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A Guiding Light: Safety Harbor

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In re Safety Harbor Resort and Spa 456 B.R. 703 (Bankr. M.D. Fla. 2011)

by Nicholas E. Williams

"The sky is falling! The sky is falling!"[1] Or is it? Today, courts across the country face a difficult task in light of the Supreme Court's recent decision regarding bankruptcy courts' jurisdiction, *Stern v. Marshall*.[2] *Stern* held bankruptcy courts are constitutionally proscribed from entering final judgment based on a private, state-law counterclaim "that is not resolved in the process of ruling on a creditor's proof of claim."[3] A bankruptcy court must now consider *Stern* when a litigant objects to the court's authority. With over 3,000 adversary proceedings pending in the Middle District of Florida for the month of July 2012 alone,[4] *Stern*

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1 Chicken Little (Walt Disney Pictures 2005); *see In re* BankUnited Fin. Corp., 462 B.R. 885, 890 (Bankr. S.D. Fla. 2011) ("Since [*Stern*'s] release, a maelstrom of opinions and articles have been written about the scope of *Stern*, ranging in tone from 'much ado about nothing' to 'the end of the bankruptcy world as we know it.'"); *see also In re* Teleservices Grp., Inc., 456 B.R. 318, 323 (Bankr. W.D. Mich. 2011) ("[B]ombshell does fairly describe *Stern*'s impact upon the more practical issue of how bankruptcy judges are to perform what the [bankruptcy] [c]ode still calls us to do.")

2 131 S. Ct. 2594 (2011).

3 *See id.* at 2620.

4 United States Bankruptcy Court Middle District of Florida, *Statistics for the Middle District of Florida* (July 2012), http://www.flmb.uscourts.gov/statistics/2012/july.pdf.

could notably impact how districts manage bankruptcy cases. A broad reading of *Stern* could mean many bankruptcy matters must be added to the already crowded district courts' dockets, while a narrow reading will only minimally affect the current division of labor.

In *In re Safety Harbor Resort and Spa*,[5] the Honorable Michael G. Williamson[6] analyzed *Stern* and provided a guiding light in our common law. This Comment examines *Safety Harbor*, preliminarily to provide its factual background. In order to explicate the *Safety Harbor* decision, this Comment then reviews the Supreme Court's jurisprudence regarding bankruptcy courts' constitutional authority and the modern bankruptcy code ("the Code"). Thereafter, this Comment provides a summary of *Safety Harbor* and an analysis of its interpretation of *Stern*.

Factual Background: Setting Up *Safety Harbor*

Before filing a Chapter 11 bankruptcy petition, the would-be debtor, Safety Harbor Resort and Spa, LLC (SHS), obtained a loan from Wells Fargo Bank.[7] The debtor's parent company, Olympia Development Group (Olympia), guaranteed the loan.[8] Subsequent to SHS's Chapter 11 filing, Wells Fargo Bank sold the SHS loan to German American.[9] The loan included a $13.8 million secured claim and a $15.9 million unsecured claim.[10] In bankruptcy, SHS proposed a reorganization plan requesting that Olympia be released from the guaranty in exchange for contributing substantial assets deemed necessary for the debtor's reorganization.[11] SHS proposed to satisfy German American's claim through (1) a $3 million contribution from Olympia, (2) the sale of land, and (3) the restructuring of the loan.[12]

5 456 B.R. 703 (Bankr. M.D. Fla. 2011).

6 The Honorable Michael G. Williamson has served as a bankruptcy judge in the Middle District of Florida since his appointment in 2000. 1 ALMANAC OF THE FEDERAL JUDICIARY, 11th Circuit, at 64 (Megan Rosen ed., 2012). Before that Judge Williamson practiced with Kay, Gronek & Latham. *Id.* Judge Williamson graduated from Duke University in 1973 and from the Georgetown University Law Center in 1976. *Id.*

7 *Safety Harbor*, 456 B.R. at 705.

8 *Id.*

9 *Id.* at 706.

