16-07589, 2016 WL 5937954 (Bankr. C.D. Cal. Sept. 15, 2016).

<sup>70</sup> *Mosher v. Willett (In re Willett)*, No. 14-11123, 2015 WL 8975218, at \*4 (Bankr. C.D. Cal. Dec. 14, 2015).

<sup>71</sup> *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 14-11335, Adv. No. 14-01297, 2017 WL 1281871 (Bankr. C.D. Cal. Feb. 1, 2017).

<sup>72</sup> *Silva v. Bollag Fam. Tr. (In re Silva)*, 539 B.R. 172 (Bankr. C.D. Cal. 2015).

<sup>73</sup> *Burkart v. Brack (In re Brack)*, No. 10-26347, 2016 WL 5793655 (Bankr. E.D. Cal. Sept. 30, 2016).

which the debtor did not previously have an ownership interest as a matter of state property law, that claim is likely non-core rather than a *Stern* claim.<sup>74</sup> Neither of the courts actually held the claims to be *Stern* claims: in *Silva* the parties consented to adjudication by the bankruptcy judge, and in *Brack* the court issued proposed findings of fact and conclusions of law. That resolution was appropriate for non-core matters, as it would have been for *Stern* claims.

In *Ralph Roberts Realty*,<sup>75</sup> the debtor claimed that certain profits made by the defendants upon the sale of properties that belonged to the debtor. Again, there is little doubt that the claim was non-core, but because the litigants had consented, the court declined to label it.

### C. How Does the Bankruptcy Court Deal with Stern Claims

#### 1. Consent

By far the most prevalent treatment of a *Stern* claim in the bankruptcy courts since the decision in *Wellness*<sup>76</sup> is for the litigants to consent to final adjudication by the bankruptcy judge. The creditor in *Wellness* filed an adversary proceeding seeking to deny the debtor, Mr. Sharif, a discharge, and seeking a declaratory judgment that the assets of a trust, purportedly administered by Mr. Sharif for his mother, was his alter ego and its assets were assets of the estate.<sup>77</sup> Mr. Sharif conceded in his answer to the complaint that the adversary proceeding was a

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<sup>74</sup> As the court explained in *Charter Crude Oil Co. v. Exxon Co. U.S.A. (In re Charter Co.)*, 913 F.2d 1575, 1579 (11th Cir. 1990):

Turnover proceedings are not to be used to liquidate disputed contract claims. . . . Congress envisioned the turnover provision of [11 U.S.C. § 542] to apply to tangible property and money due to the debtor without dispute which are fully matured and payable on demand. . . . To apply turnover principles to [a] dispute between [a creditor] and [debtor] would allow [the debtor] to recover monies under the Bankruptcy Code from disputed claims based strictly on state law. Certainly such procedure could not be sanctioned outside bankruptcy and there is no just reason why it should be sanctioned just because the entity seeking to collect disputed funds happens to be a debtor under the Bankruptcy Code.

*Id.*

<sup>75</sup> *Ralph Roberts Realty, LLC v. Savoy (In re Ralph Roberts Realty, LLC)*, 562 B.R. 144 (Bankr. E.D. Mich. 2016).

<sup>76</sup> *Wellness Int'l Network Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).

<sup>77</sup> *Wellness*, 135 S. Ct. at 1940.

“core” matter under 28 U.S.C. § 157(b)(2) and he responded to the allegations against him, seeking a favorable judgment from the bankruptcy judge.<sup>78</sup>

After judgment was entered against Mr. Sharif and he appealed the judgment to the district court, *Stern* was decided. Mr. Sharif did not cite *Stern* in his initial brief to the district court filed six weeks after *Stern* was issued, but sought permission to file a supplemental brief claiming that the bankruptcy court lacked the power to decide his case. The district court declined to permit supplemental briefing, finding that Mr. Sharif had waived his right to assert the issue by his delay in raising it, and affirmed the bankruptcy court on all counts.<sup>79</sup> The Seventh Circuit reversed, holding that, because *Stern* implicated structural concerns between Article III courts and bankruptcy judges, Mr. Sharif’s *Stern* objection to the power of the bankruptcy court was not waived and that the bankruptcy court lacked the constitutional power to enter a judgment on one of the claims asserted against him.<sup>80</sup>

The Supreme Court reversed the Seventh Circuit, holding that “litigants may validly consent to adjudication by bankruptcy courts.”<sup>81</sup> Rejecting the contention of Mr. Sharif that such consent must be express to be effective, the Supreme Court referred to its prior decision in *Roell v. Withrow*,<sup>82</sup> which held that consent to adjudication by magistrate judges could be based on “actions rather than words.”<sup>83</sup> That “implicit consent” standard was, the Court held, the appropriate one for bankruptcy cases as well.<sup>84</sup> The Court emphasized that

a litigant’s consent—whether express or implied—must still be knowing and voluntary. *Roell* makes clear that the key inquiry is whether “the litigant or counsel was made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case” before the non-Article III adjudicator.<sup>85</sup>

The Supreme Court remanded the case to the Seventh Circuit for a determination of “whether Sharif’s actions evinced the requisite knowing and voluntary

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<sup>78</sup> *Id.* at 1941.

<sup>79</sup> *Id.*; see Sharifeh v. Fox, No. 11-8811, 2012 WL 469980, at \*10 (N.D. Ill. Feb. 10, 2012).

<sup>80</sup> *Wellness Intern. Network, Ltd. v. Sharif*, 727 F.3d 751, 773 (7th Cir. 2013). The Seventh Circuit affirmed the district court with respect to all causes of action relating to the debtor’s discharge, but concluded that the claim seeking a declaratory judgment that a trust the debtor claimed he administered for his mother and sister was his “alter ego” and should be treated as part of the bankruptcy estate was beyond the constitutional power of the bankruptcy court to decide. *Id.* at 775–76.

<sup>81</sup> *Wellness*, 135 S. Ct. at 1939.

<sup>82</sup> 538 U.S. 580 (2003).

<sup>83</sup> *Id.* at 589, 590.

<sup>84</sup> *Wellness*, 135 S. Ct. at 1948.

<sup>85</sup> *Id.* (citing *Roell*, 538 U.S. at 590).



consent, and also whether, as Wellness contends, Sharif forfeited his *Stern* argument below.”<sup>86</sup> On remand, the Seventh Circuit concluded that Mr. Sharif forfeited his *Stern* claim by waiting too long to raise it, and reinstated the judgment against him.<sup>87</sup> *Wellness*, therefore, tells us that knowing and voluntary consent is required, but does not tell us what actions meet that standard.

Until December 1, 2016, the Federal Rules of Bankruptcy Procedure provided no mechanism for parties to consent to adjudication of a core claim by a bankruptcy judge. Rule 7008(a), applicable to all adversary proceedings in a bankruptcy case, required that “the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the proceeding is core or non-core and, *if non-core*, that the pleader does or does not consent to the entry of final orders or judgment by the bankruptcy judge.”<sup>88</sup> Similarly, Rule 7012(b) required that a responsive pleading “admit or deny an allegation that the proceeding is core or non-core” and only “[i]f the response is that *the proceeding is non-core*, it shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge.”<sup>89</sup> The Rules have been amended, effective December 1, 2016, to facilitate consent to final determinations of *Stern* claims by the bankruptcy courts.<sup>90</sup>

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<sup>86</sup> *Id.* at 1949.

<sup>87</sup> *Wellness Intern. Network, Ltd. v. Sharif*, 617 Fed. Appx. 589 (Mem) (7th Cir. Aug. 4, 2015).

<sup>88</sup> Fed. R. Bankr. P. 7008(a) (emphasis added) (as in effect prior to Dec. 31, 2017).

<sup>89</sup> Fed. R. Bankr. P. 7012(b) (emphasis added) (as in effect prior to Dec. 31, 2017).

<sup>90</sup> In the revised Federal Rule of Bankruptcy Procedure 7008, the pleader no longer has to specify whether the proceeding is core or non-core, and must always “include a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court.” Similarly, in Rule 7012(b), the language was modified to require a responsive pleading to “include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.” The final sentence of former Rule 7012(b), which stated that “[i]n non-core proceedings final orders and judgments shall not be entered on the bankruptcy judge’s order except with the express consent of the parties,” was eliminated.

The bankruptcy court is directed, in new Rule 7016(b), to decide whether to hear and determine the proceeding, hear the proceeding and issue proposed findings of fact and conclusions of law, or take some other action. Rule 9027(a)(1) now requires the party filing the notice to remove a claim or cause of action include in that notice “a statement that upon removal of the claim or cause of action, the party filing the notice does or does not consent to entry of final orders or judgment by the bankruptcy court.” Rule 9027(e)(3) requires any party filing a pleading in connection with the removed claim or cause of action (other than the party filing the notice of removal), must file “a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court.” Both provisions formerly required statements regarding the core or non-core nature of the claim or cause of action, and limited the statement regarding consent to non-core matters.

Rule 9033 was formerly entitled, “Review of Proposed Findings of Fact and Conclusions of Law in Non-Core Proceedings,” and, in clause (a), directed the bankruptcy judge to file proposed findings of fact and conclusions of law “[i]n non-core proceedings heard pursuant to 28 U.S.C. § 157(c)(1).” It then directed the clerk to serve copies on all parties. The revised Rule 9033 deletes the words “in Non-Core Proceedings” from its title, and in clause (a) simply directs the clerk to serve copies of proposed findings of fact and conclusions of law “[i]n a proceeding in which the bankruptcy court has issued” them.

