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Supreme Court Offers Clarification of *Stern* in *Bellingham*; Offers Guidance to Bankruptcy Courts in Non-Core Matters

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On Monday, June 9, 2014, the United States Supreme Court, in *Executive Benefits Ins. Agency v. Arkison (In Re Bellingham Insurance Agency)*, offered some much-sought guidance on the reading of its 2011 opinion in *Stern v. Marshall*. In reaching its conclusion, the Court specifically clarified two points, one substantive and one procedural.

First, the Court clarified *Stern* on the issue of whether a "statutory gap" exists preventing Bankruptcy Courts (as judges not appointed under Article III of the U.S. Constitution) from adjudicating matters and entering final orders where core jurisdiction is not present (which is to be determined by the Bankruptcy Court judge). Justice Thomas, writing for the unanimous Court, explained that when the Bankruptcy Court is presented with a matter where it cannot statutorily or consensually provide a final judgment (such as the fraudulent transfer questions in *Stern*) the Bankruptcy Court should proceed as if the matter is not core pursuant to 28 USC Section 157(c).

Second, Justice Thomas continued to explain that non-core matters should proceed with the Bankruptcy Court rendering proposed findings of fact and conclusions of law for a District Court (Article III) to consider for its *de novo* review and entering of a final judgment. Quoting Justice Thomas, he explained that **"[i]f a matter is core, the statute empowers the bankruptcy judge to enter final judgment on the claim, subject to appellate review by the district court. If a matter is non-core, and the parties have not consented to final adjudication by the bankruptcy court, the bankruptcy judge must propose findings of fact and conclusions of law. Then the district court must review the proceeding de novo and enter final judgment."**

In reaching a results-oriented decision affirming the Ninth Circuit's ruling upholding decisions made by the Bankruptcy and District Courts in *Bellingham*, the Court declined to address whether the actions of the parties amounted to "consent" to create agreed upon jurisdiction. Instead, the Supreme Court based its holding on the fact that the appeal of the Bankruptcy Court was heard *de novo* by the District Court, and, in essence, provided the non-bankrupt party with the Article III judiciary review afforded to it under the Constitution. The process that led to the *de novo* review was not intended by the petitioner to obtain an Article III review, but was satisfactory for that purpose according to the Supreme Court.

Our takeaway from this important opinion is that not much has changed. We expect Bankruptcy Courts to continue to view and rule upon the scope of their jurisdiction with careful scrutiny in matters where party consent is lacking or which may involve federal adjudication of matters of state law. Moreover, we believe it is reasonable to expect Bankruptcy Courts to look more frequently to District Court Judges for guidance in adjudicating and entering final orders (following Bankruptcy Court administration) for matters heard pursuant to 28 USC Section 157(c).

These jurisdictional issues are important, especially for non-debtor parties to a bankruptcy matter to consider when dealing with debtors in any bankruptcy scenario. The professionals at Hahn Loeser & Parks LLP stand ready to assist you in protecting your rights and employing all strategies available to help you achieve your goals. If you would like further information, or have any questions, please contact your Hahn Loeser attorney.

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