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Meet the New Sharif: Bankruptcy Court Jurisdiction in the Wake of Wellness International

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The 1978 Bankruptcy Code was hailed as a comprehensive bankruptcy overhaul, designed, in part, to eliminate the uncertainty as to which matters could be handled by a bankruptcy referee depending on the outcome of a summary versus plenary analysis. The new system empowered bankruptcy judges to handle all bankruptcy matters, but it did not take long for the Supreme Court to wreak havoc on Congress' new scheme. In *Northern Pipeline Construction Co. v Marathon Pipe Line Co.,* 458 U.S. 50 (1982), the Supreme Court held that Congress violated Article III of the constitution when it gave Article I bankruptcy judges the power to hear cases that should only be heard by Article III judges. Since the *Northern Pipeline* ruling, Congress, litigants and courts have been attempting to understand the limits on the authority vested in bankruptcy judges. After 33 years, the Supreme Court may have offered definition in the recently decided *Wellness International Networks, LTD, et al v Sharif* 575 U.S. ____ (2015).

The road between *Northern Pipeline* and *Wellness* has been long and tortuous. Congress initially responded to *Northern Pipeline* through the 1984 amendments to the Bankruptcy Code. Those amendments gave jurisdiction to the district courts to hear all matters under the Bankruptcy Code, but also authorized the district court to refer some of that authority to bankruptcy judges. In core matters, the bankruptcy judge could render final judgments; in non-core matters, absent consent by the parties, the bankruptcy judge could only make recommendations to the district court which would render final judgment.

By standing orders and local rules, district courts across the nation quickly referred all bankruptcy matters to bankruptcy courts. With a few hiccups along the way, the bankruptcy world rocked along with this system until *Stern v Marshall* 564 US , 131 S. Ct. 2594 (2011) renewed the question on constitutional limits to bankruptcy courts' authority to fully resolve cases assigned to them. In *Stern*, the Supreme Court again limited the bankruptcy courts' authority to enter final judgment even on certain core matters. "*Stern claim*" became a new term of art for claims that could be classified as core matters under the Bankruptcy Code, but could not be decided by the bankruptcy courts because they were claims of a nature that had to be heard by Article III judges. Since 2011, bankruptcy courts, articles and seminars have been dominated by analysis on what constitutes a *Stern* claim and whether one can consent to the bankruptcy court's authority to hear *Stern* claims.

Wellness has answered one of those questions. In an opinion authored by Justice Sotomayor, the majority establishes that parties may consent to adjudication by a bankruptcy court so long as that consent is knowing and voluntary. The opinion highlights that "[a]djudication based on litigant consent has been a consistent feature of the federal court system since its inception. Reaffirming that unremarkable fact . . . poses no great threat to anyone's birthrights, constitutional or otherwise." Knowing and voluntary consent involves a factual analysis, so the matter was remanded to the lower court to decide whether the debtor, as the party challenging jurisdiction, had knowingly and voluntarily consented to the bankruptcy court's authority to resolve whether or not the debtor's trust was his alter ego such that its assets could be used to pay his creditors.

Wellness offers litigants comfort that if the parties consent to the bankruptcy court's authority then that consent will be sufficient to avoid a long and protracted appeal of the bankruptcy court's authority. But, this comfort may be somewhat fleeting. What are the parties to do if there is no clear consent? Are there still core matters under

the Bankruptcy Code that bankruptcy judges cannot hear without such consent? It is arguable that the majority opinion found it easier to decide the consent issue rather than delving into bankruptcy court's authority. Even though *Wellness* bolstered the power of bankruptcy judges, we should be prepared for judges, litigants and talking heads to continue to attempt to discern just what a *Stern* claim is, and how can one resolve it with certainty.