In twenty-four of the forty-two *Stern* cases in this study, the court concluded that the parties had consented to final determination by the bankruptcy judge of what the court thought might be considered a *Stern* claim or forfeited their right to object. In eighteen of those cases, the court indicated that the consent was explicit.<sup>91</sup> In the others, the court found implicit consent<sup>92</sup> in various ways. In some cases, consent was implied by the litigants' failure to raise objection to the bankruptcy court's determination of the proceeding, coupled with active participation in court.<sup>93</sup> But in other cases, the court concluded that failure to respond in court after being notified of the consequences of non-appearance constitutes implied consent to the entry of a default judgment by the bankruptcy court or forfeiture of the right to object.<sup>94</sup>

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<sup>91</sup> See *Lofstedt v. Oletski-Behrends (In re Behrends)*, No. 13-22392, 2017 WL 4513071, at \*1 (Bankr. D. Colo. Apr. 10, 2017); *Howell v. Fulford (In re S. Home & Ranch Supply, Inc.)*, 561 B.R. 810, 812 n.1 (Bankr. N.D. Ga. 2016); *Ralph Roberts Realty, LLC v. Savoy (In re Ralph Roberts Realty, LLC)*, 562 B.R. 144, 148 (Bankr. E.D. Mich. 2016); *Glob. Comput. Enters., Inc. v. Steese, Evans & Grankel P.C. (In re Glob. Comput. Enters., Inc.)*, 561 B.R. 651, 658 (Bankr. E.D. Va. 2016); *Stillwater Liquidating LLC v. Net Five at Palm Pointe, LLC (In re Stillwater Asset Backed Offshore Fund Ltd.)*, 559 B.R. 563, 574-75 (Bankr. S.D.N.Y. 2016); *Hutson v. Jones Fam. Holdings, LLC (In re Daniel)*, 556 B.R. 722, 724 (Bankr. M.D.N.C. 2016); *Lassman v. Sergio (In re Sergio)*, 552 B.R. 9, 16 (Bankr. D. Mass. 2016); *Madden v. Morelli (In re Energy Conversion)*, 548 B.R. 208, 215 (Bankr. E.D. Mich. 2016); *Doctor's Assocs. Inc. v. Desai (In re Patwari)*, No. 08-26178, 2016 WL 1577842, at \*1 (Bankr. D.N.J. Apr. 7, 2016); *Richardson v. JPMorgan Chase Bank, N.A. (In re Jordan)*, 543 B.R. 878, 882 (Bankr. C.D. Ill. 2016); *Mosher v. Willett (In re Willett)*, No. 14-11123, 2015 WL 8975218, at \*4 (Bankr. C.D. Cal. Dec. 14, 2015); *Stapleton v. Newkey Grp., LLC (In re SGK Ventures, LLC)*, No. 13-37603, 2015 WL 7755525, at \*2 (Bankr. N.D. Ill. Nov. 30, 2015), *rev'd in part*, 2017WL 2683686 (N.D. Ill. June 20, 2016); *Whittaker v. Groves Venture, LLC (In re Bolon)*, 538 B.R. 391, 394 (Bankr. S.D. Ohio 2015); *Official Comm. of Unsecured Creditors v. The Fountainhead Grp., Inc. (In re Bridgeview Aerosol, LLC)*, 548 B.R. 477, 484 (Bankr. N.D. Ill. 2015); *Silva v. Bollag Fam. Tr. (In re Silva)*, 539 B.R. 172, 175 (Bankr. C.D. Cal. 2015); *Fox v. Hathaway (In re Chi. Mgmt. Consulting Grp., Inc.)*, No. 12-18129, Adv. Nos. 14-00294, 14-00295, 2015 WL 5177969, at \*1 (Bankr. N.D. Ill. Sept. 3, 2015); *Faith v. Inline Distrib. Co. (In re Newton Enters.)*, No. 13-12388, 2015 WL 3524603, at \*2 (Bankr. C.D. Cal. June 3, 2015); *Conti v. Perdue Bioenergy, LLC (In re Clean Burn Fuels, LLC)*, 540 B.R. 195, 199 (Bankr. M.D.N.C. 2015).

<sup>92</sup> See *Reinbold v. Morton Cmty. Bank (In re Mid-Illini Hardwoods, LLC)*, 576 B.R. 598, 603 (Bankr. C.D. Ill. 2017); *Chatz v. Stepaniants (In re Fatoorehchi)*, 546 B.R. 786, 789 (Bankr. N.D. Ill. 2016); *Wilkins v. AmeriCorp Inc. (In re Allegro L. LLC)*, 545 B.R. 675, 700 (Bankr. M.D. Ala. 2016); *Johns v. Brown (In re Fannon)*, No. 12-10075, 2015 WL 9594302, at \*4 n.1 (Bankr. S.D. W. Va. Dec. 31, 2015); *Johns v. Frye (In re Frye)*, No. 13-20078, 2015 WL 9593606, at \*4 n.2 (Bankr. S.D. W. Va. Dec. 31, 2015); *Hopkins v. M & A Ventures (In re Hoku Corp.)*, No. 13-40838, 2015 WL 8488949, at \*3 (Bankr. D. Idaho Dec. 10, 2015).

<sup>93</sup> See *In re Allegro L.*, 545 B.R. at 700 (assertion of counterclaims and filing administrative claim constituted implied consent); *In re Fatoorehchi*, 564 B.R. at 789 (failure to object at any stage, admission that the case was a core proceeding, no demand for jury trial, seeking final judgment through sophisticated counsel constituted implied consent).

<sup>94</sup> See *In re Fannon*, 2015 WL 9594302, at \*4 n.1 (failure to respond to summary judgment motion); *In re Frye*, 2015 WL 9593606, at \*4 n.2 (failure to respond to summary judgment motion); *In re Hoku*, 2015 WL 8488949, at \*3 (failure to respond to summons and complaint).

Other cases also demonstrate a broad view of implied consent, equating failure to object (silence) with implied consent,<sup>95</sup> especially when coupled with any participation in the proceeding.<sup>96</sup> Although the result may seem harsh (and difficult to square with the requirement of *Wellness* for consent to be “knowing and voluntary”), they can be understood as a form of forfeiture rather than consent—failure to exercise one’s rights in a timely manner which leads to loss of those rights. This is the analysis adopted by the Seventh Circuit on remand in *Wellness*.<sup>97</sup> The judicial system cannot countenance gamesmanship, where litigants keep silent about their desire for an Article III judge until they lose before a bankruptcy judge.

Because consent is always effective to confer constitutional authority to determine a claim or cause of action, in many cases the bankruptcy court never decides whether it would have authority in the absence of consent to decide the pending proceeding. Instead, the court will often proceed to decide a dispute without determining whether it is a *Stern* claim because the parties have consented to determination by the bankruptcy court.<sup>98</sup> Indeed, in many recent cases involving fraudulent transfers or preferences that may be beyond the

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<sup>95</sup> See, e.g., *Sears v. Sears (In re AFY, Inc.)*, 571 B.R. 825, 835 (8th Cir. BAP 2017); *Newman v. Associated Bank, N.A. (In re World Mktg. Chi., LLC)*, 574 B.R. 670, 684 n.2 (Bankr. N.D. Ill. 2017); *Miller v. Popovich (In re Hunt)*, No. 11-582222, 2015 WL 5749794, at \*5 (Bankr. C.D. Cal. Sept. 30, 2015); *Ivey v. ES2, LLC (In re ES2 Sports & Leisure, LLC)*, 544 B.R. 833, 840 (Bankr. M.D.N.C. 2015).

<sup>96</sup> See, e.g., *True Traditions LC v. Wu*, 552 B.R. 826 (N.D. Cal. 2015) (filing motion for summary judgment); *In re Breland*, No. 09-11139, 2016 WL 3193819, at \*2 (Bankr. S.D. Ala. May 27, 2016) (failure to object and actively appearing before court); *In re Wisdom*, No. 11-01135, 2016 WL 1039694, at \*2 n.6 (Bankr. D. Idaho Mar. 15, 2016) (filing motion for summary judgment).

<sup>97</sup> See discussion at note 87 *supra*.

<sup>98</sup> See, e.g., *Zhong Wu v. Lin (In re Lin)*, 576 B.R. 32, 38 (Bankr. E.D.N.Y. 2017); *Web Holdings, LLC v. Cedillo (In re Cedillo)*, 573 B.R. 451, 455 (Bankr. E.D.N.Y. 2017); *Carver Fed. Sav. Bank v. Cedillo (In re Cedillo)*, 573 B.R. 405, 412 (Bankr. E.D.N.Y. 2017); *Ralph Roberts Realty, LLC v. Savoy (In re Ralph Roberts Realty, LLC)*, 562 B.R. 144, 148 (Bankr. E.D. Mich. 2016); *First Union Baptist Church of Bronx v. TD Cap. Grp. LLC (In re First Union Baptist Church of Bronx)*, 572 B.R. 79, 85 (Bankr. S.D.N.Y. 2017); *Jackson v. Flagstar, FSB (In re Jackson)*, No. 14-3568, 2017 WL 1102849, at \*1 (Bankr. S.D. Ala. Mar. 23, 2017); *Cole v. James B. Nutter & Co. (In re Cole)*, No. 16-30960, 2017 WL 486920, at \*2 n.1 (Bankr. W.D.N.C. Feb. 6, 2017); *Glob. Comput. Enters., Inc. v. Steese, Evans & Grankel P.C. (In re Glob. Comput. Enters., Inc.)*, 561 B.R. 651, 658 (Bankr. E.D. Va. 2016); *Madden v. Morelli (In re Energy Conversion)*, 548 B.R. 208, 215 (Bankr. E.D. Mich. 2016); *Music Mix Mobile, LLC v. Newman (In re Stage Presence Inc.)*, 559 B.R. 93, 97 (Bankr. S.D.N.Y. 2016); *Mosher v. Willett (In re Willett)*, No. 14-11123, 2015 WL 8975218, at \*4 (Bankr. C.D. Cal. Dec. 14, 2015); *Stapleton v. Newkey Grp., LLC (In re SGK Ventures, LLC)*, No. 13-37603, 2015 WL 7755525, at \*2 (Bankr. N.D. Ill. Nov. 30, 2015), *rev’d in part*, 2017WL 2683686 (N.D. Ill. June 20, 2016); *Conti v. Perdue Bioenergy, LLC (In re Clean Burn Fuels, LLC)*, 540 B.R. 195, 199 (Bankr. M.D.N.C. 2015); *Official Comm. of Unsecured Creditors v. The Fountainhead Grp., Inc. (In re Bridgeview Aerosol, LLC)*, 538 B.R. 477, 484 (Bankr. N.D. Ill. 2015); *Silva v. Bollag Fam. Tr. (In re Silva)*, 539 B.R. 172, 175 (Bankr. C.D. Cal. 2015); *Geron v. Fontana (In re Thelen, LLP)*, No. 09-15631, 2015 WL 4999972, at \*3 (Bankr. S.D.N.Y. Aug. 21, 2015); *Faith v. Inline Distrib. Co. (In re Newton Enters.,)*, No. 13-12388, 2015 WL 3524603, at \*2 (Bankr. C.D. Cal. June 3, 2015).

court's constitutional authority to decide, the bankruptcy court never even mentions *Stern*, but instead notes that the parties have explicitly consented to entry of a final decision by the court.<sup>99</sup> In many of the non-core proceedings included in this survey litigants also consented to adjudication by the bankruptcy court.<sup>100</sup> The bankruptcy court needs to decide whether it has constitutional authority to hear and determine a matter only if the parties (1) claim that the proceeding is governed by *Stern*, and (2) do not consent to adjudication by a non-Article III judge, either expressly or impliedly. Such cases are very rare.