10 *Id.*

11 *Id.*

12 *Id.*

German American objected to the plan, specifically Olympia's release, and moved the court to impose "lock-up" restrictions[13] on Olympia and the reorganized SHS in order to protect the value of the loan's balance.[14] In lieu of generally releasing Olympia from its guaranty, the court enjoined German American from pursuing Olympia for four years.[15] As part of confirming the plan, Judge Williamson imposed the "lock-up" restrictions on SHS and Olympia.[16] SHS objected on the basis of *Stern v. Marshall* and claimed the bankruptcy court did not have the constitutional authority to impose "lock-up" restrictions on Olympia.[17] Accordingly, to determine whether the court could impose the "lock-up" restrictions on Olympia, Judge Williamson had to "review[] the *Stern* decision."[18]

Ultimately, Judge Williamson held bankruptcy courts' constitutional authority to impose "lock-up" restrictions was not affected by *Stern v. Marshall*[19] and "lock-up" restrictions were integral to confirming Safety Harbor's plan.[20]

A Brief History: Bankruptcy Courts Under Scrutiny

The United States Supreme Court has twice invalidated bankruptcy courts' power to enter final judgment in certain civil actions.

As Article I states, bankruptcy courts cannot constitutionally enter final judgment on the basis of a state-law claim against a non-

13 "Lock-up" restrictions are restrictions on a reorganized debtor's post-confirmation behavior. In this case, the creditor suggested that the debtor and its parent company be prohibited from the following: "(i) issuing additional equity interests to anyone other than the non-debtor guarantors; (ii) borrowing any additional funds; (iii) transferring or encumbering their equity interests in the [d]ebtor; (iv) materially changing their management personnel or the business in which they are engaged; or (v) purchasing other companies." *Id.* at 707.

14 *Id.* at 705.

15 *Id.* at 706–07.

16 *Id.* at 705.

17 *See id.*

18 *Id.* at 707.

19 Congress vested bankruptcy courts with the power to "hear and determine . . . all core proceedings . . . and . . . enter appropriate orders and judgments . . ." 28 U.S.C. § 157(b)(1) (2006). Congress also provided an illustrative list of core proceedings, including "matters concerning the administration of the estate" and "counterclaims by the estate against persons filing claims against the estate." § 157(b)(2).

20 *Safety Harbor*, 456 B.R. at 719.

consenting party. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, the Supreme Court decided whether the Bankruptcy Act of 1978 conferred jurisdiction on bankruptcy courts beyond that allowed to non-Article III courts.[21] A Chapter 11 debtor brought suit against another company on the basis of a state-law claim.[22] The Supreme Court held that allowing a bankruptcy court to adjudicate those claims violated the doctrine of separation of powers.[23] The plurality opinion[24] explained that the Constitution requires that federal judicial power be held in an independent judiciary, defined as judges guarded by the protections enumerated in Article III.[25] The plurality rejected the claims that bankruptcy courts are territorial courts, military courts, or adjuncts of the district courts.[26] Implying that bankruptcy courts' constitutional authority derives from the "public rights" nature of the claims those courts adjudicate, the opinion posited that discharging debts "may well be a 'public right,'" but adjudicating private, state-law claims "obviously is not."[27] While Chief Justice William Rehnquist's concurrence[28] did not agree that reaching the 1978 Bankruptcy Act was necessary,[29] his analysis was similar to the plurality's. Thus six justices agreed on the conclusion that a bankruptcy court cannot adjudicate purely state-law claims (without the defendant's consent).

In 1984, Congress amended the Code to ameliorate the constitutional problems announced in *Northern Pipeline*.[30] Although

21 458 U.S. 50, 52 (1982) (plurality opinion). After deciding that the bankruptcy court could not hear the state-law claim, the Court analyzed whether the rule should be applied retroactively. *Id.* at 87–89. Because it is not relevant to the discussion of *Safety Harbor*, the retroactivity analysis is not addressed in this Comment.

22 The state-law claims included, *inter alia*, a breach of contract claim. *Northern Pipeline*, 458 U.S. at 56.

23 *See id.* at 87; *see also id.* at 91–92 (concurring in the judgment).

