Supreme Court Approves Procedure to Consider Certain "*Stern*" Claims, While Failing to Address Other Issues Raised by *Stern* Decision

On June 9, 2014, in *Executive Benefits Insurance Agency v. Arkison (In re Bellingham Insurance Agency, Inc.)*,[1] a much-anticipated decision, the Supreme Court addressed how bankruptcy courts should adjudicate so-called *Stern* claims. *Stern* claims are "core" claims over which bankruptcy courts have statutory authority to enter orders and judgments,[2] but which authority the Supreme Court previously held in *Stern v. Marshall*[3] was not permitted (at least with respect to certain issues) under Article III of the United States Constitution. The *Bellingham* Court unanimously agreed that bankruptcy courts are permitted to issue decisions on such *Stern* claims to be reviewed *de novo* by the applicable district courts.[4] The Court did not, however, provide much additional guidance regarding what constitute *Stern* claims or whether the parties can agree to different procedures.[5]

I. Factual Background and Procedural History

Aegis Retirement Income Services, Inc., and Bellingham Insurance Agency, Inc. ("BIA"), as well as debtor Executive Benefits Insurance Agency, Inc. ("EBIA"), were jointly owned by Nicolas Paleveda, who eventually transferred BIA's assets to EBIA with no value received by BIA in exchange. In 2006, following such transfer, BIA filed a voluntary Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Washington. Peter Arkison was appointed Chapter 7 trustee and filed a complaint against EBIA to avoid the transfer of assets from BIA to EBIA as a fraudulent conveyance.[6]

The Bankruptcy Court granted summary judgment for the trustee on the fraudulent conveyance claims, and EBIA appealed. The United States District Court for the Western District of Washington affirmed the Bankruptcy Court's decision and entered judgment for the trustee, and EBIA appealed to the United States Court of Appeals for the Ninth Circuit.[7]

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[1] No. 12-1200, slip op. (2014), *available at* http://www.supremecourt.gov/opinions/13pdf/12-1200_2035.pdf. Citations to this case are to the slip opinion ("*Bellingham*, slip op. at __").

[2] Core jurisdiction is authorized under 28 U.S.C. *§* 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11…, and may enter appropriate orders and judgments," subject to appellate review by the district courts. Contrarily, with respect to non-core matters, under 28 U.S.C. § 157(c)(1), "[a] bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11[,]…the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after…reviewing de novo those matters to which any party has timely and specifically objected."

[3] __ U.S. __, 131 S. Ct. 2594 (2011). *See also* SUPREME COURT RESTRICTS BANKRUPTCY COURTS' JURISDICTION TO CONSIDER CERTAIN COUNTERCLAIMS *available at* http://www.cahill.com/publications/firm-memoranda/101291 (prior Cahill Firm Memorandum regarding *Stern v. Marshall*).

[4] *Bellingham*, slip op. at 1.

[5] *Id.* at 4.

[6] *Id*. at 2.

[7] *Id*.

At this point in the litigation, the Supreme Court came down with its decision in *Stern v. Marshall*[8] that "Article III of the Constitution did not permit a bankruptcy court to enter final judgment on a counterclaim for tortious interference…even though final adjudication of that claim by the Bankruptcy Court was authorized by statute."[9] EBIA moved to dismiss its case on appeal for lack of jurisdiction based on a similar argument. The Court of Appeals subsequently denied this motion to dismiss and affirmed the District Court's decision, concluding that EBIA consented to the Bankruptcy Court's jurisdiction by failing to object, even though *Stern v. Marshall* had not yet been decided.[10]

II. The Supreme Court's Decision

The Supreme Court affirmed the Court of Appeals' decision on narrow grounds, based on an analysis of legislative history and statutory interpretation.[11] Specifically, the Court noted that the bankruptcy scheme bifurcates matters into "core" and "non-core" proceedings, and bankruptcy judges are authorized to "hear and determine" core proceedings and "enter appropriate orders and [final] judgments" on them.[12] Non-core proceedings, however, include "proceedings that are 'not…core' but are 'otherwise related to a case under title 11,'"[13] and for non-core proceedings, bankruptcy courts may hear them and issue proposed findings of fact and conclusions of law that must then be reviewed *de novo* by district courts before a final order or judgment can be entered,[14] provided that parties may consent to a bankruptcy court's jurisdiction to "'enter appropriate orders and judgments' as if the proceeding were core."[15] Recognizing that the *Stern* Court addressed a conflict between this bankruptcy scheme and Article III of the Constitution, and while that case clarified that some claims labeled by Congress as "core" may not be adjudicated to a final judgment by a bankruptcy court, it did not address how bankruptcy courts should proceed on *Stern* claims brought before them.[16]

First, the Court accepted the Court of Appeals' holding that the state law fraudulent conveyance claims at issue were *Stern* claims. Then, because the District Court had reviewed the summary judgment ruling of the Bankruptcy Court *de novo*, essentially the same procedure provided for the handling of non-core claims by bankruptcy courts, the Court found the lower courts' rulings appropriate. Finally, the Court endorsed that *de novo* review process for bankruptcy courts to make decisions on *Stern* claims.[17] The Court explicitly opted not to address whether EBIA did in fact consent to the Bankruptcy Court's jurisdiction (as found in the Court of Appeals) and, if it had consented, whether the Bankruptcy Court could have entered a final judgment, leaving those issues unresolved.[18]

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[8] *See Stern v. Marshall*, *supra* note 2.

[9] *Bellingham*, slip op. at 3 (internal citation omitted).

[10] *Id.* at 12-13.

[11] *See id.* at 4-13.

[12] *Id.* at 7 (quoting 28 U.S.C. § 157(b)(1)).

[13] *Id.* at 7 (quoting 28 U.S.C. § 157(c)(1)).

[14] *Id.* at 7.

[15] *Id.* at 7 (quoting 28 U.S.C. § 157(c)(2)).

[16] *Id.* at 4.

[17] *Id.* at 11.

[18] *Id.* at 4.

III. Significance of the Decision

Stern v. Marshall created more questions than answers, and although the *Bellingham* decision provides procedures for bankruptcy courts to use in handling *Stern* claims, it leaves many open questions, including what are the universe of *Stern* claims that bankruptcy courts cannot finally adjudicate and whether parties may consent to the final adjudication of *Stern* claims by bankruptcy courts.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Joel H. Levitin at 212.701.3770 or jlevitin@cahill.com; or Richard A. Stieglitz Jr. at 212.701.3393 or rstieglitz@cahill.com.