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Lawyers React To Justices' Ruling On Bankruptcy Court Power

Law360, New York (May 26, 2015, 8:02 PM ET) -- On Tuesday, the Supreme Court overturned a Seventh Circuit decision and held that bankruptcy courts have the authority to make final decisions on certain legal claims that help liquidate a debtor or adjudicate a bankruptcy proceeding. Here, attorneys tell Law360 why the decision in Wellness International Network Ltd. v. Sharif is significant.

Derek Baker, Reed Smith LLP
"If the decision from Stern v. Marshall was thought to open significant doors to challenge bankruptcy court adjudications, those doors appear to be slowly shutting over the last few terms with the decisions in the Executive Benefits Ins. Agency v. Arkison — where the court affirmed the principle that de novo review by an Article III court can eliminate any constitutional concerns — and [today's] Wellness International, which holds that consent — even implied consent — can authorize a bankruptcy court to adjudicate a Stern claim. It appears that the wheels of the bankruptcy process will continue to turn as they have over the last 30 years."

Leyza F. Blanco, GrayRobinson PA

"In the Wellness opinion, the Supreme Court holds that a party may waive its right to have an Article III court determine a dispute which seeks to augment the bankruptcy estate and would otherwise exist without regard of the bankruptcy proceeding. The holding avoids turning years of bankruptcy courts' jurisprudence on its head in cases where parties consented to bankruptcy court jurisdiction but could have otherwise raised objections. The case is also significant because it clearly continues to enable bankruptcy courts to decide these matters where parties consent."

Eric Brunstad, Dechert LLP

"In its decision in Wellness, the Supreme Court today concluded that, with litigant consent, a bankruptcy judge may finally decide a controversy that without such consent would ordinarily have to be decided in federal court by an Article III judge. This is a tremendously important decision for the administration of not only bankruptcy cases, but also other litigation in federal court before magistrate judges. Article III of the federal Constitution generally requires that only judges with life-time tenure and a guarantee of irreducible salary may finally decide cases litigated in federal court. When Congress created the current bankruptcy courts in 1978, it did not give bankruptcy judges life-time tenure or the guarantee of irreducible salary. ... The Supreme Court determined that a litigant may consent to have a bankruptcy judge decide the claim, and that the litigant's consent need not be express, but must simply be knowing and voluntary. This decision is vitally important because it clarifies the bankruptcy judge's authority to decide a broad variety of matters brought in the federal bankruptcy courts. It is also vitally important because, by extension, it clarifies the authority that federal magistrate judges have to decide a broad variety of matters based on the litigants' consent. The current bankruptcy jurisdictional system was

patterned after the system in place for magistrate judges. The decision goes a long way in preserving the basic statutory distribution of authority between bankruptcy judges and other federal judges."

Michael L. Cook, Schulte Roth & Zabel LLP

"The court rejected the debtor's belated constitutional argument that the bankruptcy court lacked the power to decide whether purported trust assets were part of his estate and thus available to creditors. The decision, based on the parties' knowing and voluntary consent, reassures bankruptcy judges and practitioners that the system will survive."

David N. Crapo, Gibbons PC

"Wellness International answers a crucial question left unanswered by Stern v. Marshall — can parties to a bankruptcy waive or forfeit their rights to final adjudication of a matter by an Article III tribunal? In a 6-3 opinion, the Supreme Court held that parties can do so and, thereby, consent to final adjudication of a matter by a bankruptcy court. By a more narrow majority, 5-4, the court held that such consent can be implied from the parties' action — or, presumably, inaction — although the court also noted that obtaining express consent was the best practice. The court's opinion reflects a careful analysis of relevant authority. Nevertheless, pragmatic considerations of crowded district court dockets clearly informed the court's analysis. After noting that bankruptcy and magistrate judges outnumber district and appellate judges, Justice [Sonia] Sotomayor acknowledged that, absent their 'distinguished service ... the work of the federal court system would grind nearly to a halt.' The court expressly declined to delineate the parameters of effective implied consent to final adjudication by a bankruptcy court. Similarly, the court did not decide — because it did not have to — whether actions to determine whether an asset is part of the bankruptcy estate is a Stern claim that a bankruptcy court could finally adjudicate without the consent of all parties. Wellness International, therefore, leaves plenty of interpretive work for lower courts and creative counsel and lays the groundwork for additional opportunities for the Supreme Court to further interpret Stern v. Marshall."