24 The plurality was authored by Justice Brennan and joined by Justices Blackmun, Marshall, and Stevens. *Id.* at 51.

25 *Id.* at 57–60. Article III requires that judges enjoy lifetime appointment during "good behavior" and protection of their compensation from diminution. U.S. CONST. art. III, § 1.

26 *See Northern Pipeline*, 458 U.S. at 64–67, 77–83 (plurality opinion).

27 *Id.* at 71.

28 Justice O'Connor joined the concurrence. *Id.* at 89 (concurring in the judgment).

29 Because the filing of the suit was not part of the bankruptcy action, the bankruptcy court is not exercising power given to it by the 1978 Bankruptcy Act. *See id.* at 89–90 (Rehnquist, C.J.).

30 In 1984, Congress amended the Code and created the modern jurisdiction of bankruptcy courts. District courts have original and exclusive jurisdiction

many expected the Court to decide the constitutionality of these changes in *Granfinanciera v. Nordberg*, the Supreme Court passed on that broad question.[31]

Almost twenty-five years after *Northern Pipeline*, a widow alleged her husband's son tortiously interfered with her husband's will, and she filed suit in a Texas probate court.[32] Before the tortious interference claim was decided in Texas, the widow filed for bankruptcy.[33] In *Stern v. Marshall*, the son filed a proof of claim and a defamation suit in the bankruptcy court.[34] The widow filed her counterclaim to the defamation action in the bankruptcy court, and the bankruptcy court entered judgment in favor of the widow in both suits.[35] The son appealed, challenging the bankruptcy court's authority to adjudicate the widow's counterclaim.[36]

According to *Stern*, the bankruptcy court had statutory but not constitutional authority to adjudicate the counterclaim at issue.[37] Congress specifically enumerated counterclaims brought by the estate as "core proceedings" that the bankruptcy court has authority to hear.[38] However, the Court also analyzed whether the bankruptcy court had constitutional authority to hear the counterclaim.[39] The Court analogized the counterclaim at issue in *Stern* to the claim at issue in *Northern Pipeline*.[40] As in *Northern Pipeline*, the *Stern* Court explored the possibilities that could allow

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over all cases under title 11 of the Code. 28 U.S.C. § 1334(a) (2006). The district courts may refer cases to the bankruptcy judges in the district. § 157(a). Bankruptcy judges are appointed by the United States Courts of Appeals. § 152(a)(1). For more information regarding the jurisprudential and legislative history of the Code, *see generally* Elizabeth Warren & Jay Lawrence Westbrook, The Law of Debtors and Creditors 104–05 (Vicki Been et al. eds., 6th ed. 2009) (summarizing the development of the modern bankruptcy code).

31 In *Granfinanciera*, the "sole issue . . . is whether the Seventh Amendment confers on [a person who did not submit a claim against but was sued by the bankruptcy estate for a fraudulent conveyance] a right to a jury trial in the face of Congress' decision to allow a non-Article III tribunal to adjudicate the claims against them." 492 U.S. 33, 36, 50 (1989).

32 *Stern*, 131 S. Ct. at 2601.

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*

37 "Core proceedings" always arise under Title 11 or in a Title 11 proceeding, and 28 U.S.C. § 157 (2006) specifically enumerates the counterclaims brought by the estate. *See Stern*, 131 S. Ct. at 2604–05; *see also supra* note 19.

38 *See* 28 U.S.C § 157(b)(2)(C) (2006); *see also Stern*, 131 S. Ct. at 2404–05.

39 *See Stern*, 131 S. Ct. at 2404–05.

40 *See id.* at 2609–11.

the bankruptcy court to adjudicate the claim. The Court noted that the claims at issue were not "public rights."[41] Additionally, the Court reasoned that bankruptcy courts are neither "adjuncts" of the district courts[42] nor part of an agency scheme.[43] In *Stern* and *Northern Pipeline*, both claims were state-law claims brought against parties that did not consent to the court's jurisdiction over the claim.[44] Concluding that adjudicating those claims required judicial power that Congress improperly bestowed on a non-Article III court, the Court held that the bankruptcy court did not have constitutional authority to enter final judgment.[45]

Justice Stephen Breyer dissented[46] and warned of the potential practical consequences of the majority's decision:

