

Cases Discussing *Stern v. Marshall*: September 1, 2011 through November 30, 2011

Subject	Circuit Court Judge	Decision Date	Case/Comment	Holding Type
Avoidance Actions	2nd S.D.N.Y. Scheidlin	Nov. 10, 2011	<i>In re Extended Stay, Inc.</i> , Adv. Pro. 11–2398, 2011 U.S. Dist. LEXIS 131349 (S.D.N.Y. Nov. 10, 2011) – district court denied withdrawal of the reference of various fraudulent transfers actions; <i>Stern</i> does not mandate withdrawal; many of the claims are asserted against creditors who filed proofs of claim and the plaintiff’s claims would be resolved in the process of ruling on the claims; bankruptcy court is to make initial determination of its constitutional authority; at a minimum, bankruptcy court can submit proposed findings and conclusions on avoidance actions.	Neutral
Avoidance Actions	2nd S.D.N.Y. Rakoff	Nov. 28, 2011	<i>Picard v. Flinn Inv., LLC</i> , --- F. Supp. 2d ---, No. 11 Civ. 5223 (JSR), 2011 U.S. Dist. LEXIS 136627 (S.D.N.Y. Nov. 28, 2011) – district court granted motion to withdraw the reference on limited basis to determine, among other things, whether <i>Stern</i> prevents a bankruptcy court from finally resolving fraudulent transfer claims and if so, whether the bankruptcy court has the authority to render findings of fact and conclusions of law before final resolution.	Cautionary
Avoidance Actions	2nd Bankr. S.D.N.Y. Drain	Nov. 30, 2011	<i>Kirchner v. Agoglia (In re Refco, Inc.)</i> , --- B.R. ---, Adv. No. 07-3060 (RDD), 2011 Bankr. LEXIS 4496 (Bankr. S.D.N.Y. Nov. 30, 2011) – bankruptcy court entered final judgment on fraudulent transfer action and in the alternative as proposed findings and conclusions; avoidance actions under sections 544(b) and 548 are “arising under” actions; unlike the state law counterclaim in <i>Stern</i> , a fraudulent transfer action flows from a federal regulatory scheme; pursuit of avoidance claims are a core aspect of bankruptcy administration since the 18th century; courts since <i>Granfinanciera</i> continue to hold that bankruptcy courts have constitutional authority to adjudicate fraudulent transfer actions; <i>Stern</i> is self-limiting.	Narrow
Avoidance Actions	3rd Bankr. E.D. Pa. Frank	Nov. 15, 2011	<i>Goldstein v. Eby-Brown (In re Universal Mktg., Inc.)</i> , 459 B.R. 573 (Bankr. E.D. Pa. 2011) – bankruptcy court denied a motion to dismiss actions for pre and post-petition fraudulent transfers; trustee filed claim under Section 544 not the UFTA; distinction is relevant even though the avoidance power in Section 544 is premised on state law; <i>Stern</i> involved a state law claim independent of federal bankruptcy law; criticizes <i>Blixseth</i> .	Narrow

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Avoidance Actions	4th E.D. Va. Brinkema	Nov. 18, 2011	<i>McCarthy v. Wells Fargo Bank (In re El-Atari)</i> , No. 1:11cv1090, 2011 U.S. Dist. LEXIS 133423 (E.D. Va. Nov. 18, 2011) – district court denied motion to withdraw the reference; bankruptcy court does not lose power post- <i>Stern</i> to hear fraudulent conveyance action though it can no longer determine them; even if fraudulent conveyance actions are no longer core proceedings, they are “related to” proceedings.	Expansive
Avoidance Actions	5th W.D. Tex. Cardone	Nov. 9, 2011	<i>City Bank v. Compass Bank</i> , No. EP-11-MC-372-KC, 2011 U.S. Dist. LEXIS 129654 (W.D. Tex. Nov. 9, 2011) – district court denied motion to withdraw the reference on fraudulent transfer claim; district court assumed, without deciding, that the fraudulent transfer claim was non-core; court would withdraw the case if and when a jury trial became necessary; <i>Stern</i> prohibits a bankruptcy court from entering final judgment on a state law claim that is independent of a federal statutory scheme.	Expansive
Avoidance Actions	6th Bankr. W.D. Tenn. Latta	Oct. 5, 2011	<i>Tabor v. Kelly (In re Davis)</i> , Adv. No. 07-05181-L, 2011 Bankr. LEXIS 3764 (Bankr. W.D. Tenn. Oct. 5, 2011) – bankruptcy court submitted proposed findings of fact and conclusions of law on summary judgment over fraudulent transfer and preference actions; defendant did not file proof of claim, demanded jury, and did not consent to the bankruptcy court conducting the jury trial; under <i>Granfinanciera</i> and <i>Stern</i> , bankruptcy courts cannot adjudicate avoidance actions because they involve private rights, were historically suits at common law, and bankruptcy referees had no summary jurisdiction over them; if Seventh Amendment right to jury trial attaches, the action must be heard and decided in an Article III court.	Expansive
Avoidance Actions	6th Bankr. W.D. Mich. Dales	Nov. 8, 2011	<i>Hagan v. Classic Prod. Corp. (In re Wilderness Crossings, LLC)</i> , Adv. No. 11-80417, 2011 Bankr. LEXIS 5016 (Bankr. W.D. Mich. Nov. 8, 2011) – bankruptcy court entered default judgment on avoidance action; parties may waive <i>Stern</i> -based objections because <i>Stern</i> is not about jurisdiction.	Narrow