Tyson A. Crist, Ice Miller LLP

"The Supreme Court's ruling today narrows the impact of its 2011 decision in Stern v. Marshall, and resolves a circuit split over litigant consent that could have had spillover effect on the Federal Magistrate's Act. Practicality guided this decision. It clarifies — contrary to decisions by the Fifth, Sixth and Seventh circuit courts of appeals, but consistent with the Ninth Circuit — that litigants can consent to a bankruptcy judge finally determining a state-law based, Stern-type claim. Notably, Chief Justice [John] Roberts, who wrote the majority opinion in Stern, dissented from this opinion."

Joshua del Castillo, Allen Matkins Leck Gamble Mallory & Natsis LLP

"The Supreme Court's decision in Wellness Int'l ... supplements its decision in Stern v. Marshall, where it held that bankruptcy courts are forbidden from entering final judgments on non-bankruptcy claims that would otherwise 'exist without regard to any bankruptcy proceeding.' While Stern limited the jurisdiction of bankruptcy courts to matters unique to the bankruptcy context, [Wellness] allows bankruptcy courts to adjudicate substantive, non-bankruptcy matters, so long as the parties consent. Consent will now be an area of substantial focus and will require, as the court notes, a detailed 'factbound analysis' to determine whether consent was knowingly given."

Benjamin Feder, Kelley Drye & Warren LLP

"An affirmance today would have irreparably damaged the entire Article I court system. The court succeeded in escaping somewhat from the formalistic straitjacket of Stern. Since Stern, however, the

court has needed to resolve firmly two questions: the scope of what constitutes a 'public right' in the context of bankruptcy that can be decided by an Article I judge, and whether the right to have a dispute determined by an Article III judge may be waived by consent. By only answering the second question today, the court ensured that some uncertainty will continue to hover over issues of bankruptcy court jurisdiction."

Lisa Hill Fenning, Arnold & Porter LLP

"The Wellness decision essentially reflects the classic 5-4 liberal/conservative split, with the key difference between Wellness and Stern being Justice [Anthony] Kennedy's switch to join the four Stern dissenters. Although Justice [Samuel] Alito's concurrence technically makes Wellness a 6-3 decision, he sharply qualified his support by treating the result as controlled by Schor, the correctness of which he apparently questions, although these parties did not. The pragmatic Justice Kennedy was likely persuaded by the 'practical considerations' cited by the majority, especially in light of the dissent's implied threat that the Magistrate Judges' Act suffers the same constitutional infirmity as the Bankruptcy Code."

Patricia Brown Fugee, Roetzel & Andress LPA

"Relying upon practical considerations — perhaps in contrast to Stern's insistence that it was narrow, but whose effect is widespread — Wellness answers, in the affirmative, a question plaguing courts since Stern: whether Article III permits bankruptcy judges to adjudicate Stern claims with the parties' knowing and voluntary consent. The result will be threefold: First, it restores a significant amount of Bankruptcy Court jurisdiction that Stern called into doubt. Second, it places greater importance on pleading and opposing jurisdictional allegations. Third, a new question to litigate is whether consent, which may be implied rather than express, was 'knowing and voluntary.'"

Tracy Green, Wendel Rosen Black & Dean LLP

"In Wellness, rather than addressing the simple question of whether or not a bankruptcy court has the jurisdiction to decide what assets are property of the estate, the Supreme Court instead answered the question of whether or not the parties can consent to bankruptcy jurisdiction. While the 7th Circuit was overruled for holding that jurisdiction couldn't be agreed to by the parties, the court made clear that all of its prior rulings were consistent with the rule allowing parties to knowingly consent to bankruptcy court final jurisdiction. While this is nice to know — what does knowing consent mean and how much litigation will that result in? Most importantly, it's disappointing that the court couldn't send a clear message to the bankruptcy courts that they can decide whether an asset is property of the bankruptcy estate. The scope of bankruptcy jurisdiction appears to be slowly being decided by the court at the pace of a multi-year television series, and we will have to wait for the next season to see what it brings."

Rachel A. Greenleaf, Hirschler Fleischer PC

"The decision is significant in holding not only that parties can consent to bankruptcy court adjudication of Stern claims, but that such consent may be either express or implied. As such, the impact of Stern has been extremely limited, allowing for bankruptcy courts to submit proposed findings of fact and conclusions of law on Stern claims except in the instances where a party clearly contests the bankruptcy court's jurisdiction."