> Because the volume of bankruptcy cases is staggering . . . a constitutionally required game of jurisdictional ping-pong between courts would lead to inefficiency, increased cost, delay, and needless additional suffering . . . .[47]

The majority answered the dissent's concerns: "[W]e are not convinced that the practical consequences . . . are as significant as [the debtor] and the dissent suggest."[48] The majority asserted that the Code already prohibits the bankruptcy courts from exceeding their constitutional authority.[49] Further, its holding did not "meaningfully

41 *See id.* at 2611–15; *see also Northern Pipeline*, 458 U.S. at 67–71 (plurality opinion); *Northern Pipeline*, 458 U.S. at 91 (Rehnquist, C.J., concurring in the judgment).

42 *See Stern*, 131 S. Ct. at 2618–19; *see also Northern Pipeline*, 458 U.S. at 63–64, 81–86 (plurality opinion); *Northern Pipeline*, 458 U.S. at 91 (Rehnquist, C.J., concurring in the judgment).

43 *See Stern*, 131 S. Ct. at 2615; *see also Northern Pipeline*, 458 U.S. at 67–71 (plurality opinion); *Northern Pipeline*, 458 U.S. at 89–91 (Rehnquist, C.J., concurring in the judgment).

44 *See Stern*, 131 S. Ct. at 2611.

45 *See id.*; *see also Northern Pipeline*, 458 U.S. at 87 (plurality opinion); *id.* at 91–92 (Rehnquist, C.J., concurring in the judgment).

46 Joined by Justices Ruth Bader Ginsburg, Sonia M. Sotomayor, and Elena Kagan. *See Stern*, 131 S. Ct. at 2621 (Breyer, J., dissenting).

47 *Id.* at 2630.

48 *Id.* at 2619 (majority opinion).

49 Specifically, the opinion refers to 28 U.S.C. § 1334(c) (2006), which provides that bankruptcy courts may abstain from certain claims related to state law. *Id.* Furthermore, 28 U.S.C. § 157(c)(1) (2006) requires district courts to review de novo, prior to entering final judgment, matters "related to" bankruptcy proceedings. *Id.* at 2620.

change[] the division of labor in the current statute" because the issue in *Stern* was "narrow" and Congress only exceeded its authority in "one isolated respect."[50] Whatever the scope of the opinion, *Stern* must be considered to determine the constitutional relationship between bankruptcy courts and district courts.

Presently, district courts have original jurisdiction over bankruptcy cases and proceedings,[51] but district courts may refer those cases and proceedings to bankruptcy courts.[52] After referral, bankruptcy judges may enter final orders in "core proceedings"[53] but still must submit "proposed findings of fact and conclusions of law to the district court" for review in "non-core proceedings."[54] Parties may appeal bankruptcy orders, both interlocutory and final, to the district courts.[55] The way courts interpret *Stern v. Marshall* will shape the future of modern bankruptcy proceedings.

A Summary of *Stern*: The *Safety Harbor* Decision

Safety Harbor set forth an accurate, narrow reading of *Stern v. Marshall*, holding that the bankruptcy court had the constitutional authority to impose "lock-up" restrictions on Olympia as part of confirming SHS's plan.[56] Exhibiting sound interpretation and jurisprudence, *Safety Harbor* argued that the *Stern* decision did not alter bankruptcy courts' constitutional authority regarding "core proceedings" not at issue in *Stern*.[57]

In his analysis, Judge Williamson briefly restated the Supreme Court's declaration that Article III of the Constitution prohibits Congress from giving bankruptcy courts the jurisdiction of Article III courts.[58] Then, he recounted the Supreme Court's discussion of *Northern Pipeline* and the applicability of the "public-rights" exception for non-Article III courts.[59] Judge Williamson also reviewed *Stern*'s rejection of the following arguments: (1) the counterclaim in *Stern* is