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Avoidance Actions	8th D. Minnesota Nelson	Sept. 21, 2011	<i>Kelley v. JPMorgan Chase & Co.</i> , Civil No. 11-193 (SRN/JJG), 2011 U.S. Dist. LEXIS 107427 (D. Minn. Sept. 21, 2011) – district court denied defendant’s motion for withdrawal of the reference in a number of fraudulent transfer and preference actions; claims at issue derived from or are dependent on bankruptcy law unlike in <i>Stern</i> ; no jurisdictional grounds for withdrawing the reference; bankruptcy court at the very least could submit proposed findings and conclusions to the district court.	Narrow
Avoidance Actions	9th N.D. Cal. Breyer	Dec. 13, 2011	<i>Heller Ehrman v. Arnold & Porter (In re Heller Ehrman LLP)</i> , No. C 11-04848 CRB, 2011 U.S. Dist. LEXIS 143223 (N.D. Cal. Dec. 13, 2011) – district court denied motion for withdrawal of reference on fraudulent transfer action; although Justice Roberts states that <i>Stern</i> is narrow, the Court’s rationale for its holding leads to the conclusion that bankruptcy courts cannot enter final orders on fraudulent conveyance actions; bankruptcy courts, however, may submit proposed findings and conclusions.	Expansive
Avoidance Actions	9th D. Haw. Seabright	Oct. 5, 2011	<i>Field v. Lindell (In re The Mortgage Store, Inc.)</i> , Civil No. 11-00439 JMS/RLP, 2011 U.S. Dist. LEXIS 123506 (D. Haw. Oct. 5, 2011) – district court denied motion for withdrawal of reference on Section 544(b) and 548 actions; even if a bankruptcy court no longer has authority to enter final orders on avoidance actions, it may still submit proposed findings and conclusions.	Neutral
Avoidance Actions	9th Bankr. N.D. Cal. Montali	Sept. 28, 2011	<i>Heller Ehrman v. Arnold & Porter (In re Heller Ehrman LLP)</i> , Adv. No. 01-3203DM, 2011 Bankr. LEXIS 3764 (Bankr. N.D. Cal. Sept. 28, 2011) – bankruptcy court recommended denial of motions to withdraw the reference on fraudulent transfer actions; while dicta in <i>Stern</i> may indicate that fraudulent transfer actions cannot be finally determined by bankruptcy courts, the holding is much narrower. (District Court denied motion for withdrawal of reference, but determined that a bankruptcy court cannot adjudicate fraudulent transfer actions).	Narrow

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Avoidance Actions	9th Bankr. D. Idaho Pappas	Nov. 3, 2011	<i>Gugino v. Canyon County (In re Bujak)</i> , Adv. No. 11-6038, 2011 Bankr. LEXIS 4291 (Bankr. D. Idaho Nov. 3, 2011) – bankruptcy court denied motions to dismiss avoidance actions filed under Section 544(b), 547(b), and 548(a); unlike <i>Stern</i> , trustee asserted substantive avoidance powers that “arise under” the Bankruptcy Code or “arise in” a bankruptcy case; <i>Stern</i> ’s comments about fraudulent conveyance actions are dicta; defendant filed proof of claim and therefore trustee’s claims were part of the allowance/disallowance process under Section 502(d).	Narrow
Avoidance Actions	10th D. Colo. Martínez	Oct. 31, 2011	<i>Mercury Co., Inc. v. FNF Sec. Acquisition, Inc.</i> , --- F. Supp. 2d ---, No. 11-cv-02488-WJM-BNB, 2011 U.S. Dist. LEXIS 125610 (D. Colo. Oct. 31, 2011) – district court denied motion to withdraw the reference on fraudulent transfer actions; parties consented to bankruptcy court adjudication by litigating the action in bankruptcy court for 19 months and admitting in pre- <i>Stern</i> pleadings that the fraudulent transfer actions were “core”; <i>Stern</i> “was explicitly narrow.”	Narrow
State Law Issues	1st Bankr. D. Mass. Feeney	Oct. 21, 2011	<i>In re Koufos</i> , Adv. No. 11-1185, 2011 Bankr. LEXIS 4087 (Bankr. D. Mass. Oct. 21, 2011) – bankruptcy court granted motion to dismiss debtor’s complaint because the debtor’s claims were not core or non-core; no value would be realized to the bankruptcy estate because the debtor asserted Massachusetts homestead exemption.	Neutral
State Law Issues	2nd S.D.N.Y. Preska	Sept. 19, 2011	<i>In re Fairfield Sentry Ltd.</i> , --- B.R. ---, No. 11 MC 224 (LAP), 2011 U.S. Dist. LEXIS 106275 (S.D.N.Y. Sept. 19, 2011) – district court reversed and remanded bankruptcy court’s denial of mandatory abstention; claims were state law based and not core because they were not “arising in” or “arising under”; no public rights exception; district court did not have to determine whether claims were “related to” because the bankruptcy court would have to reconsider mandatory abstention anyway.	Neutral

