SELECT RECENT SUPREME COURT CASES

Executive Benefits and Ins. Agency v. Arkinson (In re Bellingham Ins. Agency, Inc.), 134 S. Ct. 2165 (2014). Justice Thomas authored the unanimous decision allowing bankruptcy courts to issue proposed findings and conclusions, subject to the district court's de novo review, for claims that must be adjudicated by an Article III court. The Court did not answer the question of whether the parties could consent to entry of final orders by the bankruptcy court on claims that would otherwise have to be adjudicated by an Article III court, and whether that consent could be implied. The underlying issue was the chapter 7 trustee's pursuit of fraudulent transfer claims against a non-debtor, which fell directly under the *Stern* classification of core-but-not-constitutionally-permitted-to-be-adjudicated-by-an-Article I judge claims.

Clark v. Rameker, 134 S. Ct. 2242 (2014). Justice Sotomayor authored the Court's opinion holding that an inherited IRA cannot be exempted under § 522(b)(3)(C). The inherited funds did not operate with the same restrictions and rules as ordinary IRA's and thus were not "retirement funds" within the meaning of § 522(b)(3)(C).

Bullard v. Blue Hills Bank, 135 S. Ct. 1686 (2015). Chief Justice Roberts wrote for the unanimous Court. The opinion held that the denial of confirmation is not a final order. Debtors must either have their cases dismissed or confirm a different plan before they can appeal an order denying confirmation. The relevant "proceeding" that must be concluded for appeal is "the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward." The denial of confirmation leaves that process open and the debtor free to propose another plan and so is not "final."

Harris v. Viegelahn, 135 S. Ct. 1829 (May 8, 2015) (appeal from ***Viegelahn v. Harris***, 757 F.3d 468 (5th Cir. 2014) which is now reversed). Justice Ginsburg authored the unanimous opinion of the Court, which holds that "a debtor who converts to chapter 7 is entitled to return of any postpetition wages not yet distributed by the Chapter 13 trustee." The conversion from chapter 13 to chapter 7 is effective immediately upon filing of notice and the chapter 13 trustee's services are terminated immediately upon filing of the notice of conversion under § 348(e). This result comports with the Congressional design that protects postpetition wages from entering the converted chapter 7 estate under § 348(f)(1)(A) in the absence of bad faith. The chapter 13 trustee has no authority to perform "services" under § 1326(c), including making payments to creditors, upon conversion. Further, the binding effect of a confirmed plan under § 1327(a) and the instruction that the trustee distribute payments in accordance with the plan under § 1326(a)(2) cease to apply upon conversion. The Court states that distributing funds to creditors is not an authorized "winding up" task under Rule 1019. While the postpetition wages held by the chapter 13 trustee "may have been" property of the estate prior to conversion, "estate property does not become property of creditors until it is distributed to them."

Wellness International Network, Ltd. v. Sharif, 135 S. Ct. 1932 (May 26, 2015). Justice Sotomayor authored the Court's opinion; Justice Alito filed an opinion concurring in part and concurring in the judgment; Chief Justice Roberts filed a dissenting opinion in which Justice Scalia joined and in which Justice Thomas joined in part; Justice Thomas filed a dissenting opinion. The Court described a “Stern” claim as one over which the bankruptcy court has statutory authority to enter a final judgment but is prohibited from doing so on constitutional grounds. By drawing on analogies to the functions performed by magistrates, referees, and arbitrators, as well as historical support for allowing parties to consent to an adjudication in federal court, the Court concludes that allowing Article I bankruptcy judges to decide matters submitted to them by consent does not violate the separation of powers so long as an Article III court retains supervisory authority. The parties’ consent must be “knowing and voluntary.” The consent may be implied, so long as the parties were made aware of the need for consent and their right to refuse to consent, but nevertheless voluntarily proceeded in the case in bankruptcy court (described as the non-Article III adjudicator). The Court encourages bankruptcy courts to ensure that consent is express, as a matter of “best practice” to ensure the consent is knowing and voluntary and to avoid later litigation over the issue of consent. The case was remanded for the Seventh Circuit to decide if Sharif’s actions amounted to a knowing and voluntary consent.

In the *Sharif* case, the underlying issue was whether assets of a certain trust were in fact assets of the estate given that the trust was alleged to be the debtor’s alter ego, so that the concealment of those trust assets by the debtor would justify denial of discharge.

Bank of America v. Caulkett, 135 S. Ct. 1995 (June 1, 2015). Justice Thomas authored the opinion of the Court, which was joined in part by Justices Kennedy, Bryer, and Sotomayor. The Court reversed the 11th Circuit and confirmed the continuing validity of *Dewsnup v.Timm*, 502 U.S. 410 (1992), which held that a chapter 7 debtor could not “strip down” a lien on real property to its judicially determined value, given that the claim was both “allowed” and “secured” and so could not be “not an allowed secured claim” under § 506(d). The Court determined that § 506(d) does not permit a chapter 7 debtor to strip off a completely underwater junior mortgage lien. The Eleventh Circuit has been allowing such strip offs under *McNeal v. GMAC Mortg., LLC (In re McNeal)*, 735 F.3d 1263 (11th Cir. 2012) and following *Folendore v. United States Small Bus. Admin.*, 862 F.2d 1537 (11th Cir. 1989). The Court held that the claims were “allowed secured claims” for purposes of § 506(d), given that the claims were (1) allowed under § 502, and (2) secured by a mortgage, without regard to the lack of value in the mortgaged property under § 506(a).

Baker Botts L.L.P. v. ASARCO LLC, 135 S. Ct. 2158 (June 15, 2015). Justice Thomas authored the opinion of the Court. Justice Sotomayor filed an opinion concurring in part and concurring in the judgment. Justice Breyer filed a dissenting opinion, in which Justices Ginsburg and Kagan joined.   The Court ruled that the bankruptcy code, particularly §§ 327(a) and 330(a)(1), does not permit bankruptcy courts to award fees to professionals for work performed in defending their fee applications. Such defense of a fee award is not “reasonable compensation for actual, necessary services rendered” because defending the fees does not serve the estate, and does not aid the administration of the bankruptcy estate. Absent statutory language that allows for the fee-defense fees, which are not in aid of administration of the estate, the American rule controls. Under the American rule, no attorney is entitled to fees from the opposing party for defending the attorney’s fee award absent explicit statutory authority. Rule 9011 serves to deter bad-faith fee award challenges. This case, at first glance, appears to call into question the Eleventh

Circuit's recent ruling in DVI Receivables, wherein the circuit court allowed "fees on fees" for the filing of an adversary proceeding to collect fees awarded under § 303(i). However, upon closer reading, the statutory text of § 303(i) was the statutory authority for the fee-collection fees in DVI Receivables, not §§ 327 and 330, and it is distinguishable on that basis.