50 *Id.*
51 *See* 28 U.S.C. § 1334(a) (2006).
52 *See Id.* § 157(a).
53 *See* § 157(b)(1).
54 *See* § 157(c)(1).
55 *See Id.* § 158(a). While some bankruptcy orders may be appealed directly to the courts of appeals, *see id.*, this practice is not as common as appeals to the district courts.
56 *In re* Safety Harbor Resort and Spa, 456 B.R. 703, 705 (Bankr. M.D. Fla. 2011).
57 *Id.*; *see also infra* section IV.
58 *Safety Harbor* at 710–11.
59 *See id.* at 711.

a "public right," (2) the filing of a proof of claim in the bankruptcy court impliedly consents to the adjudication of related counterclaims, and (3) the bankruptcy courts are adjuncts of the district courts.[60]

After that, Judge Williamson analyzed *Stern*'s holding and scope.[61] According to Judge Williamson, *Stern* held, "the bankruptcy court lacked the constitutional authority to enter a final judgment on a state-law claim that was not resolved in the process of ruling on a creditor's proof of claim."[62] Thrice quoting language from *Stern* for support, he explained that *Stern*'s holding was "narrow," and it will not "'meaningfully change' the division of labor under section 157" because "Congress only exceeded the limits of Article III in 'one isolated respect.'"[63] Judge Williamson pointed out that not even all state-law counterclaims were removed from the realm of bankruptcy courts.[64] The bankruptcy courts may still hear counterclaims that either stem from bankruptcy law itself or leave nothing to be adjudicated once the proof of claim has been decided.[65] In fact, "nothing in [*Stern*] actually limits a bankruptcy court's authority to adjudicate other 'core proceedings' identified in section 157(b)(2)."[66] Further supporting its position, the court asserted that *Stern* did not limit bankruptcy courts' authority to adjudicate any "core proceeding," except those listed under 28 U.S.C. § 157(b)(2)(C).[67] Judge Williamson's *Safety Harbor* opinion provided a well-reasoned argument that *Stern* should be read narrowly.

Prudent Jurisprudence: *Safety Harbor*'s Narrow Reading of *Stern*

Judge Williamson's early reading of *Stern* is demonstrably prudent. While *Stern* may be viably interpreted both broadly and narrowly, numerous courts have agreed with *Safety Harbor*'s interpretation.[68] Some districts, including the Middle District of

60 *See id.*
61 *See id.* at 715.
62 *Id.*
63 *See id.*
64 *See id.*
65 *See id.*
66 *Id.*
67 *Id.*
68 *See, e.g.*, *In re* Quigley Co., 676 F.3d 45, 52 (2d Cir. 2012) (upholding a bankruptcy court's jurisdiction to enjoin the debtor and its parent company from taking action on certain pending litigation); *In re* Appalachian Fuels, LLC, 472 B.R. 731, 739–41 (E.D. Ky. 2012) (citing *Safety Harbor* repeatedly and approvingly).

Florida, have adjusted local procedures in light of *Stern*'s fallout. Moreover, reading *Stern* broadly could prevent meaningful appellate review.

In the wake of *Stern v. Marshall*, bankruptcy and district judges alike must decipher the impact of the decision on the constitutional authority of bankruptcy courts to decide "core proceedings." Challenges based on *Stern* will be raised through objections in bankruptcy courts and motions to withdraw reference in district courts. The breadth of *Stern*'s application will determine the depth of its consequences.

Stern's holding is inconsistent with its analysis, so courts disagree on the scope of the majority's opinion.[69] The rationale in *Stern* was broad[70] because the Court distilled years of Supreme Court precedent into a number of considerations relevant to the bankruptcy courts' constitutional authority.[71] These cases draw from several substantive contexts, illustrating the potentially broad application of the constitutional authority analysis.[72] However, narrow interpretations of the Supreme Court's holding are justifiable because the majority in *Stern* explicitly limited the decision's application.[73] Furthermore, the majority did not even invalidate the relevant subsection of § 157.[74] In fact, the majority

69 *Compare In re* Teleservices Grp., Inc., 456 B.R. 318, 320 (Bankr. W.D. Mich. 2011) (holding the bankruptcy court *did not have* constitutional authority to enter final judgment in a fraudulent conveyance action after analyzing *Stern* among other cases), *with In re* Bujak, No. 10–03569–JDP, 2011 WL 5326038, at *5 (Bankr. D. Idaho Nov. 3, 2011) (holding the bankruptcy court *did have* constitutional authority to hear fraudulent conveyance actions after analyzing *Stern*).