## 2. Proposed Findings of Fact and Conclusions of Law

When the bankruptcy court concludes that it does not have the constitutional authority to enter a final determination on a claim without consent, and no consent has been forthcoming, it issues proposed findings of fact and conclusions of law (PPFCL) to the district court under 28 U.S.C. § 157(c)(1).<sup>101</sup>

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<sup>99</sup> See, e.g., *Osherow v. Texas Silica Logistics Joint Venture, ZSV, LLC (In re FWLL, Inc.)*, No. 15-52071, 2018 WL 1684308, at \*1 (Bankr. W.D. Tex. Apr. 5, 2018); *Lanile v. Young (In re Young)*, No. 16-10434, 2018 WL 485957, at \*1 (Bankr. M.D.N.C. Jan. 17, 2018); *Meiberger v. Reston Hosp. Ctr. (In re Twin Contracting Corp.)*, 582 B.R. 400, 402 (Bankr. E.D. Va. 2017); *Trs. of Conneaut Lake Park, Inc. v. Park Restoration, LLC (In re Trs. of Conneaut Lake Park, Inc.)*, 577 B.R. 474, 497 n.1 (Bankr. W.D. Pa. 2017); *Milbank v. Sharpshooter II, Inc. (In re Worldwide Diamond Ventures, LP)*, 559 B.R. 143, 146 (Bankr. N.D. Tex. 2016); *McCord v. Ally Fin., Inc. (In re USA United Fleet, Inc.)*, 559 B.R. 41, 50 (Bankr. E.D.N.Y. 2016); *Brandt v. FDIC (In re Equipment Acquisition Res., Inc.)*, 560 B.R. 501, 504 (Bankr. N.D. Ill. 2016); *Gugino v. Rowley (In re Floyd)*, 540 B.R. 747, 751 (Bankr. D. Idaho 2015).

<sup>100</sup> See *Martin v. JPMorgan Chase Bank, N.A. (In re Martin)*, No. 17-51507, 2017 WL 6803550, at \*1–2 (Bankr. S.D. Miss. Dec. 28, 2017); *WTE-S & S Ag. Enters., LLC v. GHD, Inc. (In re WTE-S & S Ag. Enters., LLC)*, 575 B.R. 397, 405 (Bankr. N.D. Ill. 2017); *Patek v. Alfaro (In re Primera Energy, LLC)*, 579 B.R. 75, 90 (Bankr. W.D. Tex. 2017); *Cramer v. Palm Ave. Partners, LLC (In re Palm Ave. Partners, LLC)*, 576 B.R. 239, 259 n.47 (Bankr. M.D. Fla. 2017); *In re HomeBanc Mortg. Corp.*, 573 B.R. 495, 503 (Bankr. D. Del. 2017); *Lofton v. Beneficial Fin. I Inc. (In re Lofton)*, 569 B.R. 747, 750 (Bankr. W.D. Wis. 2017); *Trs. of Conneaut Lake Park, Inc. v. Park Restoration, LLC (In re Trs. of Conneaut Lake Park, Inc.)*, 564 B.R. 495, 513 n.1 (Bankr. W.D. Pa. 2017); *Gallinghouse & Assoc., Inc. v. Black (In re Black)*, No. 15-11935, 2016 WL 5376182, at \*3 (Bankr. E.D. La. Sept. 26, 2016); *Glob. Comput. Enters., Inc. v. Steese, Evans & Frankel P.C. (In re Glob. Comput. Enters., Inc.)*, No. 14-13290, 2017 WL 3580171, at \*18 (Bankr. E.D. Va. Aug. 15, 2017); *Kelly v. D. Realty Invs., Inc. (In re Kelly)*, 568 B.R. 19, 20–21 (Bankr. N.D. Tex. 2017); *Hackman v. Nationstar Mortg., LLC (In re Hackman)*, 563 B.R. 812, 815 (Bankr. E.D. Va. 2017); *Ogle v. Comcast Corp., Inc. (In re Hous. Reg'l Sports Network, L.P.)*, 547 B.R. 717, 736 (Bankr. S.D. Tex. 2016); *In re Breland*, 2016 WL 3193819, at \*2; *Smith-Boughan, Inc. v. SunTrust Bank (In re GOE Lima, LLC)*, No. 08-35508, 2016 WL 1183650, at \*4 (Bankr. N.D. Ohio Mar. 25, 2016); *In re SGK Ventures, LLC*, 2015 WL 7755525, at \*2, *rev'd in part*, 2017 WL 2683686; *Palm Energy Grp., LLC v. Greenwich Ins. Co. (In re Tri-Union Dev. Corp.)*, No. 13-44908, 2015 WL 5730745, at \*5 (Bankr. S.D. Tex. Sept. 28, 2015); *Bennu Oil & Gas LLC v. Bluewater Indus., L.P. (In re ATP Oil & Gas Corp.)*, No. 12-36187, 2015 WL 4381068, at \*3 (Bankr. S.D. Tex. July 15, 2015); *Perkins v. LVNV Funding, LLC (In re Perkins)*, 533 B.R. 242, 249 (Bankr. W.D. Mich. 2015); *Davis v. M & M Developer, LLC (In re MBM Entm't, LLC)*, 531 B.R. 363, 377–79 (Bankr. S.D.N.Y. 2015).

<sup>101</sup> 28 U.S.C. § 157(c)(1) allows a bankruptcy judge to “hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11” and directs the judge “[i]n such [non-core] proceeding” to “submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment

By its terms, § 157(c)(1) applies only to proceedings that are not core proceedings, but the Supreme Court concluded unanimously in *Arkison*<sup>102</sup> that whenever a bankruptcy court could not constitutionally hear and determine a claim, the court had the statutory authority to issue proposed findings of fact and conclusions of law pursuant to § 157(c)(1).

In *Arkison*, the bankruptcy trustee asserted fraudulent conveyance claims, both under § 548 of the Bankruptcy Code and state law, against Executive Benefits Insurance Agency, Inc., a company created with assets transferred from the debtor, Bellingham Insurance Agency, Inc. at the direction of their common owners after the debtor became insolvent and ceased operations.<sup>103</sup> The bankruptcy court granted summary judgment to the trustee, and Executive Benefits appealed. The district court conducted a de novo review of the bankruptcy court determination, and affirmed.<sup>104</sup> After Executive Benefits appealed to the Ninth Circuit, the Supreme Court decided *Stern*, and Executive Benefits moved to dismiss the appeal for lack of jurisdiction, claiming that the bankruptcy court had no authority to decide the fraudulent transfer claims.<sup>105</sup>

The Ninth Circuit affirmed the decision of the district court.<sup>106</sup> The court held that the fraudulent transfer claims at issue were, in fact, *Stern* claims that were not within the constitutional power of the bankruptcy court to decide.<sup>107</sup> Nevertheless, the court concluded that Executive Benefits had impliedly consented to adjudication by the bankruptcy court,<sup>108</sup> and in any event, the district court provided de novo review of the bankruptcy court decision, the same level of review that would be provided had the bankruptcy court issued proposed findings of fact and conclusions of law with respect to the claims.<sup>109</sup>

Because both parties agreed that the fraudulent transfer claims were governed by *Stern*, the Supreme Court “assume[d] without deciding, that the fraudulent conveyance claims in this case are *Stern* claims.”<sup>110</sup> Relying on the severability clause in the Judicial Code provisions applicable to bankruptcy

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shall be entered by the district judge after considering the bankruptcy judge’s proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.” *Id.*

<sup>102</sup> Exec. Benefits Ins. Agency v. Arkison, 134 S. Ct. 2165 (2014).

<sup>103</sup> *Id.* at 2169.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Exec. Benefits Ins. Agency v. Arkison (*In re* Bellingham Ins. Agency, Inc.), 702 F.3d 553 (9th Cir. 2012).

<sup>107</sup> *Id.* at 565.

<sup>108</sup> *Id.* at 566, 568.

<sup>109</sup> *Id.* at 566.

<sup>110</sup> Arkison, 134 S. Ct. at 2174.

courts,<sup>111</sup> which provides that other provisions are not affected if any provision is held invalid, the Supreme Court concluded that *Stern* had implicitly held invalid the application of 28 U.S.C. § 157(b) to *Stern* claims, which left unaffected the provisions of 28 U.S.C. § 157(c).<sup>112</sup> Because *Stern* claims can no longer be “core” matters, and because the Court concluded that fraudulent transfer claims are “self-evidently ‘related to a case under title 11,’”<sup>113</sup> § 157(c)(1) (which applies to “a proceeding that is not a core proceeding but that is otherwise related to a case under title 11”<sup>114</sup>) must be applicable.

