

Lawyers Weigh In On High Court's Arkison Ruling

Law360, New York (June 09, 2014, 6:24 PM ET) -- The U.S. Supreme Court on Monday affirmed a Ninth Circuit ruling that permits bankruptcy judges to make recommendations on certain matters that may later be adopted by a federal court. Here, attorneys tell Law360 why the decision is significant.

Martin J. Bienenstock, Proskauer Rose LLP



“While the Supreme Court expressly side-stepped the interesting issue of whether parties can constitutionally consent to the non-Article III bankruptcy judge exercising Article III powers, the court put to rest the raging dispute as to whether Stern should be interpreted narrowly to apply only to estate counterclaims against creditors who file proofs of claim, or broadly to apply to any claim labeled as core which nonetheless requires Article III powers such as fraudulent transfer claims. The Supreme Court adopted the broad approach by defining ‘Stern claims’ to mean ‘a claim designated for final adjudication in the bankruptcy court as a statutory matter, but prohibited from proceeding in that way as a constitutional matter.’ It did so in a case involving a fraudulent transfer claim and issued a broad holding 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.’”

Terry Hall, Faegre Baker Daniels



“In its unanimous decision today in *Executive Benefits Ins. Agency v. Arkison*, the

Supreme Court told bankruptcy courts what to do with core matters under 28 U.S.C. 157(b)(2) that run afoul of its holding in *Stern v. Marshall* — treat them as non-core matters under 157(c) and issue findings of fact and conclusions of law for de novo review by the district court. In affirming the Ninth Circuit’s decision on the grounds that the district court had provided a sufficient de novo review of the bankruptcy court’s ‘grant’ of summary judgment to the trustee on a fraudulent transfer claim, the Supreme Court did not reach or decide if 157(c)(2) allowing parties to consent to a final judgment by a bankruptcy court could apply to a *Stern* matter.”

Seth Lieberman, Pryor Cashman LLP



“The Supreme Court’s decision appears consistent with what many bankruptcy courts already have implemented by way of practice. When presented with a *Stern* claim, a bankruptcy court will issue proposed findings of fact and conclusions of law, with the district court then reviewing the claim de novo and entering judgment.”

David Molton, Brown Rudnick LLP



“The Supreme Court’s unanimous opinion in *Bellingham* is more interesting in what it did not determine or address, rather than in what amounts to its rather unsurprising determinations. The court expressly left ‘for another day’ the important question of whether the constitution permits a bankruptcy court, with the consent of the parties, to enter final judgment on what it calls a *Stern* claim. Also left unanswered by the court for another case is the equally significant question whether a trustee’s fraudulent conveyance claim against a creditor who has filed a proof of claim against the estate is in fact a *Stern* claim immune to final judgment by the bankruptcy court where (i) the resolution of that fraudulent transfer claim is intricately intertwined with the creditor’s claim against the estate, and (ii) the resolution of the fraudulent transfer claim would resolve issues pertaining to the creditor’s claim. In *Bellingham*, the fraudulent transfer defendant was not a creditor of the estate.”

Dennis Nolan, Anderson Kill PC



“Although the Supreme Court told us Stern was limited to its holding, its decision today in EBIA demonstrates that Stern was really a jurisdictional game-changer. And the fact that the court left open the hotly-debated post-Stern question of implied consent where the bankruptcy court lacks constitutional authority is perhaps a signal that this court supports the narrowest interpretation of bankruptcy court jurisdiction.”

Madlyn Primoff, Kaye Scholer LLP



“If, as the U.S. Supreme Court’s decision in Executive Benefits holds, the Constitution does not permit a bankruptcy court to enter final judgment on something as fundamental as a fraudulent transfer claim, then the case blows the doors wide open for litigants to contend that the bankruptcy court cannot enter final orders in many, many other types of matters and the decision will require far more involvement by district courts in basic bankruptcy issues.”

Ivan Reich, GrayRobinson PA



“The decision was not the Earth-shattering decision that a lot of people in the bankruptcy community thought it would be. In fact, the court refrained from ruling on the harder issues presented in the case and took the simpler approach in utilizing the severability clause in the bankruptcy statute to basically say that those cases that were deemed core by Congress in the statute, but unconstitutional as a result of the court’s prior Stern v. Marshall decision, cannot finally be decided by bankruptcy courts but it is permissible for them to issue findings of facts and conclusions of law reviewable de novo by an Article III District Court. The court basically approved the status quo and didn’t upend the bankruptcy system as many thought it might do.”

Corey Weber, Ezra Brutzkus Gubner LLP



“The Supreme Court took a pragmatic approach to addressing the statutory ‘gap’ that was purportedly created by *Stern v. Marshall*, and concluded that bankruptcy courts may continue to hear claims that are ‘core’ pursuant to the statute but where the Constitution does not permit bankruptcy courts to enter final judgment. Bankruptcy courts may issue findings of fact and conclusions of law, and district courts will then review *de novo*. The Supreme Court’s opinion ensures that the expertise and efficiency of bankruptcy courts in hearing these claims will be preserved.”

--Editing by Emily Kokoll.