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## The US Supreme Court Clarifies the Role of the Bankruptcy Court in *Stern v. Marshall-Type* Proceedings

*Posted by Elizabeth Austin  
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On June 19, 2014 the Supreme Court of the United States in *Executive Benefits Insurance Agency v. Arkison*, 134 S. Ct. 2165 (2014) affirmed and clarified its prior decision in *Stern v. Marshall*, 131 S. Ct. 2594 (2011) which held that even though 28 U.S.C. §157 expressly provides that bankruptcy courts are allowed to enter final judgment in cases involving bankruptcy related claims, Article III of the Constitution prohibits bankruptcy courts from adjudicating certain claims. *Stern*, however, did not address how a bankruptcy court should proceed when it encounters such a claim.[1]

The *Executive Benefits* case involved an adversary proceeding commenced against a non-creditor by the chapter 7 trustee to recover fraudulent conveyance claims.[2] The bankruptcy court granted summary judgment for the trustee and Executive Benefits took an appeal to the district court which affirmed the bankruptcy court decision. However, the district court also conducted a *de novo* review and then separately entered judgment for the trustee. Executive Benefits then appealed to the 9<sup>th</sup> Circuit and while that appeal was pending, the Supreme Court issued its decision in *Stern v. Marshall*. In light of the *Stern* decision, Executive Benefits moved to dismiss its appeal for lack of jurisdiction.

The Ninth Circuit denied the motion to dismiss and affirmed the lower courts' decisions. While the Ninth Circuit acknowledged that the trustee's claims constituted Stern claims, it concluded that Executive Benefits had impliedly consented to jurisdiction. The Ninth Circuit further concluded that the bankruptcy court's judgment could instead be treated as proposed findings and conclusions of law subject to *de novo* review by the district court.

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Executive Benefits appealed to the Supreme Court which held that a proceeding listed in Section 157(b) of Title 28 of the U.S. Code as a “core” proceeding but which cannot be constitutionally adjudicated in a bankruptcy court pursuant to its prior decision in Stern, shall be treated as a non-core proceeding in which the bankruptcy court may issue proposed findings of fact and conclusions of law subject to a district court’s *de novo* review. The Supreme Court observed that although this case did not proceed in precisely that fashion, the district court’s *de novo* review of the bankruptcy court’s order and the entry of its own valid judgment cured any potential error in the bankruptcy court’s entry of judgment because Executive Benefits received the same review from the district court that it would have received if the bankruptcy court had treated the proceeding as non-core.

Accordingly, when faced with a Stern claim, bankruptcy courts now have clarification that the proper course of action is to determine whether the claims are otherwise related to the case and, if so, “[t]he bankruptcy court should hear the proceeding and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment”.

While providing clarification as to the adjudication by bankruptcy court of non-core proceedings involving “Stern claims”, the Supreme Court left unresolved the question of whether it is constitutional for bankruptcy court to adjudicate such proceedings if the parties impliedly consent to the bankruptcy court doing so.

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[1]. What constitutes a “Stern claim” has not been defined by the Supreme Court. However, we know from the Stern decision that counterclaims based on state law constitute Stern claims.

[2] The 9<sup>th</sup> Circuit held and the Supreme Court assumed without deciding that the fraudulent conveyance claims that the Trustee sought to recover from a non-creditor were Stern claims. Authority is divided on whether fraudulent claims brought against non-creditors are Stern claims and since the Supreme Court assumed without deciding, clarification of this issue is left open for another day.

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