Although the bankruptcy court did not follow the procedures set forth in § 157(c)(1) by issuing proposed findings of fact and conclusions of law, the Court noted that the district court actually provided the same de novo review it would have provided had the bankruptcy court done so. Therefore, the Court concluded that the district court cured any jurisdictional error and affirmed the judgment of the Court of Appeals.<sup>115</sup>

To find cases in which the bankruptcy court issued proposed findings of fact and conclusions of law because of *Stern*, I searched for all bankruptcy cases during the period of the survey that mentioned *Stern* or *Wellness* or *Arkison* or § 157(c)(1) and the term “proposed findings of fact” or “report and recommendation” or similar language.<sup>116</sup> In most of those cases, the court simply discussed its obligations with respect to non-core claims or *Stern* claims, or the bankruptcy court was making a recommendation with respect to withdrawal of the reference or dismissal of an appeal or other procedural matters. But in seventy-one cases, the bankruptcy court issued what it characterized as proposed findings of fact and conclusions of law or a report and recommendation dealing with the substance of an adversary proceeding.<sup>117</sup> In most of those cases, the

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<sup>111</sup> 98 Stat. 344, note following 28 U.S.C. § 151.

<sup>112</sup> *Arkison*, 134 S. Ct. at 2173.

<sup>113</sup> *Id.* at 2174.

<sup>114</sup> 28 U.S.C. § 157(c)(1).

<sup>115</sup> *Arkison*, 134 S. Ct. at 2175.

<sup>116</sup> In *Field v. Mirikitani* (*In re Mirikitani*), No. 05-03693, 2016 WL 7367760, at \*2 (Bankr. D. Haw. Dec. 19, 2016), the bankruptcy court used the phrase “proposed findings and recommended decision.” *Himmelfarb v. First Int’l Diamond* (*In re Himmelfarb*), No. 13-00229, 2015 WL 3879401, at \*2 (Bankr. D. Haw. June 22, 2015) used “proposed findings of fact and a recommended disposition.”

<sup>117</sup> See *Slobodian v. Penn. St. Univ.* (*In re Fisher*), 575 B.R. 640 (Bankr. M.D. Penn. 2017); *Life Partners Creditors’ Tr. v. Sundelius* (*In re Life Partners Holdings, Inc.*), No. 15-40289, Adv. No. 15-4087 (Bankr. N.D. Tex. Oct. 19, 2017); *Life Partners Creditors’ Tr. v. Am. Safe Rets., LLCs* (*In re Life Partners Holdings, Inc.*), No. 15-40289, Adv. No. 15-4110, 2017 BL 433173 (Bankr. N.D. Tex. Oct. 18, 2017); *Glass v. Miller & Martin, PLLC* (*In re Hutcheson Med. Ctr., Inc.*), No. 14-42863, 2017 WL 4536076 (Bankr. N.D. Ga. Oct. 6, 2017); *Citibank, N.A. v. Bombshell Taxi LLC* (*In re Hypnotic Taxi, LLC*), No. 15-43300, 2017 WL 4464876 (Bankr. E.D.N.Y. Oct. 4, 2017); *Cawood v. Seterus, Inc.* (*In re Cawood*), 577 B.R. 538, 560 (Bankr. E.D. Tenn. 2017); *Life Partners Creditors’ Tr. v. 72 Vest Level Three LLC* (*In re Life Partners Holdings, Inc.*), No. 15-40289, Adv.

No. 16-04035, 2017 WL 5599485 (Bankr. N.D. Tex. Sept. 14, 2017); *La Casa de la Raza, Inc. v. Costelo* (*In re La Casa de la Raza, Inc.*), No. 16-10331, 2017 WL 3671538, at \*1 n.4 (Bankr. C.D. Cal. Aug. 22, 2017); *Kapila v. Davis, Graham & Stubbs LLP* (*In re SMF Energy Corp.*), No. 12-19084, Adv. No. 15-01031, 2017 WL 7788467 (Bankr. S.D. Fla. Aug. 11, 2017); *McLenore v. Jones* (*In re Bly-Holland Land Co., LLC*), No. 15-73015, Adv. No. 15-07107 (Bankr. E.D. Va. July 25, 2017); *Dev. Specialists, Inc. v. Montravers* (*In re Coudert Bros. LLP*), No. 06-12226, 2017 WL 2911589, at \*3 (Bankr. S.D.N.Y. July 6, 2017); *Scott v. Am. Sec. Ins. Co.* (*In re Scott*), 572 B.R. 492 (Bankr. S.D.N.Y. 2017); *McCarthy v. QTrax, Inc.* (*In re El-Atari*), No. 09-14950, Adv. No. 16-01204, 2017 WL 9477089 (Bankr. E.D. Va. June 13, 2017); *Munoz v. Cedar Park Constr., LLC* (*In re RTX Custom Homes, Inc.*), No. 14-11732, 2017 WL 2484850 (Bankr. W.D. Tex. June 8, 2017); *Prithvi Catalytic, Inc. v. Microsoft Corp.* (*In re Prithvi Catalytic, Inc.*), 571 B.R. 105, 118 (Bankr. W.D. Pa. 2017); *Kerr v. Am. Alternative Ins. Co.* (*In re One World Adoption Servs., Inc.*), 571 B.R. 474 (Bankr. N.D. Ga. 2017); *In re Garlock Sealing Techs. LLC*, No. 10-31607 (Bankr. W.D. N.C. May 24, 2017); *Brandao v. Fed. Nat'l Mortg. Assoc.* (*In re Brandao*), 567 B.R. 396 (Bankr. D. Mass. 2017); *Citibank, N.A. v. Bombshell Taxi LLC* (*In re Hypnotic Taxi, LLC*), No. 15-43300, 2017 WL 1207471 (Bankr. E.D.N.Y. Mar. 30, 2017); *ECN Cap. (Aviation) Corp. v. Airbus Helicopters SAS* (*In re CHC Grp. Ltd.*), No. 17-00075, 2017 WL 1380514 (Bankr. N.D. Tex. Mar. 28, 2017); *Bash v. Textron Fin. Corp.* (*In re Fair Fin. Co.*), No. 10-50494, Adv. No. 12-5101, 2017 WL 1183907 (Bankr. N.D. Ohio Mar.29, 2017); *In re Associated Cmty. Servs., Inc.*, No. 14-44095, 2017 WL 7691740 (Bankr. E.D. Mich. Mar. 23, 2017); *BBeautiful v. Rieke-Arminak Corp.* (*In re BBeautiful*), No. 16-10799, 2017 WL 932945, at \*14 (Bankr. C.D. Cal. Mar. 8, 2017); *Bavelis v. Doukas* (*In re Bavelis*), 571 B.R. 278, 287–88 (Bankr. S.D. Ohio 2017); *In re Thorpe*, 563 B.R. 576, 594 (Bankr. E.D. Pa. 2017); *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC* (*In re Plaza Healthcare Ctr. LLC*), No. 14-11335, 2017 WL 1281871 (Bankr. C.D. Cal. Feb. 1, 2017); *Baron v. Sherman* (*In re Ondova Ltd. Co.*), No. 09-34784, 2017 WL 477776 (Bankr. N.D. Tex. Feb. 1, 2017); *Sharp v. Evanston Ins.* (*In re C.M. Meiers Co., Inc.*), No. 12-10229, 2016 WL 9458553, at \*1 (Bankr. C.D. Cal. Dec. 20, 2016); *In re Mirikitani*, 2016 WL 7367760, at \*2; *McFarland v. California Bank & Tr.* (*In re Int'l Manufacturing Grp., Inc.*), No. 14-25820, Adv. No. 16-2090, 2016 WL 7163588 (Bankr. E.D. Cal. Dec. 6, 2016); *Gould v. Dillard* (*In re Tomahawk Oil & Gas Mktg., LLC*), No. 14-15055, Adv. No. 15-01220, 2016 BL 454646 (Bankr. W.D. Okla. Nov. 22, 2016); *Dev. Specialists, Inc. v. Varanese* (*In re Coudert Bros. LLP*), No. 06-12226, 2016 WL 6875900 (Bankr. S.D.N.Y. Nov. 21, 2016); *Batiste v. Sun Kona Fin. I, LLC* (*In re 1250 Oceanside Partners*), No. 13-00353, 2016 WL 7367761, at \*3 (Bankr. D. Haw. Nov. 2, 2016); *Gillies v. JPMorgan Chase Bank, N.A.* (*In re Gillies*), No. 16-07590, 2016 WL 6999506, at \*1 n.2 (Bankr. C.D. Cal. Oct. 12, 2016); *Kapila v. Grant Thornton, LLP* (*In re SMF Energy Corp.*), No. 12-19084, Adv. No. 14-01162, 2016 BL 475135 (Bankr. S.D. Fla. Oct. 12, 2016); *Burkart v. Brack* (*In re Brack*), No. 10-26347, 2016 WL 5793655 (Bankr. E.D. Cal. Sept. 30, 2016); *1250 Oceanside Partners v. Buckles* (*In re 1250 Oceanside Partners*), No. 13-00353, 2016 WL 5485106 (Bankr. D. Haw. Sept. 29, 2016); *Miller v. Kirkland & Ellis, LLP* (*In re IH 1, Inc.*), No. 09-10982, 2016 WL 6394296 (Bankr. D. Del. Sept. 28, 2016); *Dev. Specialists, Inc. v. Sullivan* (*In re Coudert Bros. LLP*), No. 06-12226, 2016 WL 5361195 (Bankr. S.D.N.Y. Sept. 23, 2016); *Walro v. Hatfield* (*In re Lee*), No. 12-90007, Adv. No. 14-59038 (Bankr. S.D. Ind. Sept. 20, 2016); *Carswell v. Select Portfolio Servicing, Inc.* (*In re Carswell*), No. 16-07589, 2016 WL 5937954 (Bankr. C.D. Cal. Sept. 15, 2016); *OHA Inv. Corp. v. Bennu Oil & Gas, LLC* (*In re ATP Oil & Gas Corp.*), No. 12-36187, 2016 WL 6247613 (Bankr. S.D. Tex. Aug. 19, 2016); *Queyrouze v. Alfred* (*In re Forty Acre Corp.*), No. 11-10074, Adv. No. 14-1050, 2016 WL 11216509 (Bankr. E.D. La. Aug. 4, 2016); *South v. Life Partners, Inc.* (*In re Life Partners Holdings, Inc.*), No. 15-40289, Adv. No. 15-4061 (Bankr. N.D. Tex. May 13, 2016); *Weisfelner v. Fund 1* (*In re Lyondell Chem. Co.*), 554 B.R. 655 (Bankr. S.D.N.Y. 2016); *In re Harris*, No. 08-31056, 2016 WL 3412640 (Bankr. D. Mass. May 26, 2016); *Stoebner v. PNY Techs., Inc.* (*In re Polaroid Corp.*), No. 08-46617, Adv. No. 10-4595, 2016 WL 11409313 (Bankr. D. Minn. May 6, 2016); *The Containership Co. v. U.S. Pac. Transp., Inc.* (*In re The Containership Co.*), No. 11-12622, 2016 WL 2341363, at \*2 (Bankr. S.D.N.Y. Apr. 29, 2016); *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 10-04311, 2016 WL 1695296 (Bankr. S.D.N.Y. Apr. 25, 2016); *Weil v. United States* (*In re Tag Entm't Corp.*), No. 09-26982, 2016 WL 1239519 (Bankr. C.D. Cal. Mar. 29, 2016); *Nisselson v. Salim* (*In re Big Apple Volkswagen, LLC*), No. 11-11388, 2016 WL 1069303 (Bankr. S.D.N.Y. Mar. 17, 2016); *Flatau v. Barry Switzer Fam., LLC* (*In re Donnan*), No. 11-31083, 2016 WL 1085499 (Bankr. M.D. Ga. Mar. 17, 2016); *Krasnoff v. Roberts* (*In re Messingham*), No. 14-10910, 2016 WL

bankruptcy court followed this procedure because the court concluded that one or more of the claims under consideration were non-core.<sup>118</sup> However, in twenty-