L. P. Harrison III, Curtis Mallet-Prevost Colt & Mosle LLP

"This much-needed decision has cleared up some confusion in the bankruptcy practice stemming from the court's 2011 Stern decision. The Supreme Court found that bankruptcy court adjudication of Stern

claims with the parties' knowing and voluntary consent — and not necessarily requiring express consent — will allow the large number of bankruptcy proceedings to proceed more smoothly through to resolution. The court has embraced the long-standing notion that parties can consent to adjudication while simultaneously acknowledging the volume of cases that bankruptcy judges handle, which has been more than double the total number filed in district and circuit courts in recent years."

Paul Hoffmann, Stinson Leonard Street LLP

"Only time will tell. It opens the door to parties arguing about implied consent to a bankruptcy court adjudicating 'Stern claims,' but does nothing to clarify what is a 'Stern claim' or what constitutes implied consent. And lengthy dissents by three justices leave the door open for further litigation. I believe any case involving an arguable 'Stern claim' needs proposed findings and conclusions adopted by the district court to clearly pass constitution muster. Anything else invites further appeal."

Paul G. Jennings, Bass Berry & Sims PLC

"Wellness addresses the question left unanswered by Stern and Arkison: can parties consent to Bankruptcy Court final adjudication of non-core state law claims? The U.S. Supreme Court, in a 6-3 decision, said yes. After Stern in 2011, bankruptcy practitioners struggled with whether particular state-law claims finally could be decided by Bankruptcy Courts. Remedies included having the Bankruptcy Court propose findings of fact and conclusions of law to the District Court or withdrawing the case to the District Court. Wellness now clarifies that parties can consent to final adjudication by the Bankruptcy Court, efficiently resolving the 'procedural' complications created by Stern."

Hywel Leonard, Carlton Fields Jorden Burt

"Avoiding creating havoc in the established system of allowing some final decision making by Magistrate and Bankruptcy Judges, the majority in Wellness take the pragmatic approach of permitting express or even implied consent to the exercise of Article III powers by Article I judges. As Justice Sotomayor acknowledged 'without the … service of these [Article I] colleagues, the work of the federal court system would grind nearly to a halt.' Dissenting opinions focus on the blurring of the constitutional requirement that only Article III Judges may render dispositive judgments and observe that the 'structural protections of Article III are only as strong as this court's will to enforce them.' Given that there is no likelihood that Congress would appoint the needed additional Article III Judges to take over the work now performed by the Bankruptcy and Magistrate Judges, the outcome was predictable."

Seth H. Lieberman, Pryor Cashman LLP

"In the four years since Stern v. Marshall, it was unknown whether parties could consent to a bankruptcy court's adjudication of Stern claims. In Wellness International, the court has indicated that adjudication based on the parties' knowing and voluntary consent is permissible. What remains to be seen is what will be required for a party to 'knowingly and voluntarily' consent to such jurisdiction."

Richard Mikels, Mintz Levin Cohn Ferris Glovsky & Popeo PC

"The case of Wellness International is of critical importance in the bankruptcy world. By deciding that matters that merely 'relate to' bankruptcy proceedings may be litigated to judgement by the bankruptcy court with the consent of the parties — cases that 'arise in' or 'arise under' the Bankruptcy Code do not require such consent — the ruling will greatly simplify bankruptcy procedure and avoid much of the uncertainty that heretofore existed."

Joseph G. Minias, Willkie Farr & Gallagher LLP

"Bankruptcy practitioners have reason to celebrate Wellness — twice. First, the majority held that parties can consent to adjudication of Stern claims by a bankruptcy judge. Second, even the dissent would have held that absent a third-party claim to estate assets, adjudication of the 'property of the estate' question would not be prohibited by Stern since it stems from the bankruptcy itself. The contours of consent will be determined on remand. Today, though, practitioners who once feared Stern could wreak havoc on bankruptcy courts should take comfort in the decision as a whole, but particularly the practicality of the holding."