70 George W. Kuney, *Stern v. Marshall: A Likely Return to the Bankruptcy Act's Summary/Plenary Distinction in Article III Terms*, 21 Norton J. Bankr. L. & Prac., 1, 9 (2012).

71 *See Stern v. Marshall*, 131 S. Ct. 2594, 2609–13 (2011) (citing, *inter alia*, *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272 (1856); *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982); *Crowell v. Benson*, 285 U.S. 22 (1932)).

72 In *Murray's Lessee*, the solicitor of the treasury issued a distress warrant. *See* 59 U.S. at 274. In *Northern Pipeline*, a bankruptcy judge entered final judgment for a debtor's state-law claim. *See* 458 U.S. at 56–57. In *Crowell*, a deputy commissioner of the United States Employees' Compensation Commission ruled on an employee's claim against his employer. *See* 285 U.S. at 36.

73 *See supra* notes 49–51, 65, and accompanying text.

74 *See Stern*, 131 S. Ct. at 2619–20 (discussing the limited circumstances where 28 U.S.C § 157(b)(2)(C) (2006) grants bankruptcy courts unconstitutional authority).

predicted its decision would not result in sweeping changes.[75] Nevertheless, a broad rationale combined with limiting language allows for both broad and narrow interpretations.

Many courts have approved of *Safety Harbor*'s narrow reading of *Stern*.[76] In an order denying a motion to withdraw reference, the Middle District of Florida's Chief Judge Anne C. Conway cited *Safety Harbor* positively.[77] The Chief Bankruptcy Judge of the Southern District of Florida, the Honorable Paul G. Hyman, cited *Safety Harbor* throughout an order that overruled an objection to a bankruptcy court's adjudicating a fraudulent transfer action.[78] In the Southern District of New York, Judge Scheinlin also cited *Safety Harbor*, among other decisions, in support of her argument that *Stern* has not been given an "expansive effect."[79] In less than a year, *Safety Harbor* has been cited in more than twenty decisions in at least seventeen separate districts. Many courts have agreed that Judge Williamson provided a compelling interpretation of *Stern* in *Safety Harbor*.[80]

In the post-*Stern* world, districts across the country have adjusted local procedures. For example, Chief Judge Conway amended the Middle District of Florida's standing order of reference on February 22, 2012.[81] It directed bankruptcy judges to enter proposed findings of fact and conclusions of law if they conclude they do not have constitutional authority to enter a final judgment.[82] Additionally, Chief Judge Conway's order explicitly allows the district court to treat final orders issued by the bankruptcy court as proposed findings of fact and conclusions of law.[83] Other districts have issued

75 *See id.* at 2620 ("We do not think the removal of counterclaims such as [the debtor's] from core bankruptcy jurisdiction meaningfully changes the division of labor in the current statute . . . .").

76 *See, e.g.*, *In re* Connelly, No. 11–03315–KRH, 2012 WL 1098431, at *6 (Bankr. E.D. Va. Mar. 30, 2012).

77 *In re* Land Resource, LLC, No. 6:11-cv-1808-Orl-22 (M.D. Fla. Feb. 2, 2012).

78 *See In re* Custom Contractors, LLC, 462 B.R. 901, 905–06, 908, 910 (Bankr. S.D. Fla. 2011) (citing *Safety Harbor*, 456 B.R. 703, 715, 717, 718 (Bankr. M.D. Fla. 2011), for several points and holding the Internal Revenue Service consented to bankruptcy court jurisdiction).

79 *See In re* Extended Stay, Inc., 466 B.R. 188, 202, 203 (S.D.N.Y. 2011).

80 *See, e.g.*, *In re* Ambac Fin. Grp., Inc., 457 B.R. 299, 308 (Bankr. S.D.N.Y. 2011).

81 *In re* Standing Order of Reference Cases arising Under Title 11, United States Code, 6:12-mc-26-Orl-22 (M.D. Fla. Feb. 22, 2012).