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8736835 (Bankr. C.D. Cal. Mar. 16, 2016); *Gocha v. Credit Advocs. L. Firm, LLC (In re Werkmeister)*, No. 14-03464, 2016 WL 758234 (Bankr. W.D. Mich. Feb. 22, 2016); *In re Johnson*, No. 15-31025, 2016 WL 11271937 (Bankr. S.D. Ill. Jan. 5, 2016); *PACA Tr. Creditors of Lenny Perry's Produce, Inc. v. Genecco Produce Inc. (In re Lenny Perry's Produce, Inc.)*, No. 09-10297, Adv. No. 09-1269, 2015 WL 9581383 (Bankr. W.D.N.Y. Dec. 28, 2015); *Chubb v. LG Warranty Co., LLC (In re Access Ins. Servs., Inc.)*, No. 11-52830, Adv. No. 13-05034, 2015 BL 502897 (Bankr. D. Nev. Dec. 21, 2015); *Bash v. The Sydney Jackson Williams, Jr. Irrevocable Tr. U/A/D 12-27-04 (In re Fair Fin. Co.)*, No. 10-50494, Adv. No. 14-1169, 2016 WL 11408398 (Bankr. N.D. Ohio Feb. 3, 2016); *Brit. Am. Ins. Co. Ltd. v. Fullerton (In re Brit. Am. Ins. Co. Ltd.)*, No. 09-31881, 2015 WL 8489611 (Bankr. S.D. Fla. Dec. 8, 2015); *Ames Dept. Stores, Inc. v. Lumbermens Mutual Cas. Co. (In re Ames Dept. Stores, Inc.)*, 542 B.R. 121 (Bankr. S.D.N.Y. 2015); *West v. High Desert, LLC (In re Fisher)*, No. 13-26460, 2015 WL 9999216 (Bankr. D. Utah Dec. 4, 2015); *In re Montreal Me. & Atl. Ry., Ltd.* No. 13-10670, 2015 WL 7431192, at \*5 and \*28 (Bankr. D. Me. Oct. 9, 2015); *Alexander v. Carrington Mortg. Servs., Inc. (In re Alexander)*, No. 15-40264, 2015 WL 6689243 (Bankr. N.D. Tex. Oct. 8, 2015); *BCL-Sheffield LLC v. Gemini Int'l, Inc. (In re Tolomeo)*, 537 B.R. 869, 873 (Bankr. N.D. Ill. 2015); *New York Skyline, Inc. v. Empire St. Bldg. Co. L.L.C. (In re New York Skyline, Inc.)*, No. 09-10181, 2015 WL 5071948 (Bankr. S.D.N.Y. Aug. 26, 2015); *Davis v. Orion Fed. Credit Union (In re Davis)*, 558 B.R. 222 (Bankr. W.D. Tenn. 2015); *Ali v. Merchant (In re Ali)*, No. 13-50724, 2015 WL 4611343 (Bankr. W.D. Tex. July 23, 2015); *In re Himmelfarb*, 2015 WL 3879401, at \*2; *Marcinowski v. Ecast Settlement Corp. (In re Marcinowski)*, No. 13-33571, 2015 WL 3524977 (Bankr. N.D. Ill. June 3, 2015); *Benavides v. JEK Lending, LLC (In re Rose Pearl, Ltd.)*, No. 14-34605, 2015 WL 3988415 (Bankr. N.D. Tex. May 26, 2015).

In many other cases, the bankruptcy court issued an opinion and then suggested, in text or in footnote, that if it was determined that the court did not have the authority to enter a final decision, or if the parties did not consent, the opinion could be characterized as proposed findings of fact and conclusions of law. *See, e.g.,* *Chatz v. Continental Cas. Co. (In re CFB Liquidating Co.)*, 581 B.R. 317, 322 (Bankr. N.D. Cal. 2017); *Matson v. Rescue Rangers, LLC (In re Rescue Rangers, LLC)*, 576 B.R. 521, 524 n.5 (Bankr. E.D. Va. 2017); *Weisfelner v. LR2 Mgmt. (In re Lyondell Chem. Co.)*, No. 09-10023, 2015 WL 5560283, at \*1 n.1 (Bankr. S.D.N.Y. Sept. 18, 2017); *Textile Mgmt. Assocs., Inc. v. FieldTurf USA, Inc. (In re AstroTurf, LLC)*, No. 16-41504, 2017 WL 3889710, at \*3 n.7 (Bankr. N.D. Ga. Sept. 5, 2017); *Giuliano v. Schnabel (In re DSI Renal Holdings, LLC)*, 574 B.R. 446, 455 (Bankr. D. Del. 2017); *Herrera-Edwards v. Moore (In re Herrera-Edwards)*, 578 B.R. 853, 866 (Bankr. M.D. Fla. 2017); *Segner v. Ruthven Oil & Gas, LLC (In re Provident Royalties, LLC)*, 581 B.R. 185, 190 n.4 (Bankr. N.D. Tex. 2017) & No. 09-33866, Adv. No. 11-03385, at n.14 (Bankr. N.D. Tex. Apr. 20, 2017); *Prithvi Catalytic, Inc. v. Microsoft Corp. (In re Prithvi Catalytic, Inc.)*, 571 B.R. 105, 118 (Bankr. W.D. Pa. 2017); *Gallinghouse & Assocs., Inc. v. Black (In re Black)*, No. 15-11935, 2016 WL 5376182, at \*3 n.12 (Bankr. E.D. La. Sept. 26, 2016); *In re Luxeyard, Inc.*, 556 B.R. 627, 630 n.1 (Bankr. D. Del. 2016); *Robinson v. JH Portfolio Debt Equities, LLC (In re Robinson)*, 554 B.R. 800, 807 (Bankr. W.D. La. 2016); *Anderson v. Celleo P'ship (In re Anderson)*, No. 09-33431, 2016 WL 3549103, at \*3 (Bankr. W.D.N.C. June 21, 2016); *In re Breland*, No. 09-11139, 2016 WL 3193819, at \*2 n.1 (Bankr. S.D. Ala. May 27, 2016); *Fort v. Cilwa (In re Cilwa)*, No. 15-00263, 2016 WL 1579081, at \*5 n.19 (Bankr. D.S.C. Apr. 15, 2016); *Zucker v. Wesbanco Bank, Inc. (In re Fairmont Gen. Hosp., Inc.)*, 546 B.R. 659, 661 n.2 (Bankr. N.D. W. Va. 2016); *Bank of Am., N.A. v. Welsh (In re Welsh)*, 539 B.R. 713, 714 n.1 (Bankr. D. Del. 2015); *Ezenia! Inc. v. Nguyen (In re Ezenia! Inc.)*, 536 B.R. 485, 490 n.4 (Bankr. D.N.H. 2015); *Yelverton v. D.C. Dept. of Pub. Works (In re Yelverton)*, No. 09-00414, 2015 WL 3637440, at \*14 (Bankr. D.D.C. June 15, 2015); *Campbell v. Access Grp., Inc. (In re Campbell)*, No. 14-10021, 2015 WL 3919514, at n.1 (Bankr. D. Del. June 24, 2015). Although some of those decisions by the bankruptcy court were appealed, none was transmitted as proposed findings of fact and conclusions of law or treated as such by the district court.

<sup>118</sup> *See, e.g.,* *Life Partners Creditors' Tr. v. Sundelius (In re Life Partners Holdings, Inc.)*, No. 15-40289, Adv. No. 15-4087 (Bankr. N.D. Tex. Oct. 19, 2017); *In re Life Partners Holdings, Inc.*, 2017 BL 433173; *In re Cawood*, 577 B.R. at 560; *Life Partners Creditors' Tr. v. 72 Vest Level Three LLC (In re Life Partners Holdings,*



one cases in the study, the court issued proposed findings of fact and conclusions of law because it concluded that the dispute was (or may be) a *Stern* claim and the parties did not consent to a final determination by the bankruptcy court.<sup>119</sup>