Joel Moss, Shearman & Sterling LLP

"The court's decision in Wellness provides welcome guidance to courts and practitioners alike on the issue of whether a litigant can, following the court's decision in Stern, consent to a bankruptcy court entering a final judgment on so-called 'Stern claims.' More practically, litigants now have a choice of allowing bankruptcy courts to enter final judgments on 'Stern claims,' which could be more efficient in some circumstances than allowing recommendations of the bankruptcy court to be reviewed by a district court. Wellness requires knowing and voluntary, but not express, consent for a litigant to be subject to a bankruptcy court rendering a final judgment. It remains to be seen what type of facts will be sufficient to determine that a litigant's consent was sufficiently knowing and voluntary following Wellness. Chief Justice Roberts' dissent is also notable in that he would have found that a bankruptcy court had authority to determine under the facts of Wellness whether property constituted 'property of the estate.'"

Joseph O'Neil, Montgomery McCracken Walker & Rhoads LLP

"The Supreme Court did what was necessary to preserve the bankruptcy court's authority. It looked to precedent and found that litigant consent has been a hallmark of our judicial system from day one. Consent to bankruptcy court jurisdiction to resolve issues that may not always fit neatly within the constitutional framework of Article III is pragmatic. The court's recognition that consent may be implied also compels litigants to take action if they have a basis to opt out of bankruptcy court and prevents them from raising jurisdictional issues later if a potential outcome does not look favorable to them."

Dennis J. Nolan, Anderson Kill PC

"The decision is not ground-breaking, but it provides a little more clarity to bankruptcy judges in what has been a murky area over the past few years, and gives these judges back some autonomy. Allowing bankruptcy courts to confirm up front that a party voluntarily consents to the court's jurisdiction to hear this type of claim can help avoid needless, protracted litigation, and pays heed to an over-arching bankruptcy principle – efficient administration of a debtor's estate."

Jeffrey Reisner, Irell & Manella LLP

"The ruling announced today is not as broad as one may first believe. In essence, the Supreme Court did no more than allow the decision by bankruptcy judges of so called Stern claims when consent is provided either overtly or through waiver. Importantly, the court did not limit the scope of Stern claims, declining to rule on whether an action based on state law whose effect is to augment a bankruptcy estate may be adjudicated by the bankruptcy court. This ruling will result in much discussion about whether consent may be implied from the facts of particular cases."

John K. Rezac, Taylor English Duma LLP

“Allowing parties to disregard by consent Article III restrictions on the powers of the judiciary is a mistake. The court’s ruling today embraces a dangerously cavalier view of the importance of Constitutional separation of federal powers, further on display in the majority’s sarcastic response to the dissent’s concerns over the Constitution’s system of checks and balances — e.g., 'To hear the principal dissent tell it, the world will end not in fire, or ice, but in a bankruptcy court.' The United States Constitution is deserving of far greater regard than that displayed in the tone and substance of today’s decision.”

Grant Stein, Alston & Bird LLP

“The Supreme Court’s Wellness opinion is based on the long-acknowledged principal in bankruptcy of consent, in this case consent to the exercise of judicial power by an Article I Judge. The case was remanded to determine whether the consent was 'knowing and voluntary' or whether Sharif waived his Stern arguments by not raising them in the case’s earlier stages. The consent contemplated in Wellness can be express, or implied. Justice Alito’s concurring opinion also notes the practical effects of Arkison on the consent question implicated by having otherwise core matters be deemed to be non-core if they present Stern issues.”

Wayne Weitz, Gavin/Solmonese LLC

“The Supreme Court has clarified some of the jurisdictional fogginess that has lingered over the Bankruptcy Court following the high court’s 2011 decision in Stern. In Wellness, the Supreme Court ruled that parties can mutually agree to be bound by the jurisdiction of the Bankruptcy Court. The ruling may put an end to arguments about whether conflicts are 'core' or 'non-core' to a bankruptcy case, and lends greater legitimacy to what are referred to as 'Article I courts.' In other words, today’s ruling in Wellness is a victory for the authority of the Bankruptcy Court and its judges..”

Gregory W. Werkheiser, Morris Nichols Arsht & Tunnell LLP

“For the parties, the court’s opinion in Wellness International means further litigation in the inferior courts 'over whether Sharif’s actions evidenced the requisite knowing and voluntary consent and whether Sharif forfeited his Stern argument below.' For the federal court system, however, today’s opinion vindicates the use of knowing and voluntary consent that has made viable the widespread reliance on magistrate and bankruptcy judges to help shoulder the massive caseload of the federal courts.”

--Editing by Emily Kokoll.