82 *See id.*

83 *See id.*

similar standing orders of reference.[84] These steps may diminish the impact of a broad reading of *Stern* because district judges can more efficiently administrate bankruptcy courts' incorrect rulings. But even before these changes, Judge Williamson's point-by-point examination of *Stern* presented an insightful, accurate interpretation. These district-wide changes evidence courts' recognition that *Stern*'s fallout must be managed carefully.

In this author's opinion, part of that management must include a jurisprudential choice because applying *Stern* broadly at the bankruptcy-court level could create a systemic problem. To understand how narrow applications of *Stern* facilitate appellate review, it is necessary to understand how *Stern* objections will arise.

A bankruptcy judge faces a discrete set of choices when presented with a particular matter for adjudication. The bankruptcy judge may issue a final order[85] or propose findings of fact and conclusions of law to the district court.[86] Like the orders of all Article I courts, every bankruptcy order has two distinct analyses: the threshold question of constitutional authority and the merits of the issue.

For an appellate court to hold whether the bankruptcy court applied *Stern* correctly, the bankruptcy court must enter final judgment. If a bankruptcy judge issues a final order and it is appealed to the district court, the district judge can affirm the order, remand for additional proceedings, or reverse and enter its own order. If a bankruptcy judge proposes findings of fact and conclusions of law, no *Stern* issue will be in the record because the district court will have entered final judgment. An appellate court

84 *See In re* Standing Order of Reference Re: Title 11 (D. Del. Feb. 29, 2012) ("The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III."); *In re* Standing Order of Reference Re: Title 11, No. 12 Misc. 00032 (S.D.N.Y. Feb. 1, 2012) (same).

85 *See supra* note 54 and accompanying text.

86 *See supra* note 55 and accompanying text. Theoretically, bankruptcy judges could also abstain based on the principles of federal court abstention. The abstention doctrine is the idea that courts will not hear a case for a particular reason, usually involving deference to a different court's authority. *See, e.g.*, R.R. Comm'n v. Pullman Co., 312 U.S. 496 (1941). These concepts do not cover the relationship between district courts and bankruptcy courts. Bankruptcy courts could abstain based on 28 U.S.C. § 1334(c), but this would also leave entry of a final order for the district court.

cannot evaluate the bankruptcy courts' constitutional authority if the final order is entered by the district court not the bankruptcy court. The issue would not be properly before the court. For this reason, interpreting *Stern* in bankruptcy courts too broadly may deprive appellate courts of the opportunity to review the issue.

Judge Williamson's interpretation of *Stern* is more than just intellectually honest. It also preserves issues for appeal and allows Article III courts to declare bankruptcy courts' jurisdiction in light of *Stern*. From North Carolina[87] to Hawaii,[88] *Safety Harbor* has been used to bolster and inform discussions of *Stern*.[89] As an article in the *Florida Bar Journal* aptly observed, "Tampa Bankruptcy Judge Michael G. Williamson grappled with some of the issues raised by *Stern v. Marshall* and seems to have put the decision in its proper perspective . . . ."[90]

87 *See In re* Freeway Foods of Greensboro, Inc., 466 B.R. 750, 767, 771 (Bankr. M.D.N.C. 2012).

88 *See In re* The Mortgage Store, Inc., 464 B.R. 421, 425 (D. Haw. 2011) (quoting *Safety Harbor*, 456 B.R. at 717).

89 *See, e.g., In re* Ambac Fin. Group, Inc., 457 B.R. 299, 308 (Bankr. S.D.N.Y. 2011) ("This is the correct view of *Stern v. Marshall* and of the Court's jurisdiction and constitutional authority in this case."); *In re* Wilderness Crossings, LLC, No. 09–14547, 2011 WL 5417098, at *2 (Bankr. W.D. Mich. Nov. 8, 2011); *In re* Direct Response Media, Inc., 466 B.R. 626, 645 (Bankr. D. Del. 2012).

90 Roberta A. Colton & Stephanie C. Lieb, *Is Bankruptcy Court Jurisdiction in Flux Because of Anna Nicole Smith?*, FLA. B.J., Jan. 2012, at 39.