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Inc.), No. 15-40289, Adv. No. 16-04035 (Bankr. N.D. Tex. Sept. 14, 2017); *McLemore v. Jones (In re Bly-Holland Land Co., LLC)*, No. 15-73015, Adv. No. 15-07107 (Bankr. E.D. Va. July 25, 2017); *Ritchie Cap. Mgmt., LLC v. JPMorgan Chase & Co. (In re Petters Co., Inc.)*, No. 08-45258, 2017 WL 2799878 (Bankr. D. Minn. May 31, 2017); *In re Garlock Sealing Techs. LLC*, No. 10-31607 (Bankr. W.D. N.C. May 24, 2017); *In re Hutcheson Med. Ctr., Inc.*, 2017 WL 4536076; *In re 1250 Oceanside Partners*, 2016 WL 7367761, at \*3; *In re Hypnotic Taxi, LLC*, 2017 WL 4464876; *In re La Casa de la Raza, Inc.*, 2017 WL 3671538; *In re SMF Energy Corp.*, 2017 WL 7788467; *In re Coudert Bros. LLP*, 2017 WL 2911589, at \*3; *In re Scott*, 572 B.R. 492; *In re El-Atari*, 2017 WL 9477089; *In re RTX Custom Homes, Inc.*, 2017 WL 2484850; *In re Prithvi Catalytic, Inc.*, 571 B.R. at 118; *In re One World Adoption Servs., Inc.*, 571 B.R. 474; *In re Brandao*, 567 B.R. 396; *In re Hypnotic Taxi, LLC*, 2017 WL 1207471; *In re CHC Grp. Ltd.*, 2017 WL 1380514; *In re BBeautiful*, 2017 WL 932945, at \*14; *In re Bavelis*, 571 B.R. at 287–88; *In re Thorpe*, 563 B.R. at 594; *In re C.M. Meiers Co., Inc.*, 2016 WL 9458553, at \*1; *In re SMF Energy Corp.*, 2016 BL 475135; *In re 1250 Oceanside Partners*, 2016 WL 5485106; *In re IH 1, Inc.*, 2016 WL 6394296; *In re Coudert Bros. LLP*, 2016 WL 5361195; *Walro v. Hatfield (In re Lee)*, No. 12-90007, Adv. No. 14-59038 (Bankr. S.D. Ind. Sept. 20, 2016); *In re Forty Acre Corp.*, 2016 WL 11216509; *In re ATP Oil & Gas Corp.*, 2016 WL 6247613; *South v. Life Partners, Inc. (In re Life Partners Holdings, Inc.)*, No. 15-40289, Adv. No. 15-4061 (Bankr. N.D. Tex. May 13, 2016); *In re Polaroid Corp.*, 2016 WL 11409313; *In re The Containership Co.*, 2016 WL 2341363, at \*2; *In re Fair Fin. Co.*, 2017 WL 1183907; *In re Lenny Perry's Produce, Inc.*, 2015 WL 9581383; *In re Access Ins. Servs., Inc.*, 2015 BL 502897; *In re Fair Fin. Co.*, 2016 WL 11408398; *In re Montreal Me. & Atl. Ry., Ltd.*, 2015 WL 7431192, at \*5 and \*28; *In re New York Skyline, Inc.*, 2015 WL 5071948; *In re Davis*, 558 B.R. 222; *In re Ali*, 2015 WL 4611343; *In re Marcinowski*, 2015 WL 3524977; *In re Tolomeo*, 537 B.R. at 873; *In re Rose Pearl, Ltd.*, 2015 WL 3988415. *Cf. In re Johnson*, 2016 WL 11271937 (bankruptcy court doubted its ability to conduct criminal contempt proceedings); *In re Associated Cmty. Servs., Inc.*, 2017 WL 7691740 (bankruptcy court doubted its ability to issue writ to require incarcerated person to testify at trial).

Some bankruptcy judges issued a report and recommendation in cases in which the district court had previously directed that the bankruptcy court provide one pursuant to a decision on a prior motion to withdraw the reference and therefore did not discuss their jurisdiction. *See In re Ondova Ltd. Co.*, 2017 WL 477776 (referred claims against bankruptcy trustee); *In re Harris*, 2016 WL 3412640 (referred motions for summary judgment with respect to alleged violations of discharge injunction following closed bankruptcy case); *In re Brit. Am. Ins. Co. Ltd.*, 2015 WL 8489611 (referred matters involving breach of fiduciary duty in chapter 15 cases); *In re Ames Dept. Stores, Inc.*, 542 B.R. 121 (referred claims for breach of contract and other related claims); *Segner v. Ruthven Oil & Gas, LLC (In re Provident Royalties, LLC)*, No. 09-33886, Adv. No. 11-03385 2015 WL 3745426 (Bankr. N.D. Tex. June 1, 2015) (referred fraudulent transfer claims for pretrial preparation).

<sup>119</sup> *See In re Fisher*, 575 B.R. 640; *In re Fair Fin. Co.*, 2017 WL 1183907; *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 14-11335, 2017 WL 1281871 (Bankr. C.D. Cal. Feb. 1, 2017) & Adv. No. 14-01297, Doc. 223 (Bankr. C.D. Cal. Sept. 2, 2016); *In re Mirikitani*, 2016 WL 7367760; *In re Int'l Manufacturing Grp., Inc.*, 2016 WL 7163588; *In re Tomahawk Oil & Gas Mktg., LLC*, 2016 BL 454646; *In re Coudert Bros. LLP*, 2016 WL 6875900; *In re Gillies*, 2016 WL 6999506; *In re Brack*, 2016 WL 5793655; *Dev. Specialists, Inc. v. Sullivan (In re Coudert Bros. LLP)*, No. 06-12226, 2016 WL 5363687 (Bankr. S.D.N.Y. Sept. 23, 2016); *In re Carswell*, 2016 WL 5937954; *In re Lyondell Chem. Co.*, 554 B.R. 655; *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 2016 WL 1695296; *In re Tag Entm't Corp.*, 2016 WL 1239519; *In re Big Apple Volkswagen, LLC*, 2016 WL 1069303; *In re Donnan*, 2016 WL 1085499; *In re Messingham*, 2016 WL 8736835; *In re Werkmeister*, 2016 WL 758234; *In re Fisher*, 2015 WL 9999216; *In re Alexander*, 2015 WL 6689243; *In re Himmelfarb*, 2015 WL 3879401, at \*2.

These cases included fourteen in which the dispute involved alleged fraudulent transfers,<sup>120</sup> one which involved an alleged preference,<sup>121</sup> and the remaining six involved claims that were either probably core claims that the bankruptcy court could have constitutionally decided,<sup>122</sup> or claims that appeared to be non-core.<sup>123</sup>

### 3. District Court De Novo Review

Once a bankruptcy court has produced proposed findings of fact and conclusions of law under 28 U.S.C. § 157(c)(1) (whether because the proceeding is non-core or alternatively is core but beyond the constitutional competence of the bankruptcy court to decide), the bankruptcy court is required to serve copies on all parties,<sup>124</sup> and transmit the PFFCL to the district court.<sup>125</sup> Those so served have fourteen days to serve and file written objections to the PFFCL, identifying the specific proposed findings or conclusions to which they object and stating the grounds for the objection.<sup>126</sup> The other parties then have another fourteen days after service to respond to those objections.<sup>127</sup> The district court provides a de novo review of any portion of the bankruptcy court's PFFCL to which an objection has been made in accordance with the requirements of the rules.<sup>128</sup>

The district court has broad discretion as to its disposition of a proceeding transmitted in this fashion. It may “accept, reject, or modify the proposed findings of fact or conclusions of law, receive further evidence, or recommit the

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<sup>120</sup> *In re Fisher*, 575 B.R. 640; *In re Fair Fin. Co.*, 2017 WL 1183907; *In re Mirikitani*, 2016 WL 7367760; *In re Int'l Manufacturing Grp. Inc.*, 2016 WL 7163588; *In re Tomahawk Oil & Gas Mktg., LLC*, 2016 BL 454646; *In re Coudert Bros. LLP*, 2016 WL 6875900; *In re Coudert Bros. LLP*, 2016 WL 5363687; *In re Lyondell Chem. Co.*, 554 B.R. 655; *Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 2016 WL 1695296; *In re Tag Entm't Corp.*, 2016 WL 1239519; *In re Donnan*, 2016 WL 1085499; *In re Messingham*, 2016 WL 8736835; *In re Werkmeister*, 2016 WL 758234; *In re Himmelfarb*, 2015 WL 3879401, at \*2.

<sup>121</sup> *In re Big Apple Volkswagen, LLC*, 2016 WL 1069303.

<sup>122</sup> *In re Gillies*, 2016 WL 6999506; *In re Carswell*, 2016 WL 5937954; *In re Fisher*, 2015 WL 9999216. See discussion at notes 65–69 *supra*.

<sup>123</sup> See *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 14-11335, Adv. No. 14-01297 (Bankr. C.D. Cal. May 26, 2016) & 2017 WL 1281871 (Bankr. C.D. Cal. Feb. 1, 2017) (dispute over lease assumed by debtor/defendant under 11 U.S.C. § 363 and related claim for attorneys' fees); *In re Alexander*, 2015 WL 6689243 (motion to dismiss proceeding attacking wrongful foreclosure); *In re Brack*, 2016 WL 5793655 (alleged “turnover” action seeking spousal support arrearages). See discussion at notes 70–75 *supra*.

<sup>124</sup> Fed. R. Bankr. P. 9033(a).

<sup>125</sup> 28 U.S.C. § 157(c)(1).

<sup>126</sup> Fed. R. Bankr. P. 9033(b). The court may extend the period for filing objections for cause for a period not to exceed twenty-one additional days. Fed. R. Bankr. P. 9033(c).

<sup>127</sup> *Id.*

<sup>128</sup> Fed. R. Bankr. P. 9033(d).

matter to the bankruptcy judge with instructions.”<sup>129</sup> I found, however, that in most cases involving *Stern* claims the district court does only one thing—accept the recommendation of the bankruptcy court. Cases in which the district court, after de novo review, disagrees in whole or in part with the PFFCL submitted by the bankruptcy court based on a *Stern* claim are rare.

I looked at how the district court dealt with the seventy-one cases in the study in which I found bankruptcy courts issuing proposed findings of fact and conclusion of law. Beginning with the twenty-one cases in which the bankruptcy court believed it might be dealing with *Stern* claims, the district court approved and adopted the PFFCL in whole in all fifteen cases in which a decision has been rendered.<sup>130</sup> Indeed, it is rare that there are any objections filed to the PFFCL for these *Stern* claims.<sup>131</sup>

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<sup>129</sup> *Id.*

<sup>130</sup> See *Bash v. Textron Fin. Corp.*, 575 B.R. 814 (N.D. Ohio 2017); *Gould v. Dillard (In re Tomahawk Oil & Gas Mktg., LLC)*, No. 16-1455, 2017 WL 1050128 (W.D. Okla. Mar. 20, 2017); *Field v. Mirikitani*, No. 16-00121, 2016 WL 7367760 (D. Haw. Mar. 14, 2017); *Picard (Tr. for the Liquidation of Bernard L. Madoff Inv. Sec. LLC) v. Cohen*, No. 16-5513, 2017 BL 480129 (S.D.N.Y. Feb. 24, 2017); *McFarland v. California Bank & Tr. (In re Int'l Manufacturing Grp., Inc.)*, No. 16-2873, 2016 WL 7409947 (Bankr. E.D. Cal. Dec. 6, 2016); *In re Carswell*, No. 16-07589, 2016 WL 5937954 (Bankr. C.D. Cal. Dec. 16, 2016); *Burkart v. Brack (In re Brack)*, No. 16-02367, 2016 BL 406027 (E.D. Cal. Dec. 6, 2016); *In re Gillies*, No. 16-7590, 2016 WL 6998569 (C.D. Cal. Nov. 30, 2016); *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 16-1625, 2016 BL 373068 (C.D. Cal. Nov. 8, 2016), *appeal dismissed*, No. 16-56743 (9th Cir. Apr. 6, 2017); *Weil v. United States (In re Tag Entm't Corp.)*, No. 16-02213, 2016 WL 5947304 (C.D. Cal. Oct. 5, 2016); *Flatau v. Barry Switzer Fam., LLC*, No. 16-35 (M.D. Ga. Apr. 5, 2016); *In re Messingham*, No. 14-10910, 2017 WL 1396060 (Bankr. C.D. Cal. Jan. 13, 2017); *Gocha v. Credit Advocs. L. Firm, LLC (In re Werkmeister)*, No. 16-193, 2016 WL 723351 (W.D. Mich. Feb. 24, 2016); *West v. High Desert, LLC (In re Fisher)*, No. 15-858, 2016 BL 31539 (D. Utah Feb. 4, 2016); *Alexander v. Carrington Mortg. Servs., Inc. (In re Alexander)*, No. 15-469, 2015 BL 356472 (N.D. Tex. Oct. 29, 2015).

In Plaza Healthcare Center, the bankruptcy court issued a second report and recommendation on an award of fees with respect to the prior litigation, but the parties settled their dispute before a second decision by the district court, and dismissed the proceeding. See *W. Pico Terrace-Let, LLC v. Flora Terrace E. LLC (In re Plaza Healthcare Ctr. LLC)*, No. 17-00191 (C.D. Cal. filed Feb. 21, 2017), No. 14-11335, Adv. No. 14-01297 (Order on Stipulated Dismissal, Bankr. C.D. Cal. Filed May 3, 2017).

In *Lyondell Chem. Co. v. CIBC World Mkts.*, No. 16-06734 (S.D.N.Y. Aug. 15, 2017), on motion of the defendants and without objection by the plaintiff, the court ordered the case remanded to the bankruptcy court prior to any decision on the PFFCL.

In *Himmelfarb v. First Int'l Diamond, Inc.*, No. 14-00258 (D. Haw. Sept. 8, 2015), the district court administratively closed the proceeding after submission of the PFFCL but before a decision because the parties settled their dispute.

There is no reported district court decision in four of the cases. See *Slobodian v. Pa. St. U.*, No. 17-02296 (M.D. Pa. filed Dec. 13, 2017); *Coudert Bros. LLP v. Varanese*, No. 17-03619 (S.D.N.Y. filed May 15, 2017); *Coudert Bros. LLP v. Sullivan*, No. 16-08248 (S.D.N.Y. filed Oct. 21, 2016); *Nisselson v. Salim (In re Big Apple Volkswagen, LLC)*, No. 16-03182 (S.D.N.Y. filed Apr. 28, 2016).

<sup>131</sup> Objections were filed in only eight of the twenty-one cases. See *Bash*, 575 B.R. 814 (objections filed by trustee with respect to *Stern* claim); *In re Tomahawk Oil & Gas Mktg., LLC*, 2017 WL 1050128 (objection filed by defendant); *Field v. Mirikitani*, 2016 WL 7367760 (objections filed by both plaintiff/trustee and defendants); *Picard (Tr. for the Liquidation of Bernard L. Madoff Inv. Sec. LLC) v. Cohen*, 2017 BL 480129

This is not to suggest that the district court never rejects proposed findings of fact and conclusions of law on *Stern* claims, but they are difficult to find. Looking at district court decisions issued during the period of the survey in which the court was reviewing a PFFCL, I found nine additional cases involving *Stern* claims in which the bankruptcy court filed its PFFCL earlier than May 26, 2015, the earliest date included in the survey.<sup>132</sup> Five of those cases involved alleged fraudulent transfers,<sup>133</sup> and in all of them the district court adopted the PFFCL of the bankruptcy court in full, overruling objections in three cases.<sup>134</sup> Of the other four district court cases, only one, *Jamsek Clinic*, involved a counterclaim by the estate against someone filing a claim against the estate within the meaning of 28 U.S.C. § 157(b)(2)(C) and was therefore a *Stern* claim.<sup>135</sup> Another case, *Lindo*, involved alleged malpractice by the debtor's bankruptcy attorney, which is also a core matter that is subject to *Stern*.<sup>136</sup> The district court adopted the PFFCL in full in both cases, although the appellate court in *Jamsek Clinic* vacated the decision, holding that the bankruptcy court imposed sanctions (dismissal with prejudice and damage award) that were disproportionate to the offense.<sup>137</sup> The other two cases, although the court characterized the dispute as involving *Stern* claims, were arguably non-core matters that were related to the bankruptcy case but could have been pursued

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(defendant filed objections); *In re Gillies*, 2016 WL 6998569 (objections filed by plaintiff/debtor); *In re Plaza Healthcare Ctr. LLC*, 2016 BL 373068 (objections filed by defendants); *Nisselson v. Salim (In re Big Apple Volkswagen, LLC)*, No. 16-03182 (S.D.N.Y. filed Apr. 28, 2016) (objections filed by plaintiff and defendants); *Lyondell Chem. Co. v. CIBC World Mkts.*, No. 16-06734, (S.D.N.Y. Aug. 15, 2017) (objections filed by trustee).

<sup>132</sup> See *Lindo v. Figeroux (In re Lindo)*, No. 13-6918, 2015 WL 9255561 (S.D.N.Y. Dec. 18, 2015); *Blue Cross Blue Shield of N.C. v. Jemsek Clinic, P.A. (In re Jemsek Clinic, P.A.)*, No. 14-417, 2015 WL 8328823 (W.D.N.C. Dec. 8, 2015), *vacated*, 850 F.3d 150 (4th Cir. Mar. 3, 2017); *Nat'l Hockey League v. Moyes*, No. 10-01036, 2015 WL 7008213 (D. Ariz. Nov. 12, 2015); *Bank of Am. v. Vehluchamy*, 551 B.R. 364 (N.D. Ill. 2015); *Kramer v. Maria (In re Khan)*, No. 14-1674, 2015 BL 319310 (E.D.N.Y. Sept. 30, 2015); *Meoli v. Huntington Nat'l Bk.*, No. 12-1113, 2015 WL 5690953 (W.D. Mich. Sept. 28, 2015), *rev'd in part*, 848 F.3d 716 (6th Cir. 2017); *Myers v. Blumenthal*, 534 B.R. 6 (D. Neb. 2015); *Pyle v. U.S. Bank Nat'l Assoc.*, No. 15-0624, 2015 WL 3949376 (N.D. Tex. June 22, 2015); *Burkart v. Singh*, No. 15-00916, 2015 WL 3887686 (E.D. Cal. June 17, 2015).

<sup>133</sup> See *Veluchamy*, 551 B.R. 364; *In re Khan*, 2015 BL 319310; *Meoli*, 2015 WL 5690953; *Myers*, 534 B.R. 6; *Burkart*, 2015 WL 3887686.

<sup>134</sup> See *Veluchamy*, 551 B.R. 364; *In re Khan*, 2015 BL 319310; *Meoli v. Huntington Nat'l Bk.*, No. 12-1113, 2015 WL 5690953 (W.D. Mich. Sept. 28, 2015), *rev'd in part*, 848 F.3d 716 (6th Cir. 2017).

<sup>135</sup> See *In re Jemsek Clinic, P.A.*, 2015 WL 8328823 (breach of contract and tortious interference with business claims against creditor).

<sup>136</sup> See *In re Lindo*, 2015 WL 9255561.

<sup>137</sup> See *Blue Cross Blue Shield of N.C. v. Jemsek Clinic, P.A. (In re Jemsek Clinic, P.A.)*, 850 F.3d 150 (4th Cir. 2017).

outside of the bankruptcy court.<sup>138</sup> In one of those the district court adopted the PFFCL in full;<sup>139</sup> in the other, the district court rejected the PFFCL in part.<sup>140</sup>

Even if we look at the cases in the study involving non-core proceedings, the number of cases in which the district court modified or rejected the PFFCL of the bankruptcy court<sup>141</sup> are far outnumbered by those in which the district court adopted the recommendations in full.<sup>142</sup> (In a few cases there is either no

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<sup>138</sup> See *Nat'l Hockey League v. Moyes*, No. 10-01036, 2015 WL 7008213 (D. Ariz. Nov. 12, 2015) (state law tort claims originally brought in state court against parent of debtors); *Pyle v. U.S. Bank Nat'l Assoc.*, No. 15-0624, 2015 WL 3949376 (N.D. Tex. June 22, 2015) (state law claims against non-creditor lender who forged debtor's signature on note and deed of trust but transferred note before bankruptcy case was filed).

<sup>139</sup> See *Pyle*, 2015 WL 3949376.

<sup>140</sup> See *Moyes*, 2015 WL 7008213.

<sup>141</sup> See *Ritchie Cap. Mgmt., L.L.C. v. JPMorgan Chase & Co.*, No. 14-4786, 2017 WL 6403096 (D. Minn. Dec. 14, 2017) (dismissing all claims with prejudice rather than some without prejudice); *Life Partners Creditors' Tr. v. Sundelius (In re Life Partners Holdings, Inc.)*, No. 16-00200, 2017 WL 5591631 (N.D. Tex. Nov. 17, 2017) (dismissing all claims rather than just some); *Life Partners Creditors' Tr. v. 72 Vest Level Three LLC (In re Life Partners Holdings, Inc.)*, No. 16-04035, 2017 WL 5599485 (N.D. Tex. Nov. 17, 2017) (dismissing all claims rather than just some); *Life Partners Creditors' Tr. v. Am. Safe Rets., LLCs (In re Life Partners Holdings, Inc.)*, No. 16-299, 2017 WL 5591632 (N.D. Tex. Nov. 17, 2017) (dismissing all claims rather than just some); *In re Queyrouze*, 580 B.R. 671 (E.D. La.) (rejecting proposal to grant summary judgment to defendants); *McLemore v. Jones*, No. 17-428, 2017 WL 3908910 (E.D. Va. Sept. 6, 2017) (rejecting recommendation to dismiss claim for constructive trust); *Dev. Specialists, Inc. v. Li (In re Coudert Bros. LLP)*, No. 16-8237, 2017 WL 1944162 (S.D.N.Y. May 10, 2017) (concluding defendant was not properly served with summons and complaint); *BBeautiful v. Rieke-Arminak Corp.*, No. 17-02134, 2017 WL 8180596 (C.D. Cal. Apr. 12, 2017) (modified PFFCL to make dismissal of proceeding without prejudice rather than with prejudice) (overruling other objections); *Kapila v. Grant Thornton, LLP*, No. 14-61194, 2017 WL 2590975 (S.D. Fla. Mar. 9, 2017) (rejecting recommendation and granting summary judgment on three claims, and adopting recommendation in other respects); *Batiste v. Sun Kona Fin. I, LLC*, No. 15-00397, 2017 WL 123425 (D. Haw. Jan. 12, 2017) (adopting the recommendation of the bankruptcy court, but modified the grounds for the decision); *New York Skyline, Inc. v. Empire St. Bldg. Co. L.L.C.*, 542 B.R. 321 (S.D.N.Y. 2015) (rejecting bankruptcy court's interpretation of a term in the lease).

<sup>142</sup> See *La Casa de la Raza, Inc. v. Costelo (In re La Casa de la Raza, Inc.)*, No. 17-0668 (C.D. Cal. Feb. 28, 2018) (no objections); *Kapila v. Davis, Graham & Stubbs, LLP*, No. 15-61016, 2017 WL 6060639 (S.D. Fla. Dec. 7, 2017) (overruling objections); *Citibank, N.A. v. Bombshell Taxi, LLC*, No. 17-06619 (E.D.N.Y. Nov. 20, 2017) (no objections filed); *Glass v. Miller & Martin, PLLC (In re Hutcheson Med. Ctr., Inc.)*, No. 17-00023 (N.D. Ga. Oct. 25, 2017) (no objections filed); *Munoz v. Cedar Park Constr., LLC*, No. 17-00648 (W.D. Tex. Oct. 4, 2017) (overruling objections); *Chubb v. LG Warranty Co., LLC*, No. 16-00173, 2017 WL 4236374 (D. Nev. Sept. 25, 2017) (overruling objections); *ECN Cap. (Aviation) Corp. v. Airbus Helicopters SAS*, No. 17-075 (N.D. Tex. Aug. 7, 2017) (overruling objections); *Citibank N.A. v. Bombshell Taxi LLC*, No. 15-5067, 2017 WL 3054832 (E.D.N.Y. July 19, 2017) (overruling objections); *McCarthy v. QTrax, Inc. (In re El-Atari)*, No. 17-794, 2017 WL 3169057 (E.D. Va. June 13, 2017) (no objections); *In re Garlock Sealing Techs. LLC*, No. 17-00275, 2017 WL 2539412 (W.D. N.C. June 12, 2017) (no objections); *U.S. Tr. v. Thorpe*, No. 17-857, 2017 WL 3084388 (E.D. Pa. July 20, 2017) (overruling objections); *Walro v. Hatfield (In re Lee)*, No. 16-03053, 2017 WL 2772335 (S.D. Ind. June 27, 2017) (overruling objections); *Brandao v. Fed. Nat'l Mortg. Assoc.*, No. 17-11028 (D. Mass. June 7, 2017) (no objections); *PACA Tr. Creditors of Lenny Perry's Produce, Inc. v. Genecco Produce Inc.*, No. 16-4, 2017 WL 2462035 (W.D. N.Y. June 7, 2017) (overruling objections); *Bash v. Textron Fin. Corp.*, 575 B.R. 814 (N.D. Ohio 2017) (overruling objections); *1250 Oceanside Partners v. Buckles (In re 1250 Oceanside Partners)*, No. 16-00585, 260 F. Supp. 3d 1300 (D. Haw. May 25, 2017) (overruling

indication on the docket that the PFFCL were transmitted to the district court,<sup>143</sup> or no decision from the district court after transmittal<sup>144</sup>).

It is unsurprising that a district court would be more likely to reject or modify PFFCL of a bankruptcy court with respect to a non-core proceeding than a *Stern* claim. Most *Stern* claims involve fraudulent transfers or preferences, topics with which bankruptcy judges tend to be more familiar than district court judges. Bankruptcy judges have no special expertise with respect to non-core proceedings, which could exist outside of bankruptcy, and therefore they may be more likely to differ in their analysis from the district court judge.

### CONCLUSION

*Stern v. Marshall* has had far less impact on the bankruptcy firmament than was originally feared. Most adversary proceedings brought before bankruptcy judges are either non-core, or are statutorily core matters that the bankruptcy court, sometimes after more analysis than is probably necessary, concludes it has the constitutional power to hear and decide. Even when the court questions its power to reach a final determination, in most cases (both core and non-core) the parties consent to bankruptcy court adjudication, thereby waiving the right to have the dispute determined by an Article III judge. In those rare cases when

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objections); *Kerr v. Am. Alternative Ins. Co.*, No. 17-01581 (N.D. Ga. May 22, 2017) (no objections); *In re C.M. Meiers Co., Inc.* No. 17-01400, 2017 WL 2927296 (C.D. Ca. July 6, 2017) (overruling objections); *OHA Inv. Corp. v. Benu Oil & Gas, LLC (In re ATP Oil & Gas Corp.)*, 570 B.R. 764 (S.D. Tex. 2017) (overruling objections); *Miller v. Kirkland & Ellis LLP (In re IH 1, Inc.)*, No. 16-305 (D. Del. Oct. 31, 2016) (no objections); *Davis v. Orion Fed. Credit Union*, No. 16-00035, 2016 WL 6157894 (W.D. Tenn. Oct. 19, 2016) (no objections); *Stoebner v. PNY Techs., Inc.*, No. 14-0137, 2017 WL 4046897 (D. Minn. July 28, 2016) (overruling objections); *Bash v. The Sydney Jackson Williams, Jr. Irrevocable Tr. U/A/D 12-27-04*, No. 16-257, 2016 WL 1592445 (N.D. Ohio Apr. 20, 2016); *BCL-Sheffield LLC v. Gemini Int'l, Inc. (In re Tolomeo)*, No. 15-8118, 2015 WL 8741730 (N.D. Ill. Dec. 15, 2015), *appeal dismissed*, 832 F.3d 815 (7th Cir. 2016); *South v. Life Partners, Inc. (In re Life Partners Holdings, Inc.)*, No. 16-212, 2016 WL 8793512 (N.D. Tex. June 2, 2016) (overruling objections); *In re Montreal Me. & Atl. Ry., Ltd.*, No. 15-329, 2015 WL 7302223 (D. Me. Nov. 18, 2015) (no objections); *Benavides v. JEK Lending, LLC (In re Rose Pearl, Ltd.)*, No. 15-01817 (N.D. Tex. Aug. 6, 2015) (overruling objections). *Cf. In re Johnson*, No. 16-64, 2017 WL 1207055 (S.D. Ill. Jan. 5, 2016) (overruling objections and imposing sanctions for civil and criminal contempt); *In re Associated Cmty. Servs., Inc.*, No. 17-50420, 2017 WL 7689633 (E.D. Mich. Mar. 24, 2017) (no objections to report requesting issuance of writ ordering production of prisoner to testify at trial in bankruptcy court).

<sup>143</sup> See *Dev. Specialists, Inc. v. Montravers (In re Coudert Bros. LLP)*, No. 06-12226, Adv. No. 08-01453 (Bankr. S.D.N.Y. July 6, 2017).

<sup>144</sup> See *Fed. Nat'l Mortg. Assoc. v. Cawood*, No. 17-00357 (E.D. Tenn. Dec. 19, 2017); *Scott v. Am. Sec. Ins. Co.*, No. 17-05881 (S.D.N.Y. Aug. 3, 2017); *Bavelis v. Doukas*, No. 17-327 (S.D. Ohio Apr. 18, 2017); *The Containership Co. v. U.S. Pac. Transp., Inc. (In re The Containership Co.)*, No. 16-05210 (S.D.N.Y. June 30, 2016); *cf. Marcinowski v. Ecast Settlement Corp. (In re Marcinowski)*, No. 15-05818 (N.D. Ill. June 16, 2017) (voluntarily dismissed); *Ali v. Merchant (In re Ali)*, No. 15-01112 (W. D. Tex. June 9, 2015) (stipulated order of dismissal upon settlement).

(i) the matter is statutory core but not within the bankruptcy court's constitutional power to decide, (ii) the parties decline to consent to a final adjudication by the bankruptcy judge, and (iii) the bankruptcy judge prepares proposed findings of fact and conclusions of law for the benefit of the district court, in almost all cases the district court (after de novo review) adopts the findings of fact and conclusions of law as its own.

With the recent amendments to the Federal Rules of Bankruptcy Procedure,<sup>145</sup> I suspect that the distinction between core matters (*Stern* claims or not) and non-core matters will become even less important because most litigants will consent to adjudication by the bankruptcy court at the inception of an adversary proceeding. In light of the respect shown to the bankruptcy courts by the district courts with respect to *Stern* claims, those litigants who choose to assert their constitutional right to a final determination by an Article III judge are likely to find that the Article III judge will conclude that the bankruptcy judge knows best.

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<sup>145</sup> See text, *supra* notes 88–90.