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State Law Issues	2nd S.D.N.Y. McMahon	Sept. 23, 2011	<i>Retired Partners of Coudert Bros. Trust v. Baker McKenzie LLP (In re Coudert Bros. LLP)</i> , App. Case No. 11-2785 (CM), 2011 U.S. Dist. LEXIS 110425 (S.D.N.Y. Sept. 23, 2011) – district court vacated bankruptcy court rulings on state law claims and converted the ruling to a report and recommendation; claims were “related to” and parties did not consent to bankruptcy court adjudication merely by participating in litigation; whether a bankruptcy court can finally adjudicate a matter post- <i>Stern</i> depends on whether the claim to be adjudicated involves a “public” or “private” right; <i>Stern</i> says nothing about the district court’s authority to hear and determine “related to” matters.	Expansive
State Law Issues	2nd S.D.N.Y. McMahon	Nov. 2, 2011	<i>Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP</i> , No. 11 civ. 5994 (CM), 2011 U.S. Dist. LEXIS 127898 (S.D.N.Y. Nov. 2, 2011) – district court withdrew the reference on various state law-based causes of action; parties agreed that actions were “related to”; whether a bankruptcy court can finally adjudicate a matter post- <i>Stern</i> depends on whether the claim to be adjudicated involves a “public” or “private” right; <i>Stern</i> goes further than <i>Marathon</i> and <i>Granfinanciera</i> ; district court had jurisdiction and power to adjudicate the “related to” matters under 28 U.S.C. § 1334(b).	Expansive
State Law Issues	3rd D. Del. Hillman	Sept. 9, 2011	<i>Kurz v. Emak Worldwide, Inc.</i> , Civ. No. 11-375-NLH, 2011 U.S. Dist. LEXIS 102906 (D. Del. Sept. 9, 2011) – district court denied motion for remand; plaintiffs asserted prepetition cause of action and after the defendant filed bankruptcy, the plaintiff filed a proof of claim on the same basis; because the two were identical, the bankruptcy court was required to adjudicate the action to resolve the proof of claim; <i>Stern</i> ’s holding is “very limited.”	Narrow
State Law Issues	3rd Bankr. D. Mass. Feeney	Oct. 27, 2011	<i>Lacey v. BAC Home Loans Serv., LP (In re Lacey)</i> , Adv. No. 10-1249, 2011 Bankr. LEXIS 4179 (Bankr. D. Mass. Oct. 27, 2011) – bankruptcy court denied motions to remand and abstain for hearing various state law claims; claims were “related to”; defendants did not consent, but bankruptcy court could still hear the matters and submit proposed findings of fact and conclusions of law under 28 U.S.C. § 157(c)(1).	Neutral

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State Law Issues	3rd Bankr. D.N.J. Stern	Nov. 1, 2011	<i>Bayonne Med. Ctr. v. Bayonne/Omni Dev., LLC (In re Bayonne Med. Ctr.)</i> , Adv. No. 09-1689, 2011 Bankr. LEXIS 4748 (Bankr. D.N.J. Nov. 1, 2011) – bankruptcy court entered summary judgment on state law non-core matters; parties consented to bankruptcy court adjudication; <i>Stern</i> dealt with adjudication of a statutorily core cause of action.	Narrow
State Law Issues	5th N.D. Tex. McBryde	Sept. 7, 2011	<i>Meyers v. Textron Fin. Corp. (In re AIH Acquisitions, LLC)</i> , No. 4:11-CV-379-A, 2011 U.S. Dist. LEXIS 101190 (N.D. Tex. Sept. 7, 2011) – district court vacated bankruptcy court’s dismissal of state law claims; appellees argued that appellants consented to bankruptcy court adjudication by seeking to intervene in adversary pre- <i>Stern</i> ; district court determined that a petition in intervention that asserts state law claims is not entitled to any greater bankruptcy status than the counterclaim filed in <i>Stern</i> .	Expansive
State Law Issues	5th Bankr. S.D. Tex. Isgur	Oct. 14, 2011	<i>Hill v. New Concept Energy, Inc. (In re Yazoo Pipeline Co., L.P.)</i> , 459 B.R. 636 (Bankr. S.D. Tex. 2011) – bankruptcy court granted in part and denied in part motions to dismiss various state law claims; <i>Stern</i> precludes bankruptcy court from entering a final judgment because the claims at issue would not necessarily be resolved through the claims allowance process; <i>Stern</i> does not limit the bankruptcy court’s authority to enter pre-trial orders that are within its statutory jurisdiction.	Neutral
State Law Issues	5th Bankr. S.D. Tex. Isgur	Nov. 10, 2011	<i>NERS, L.P. v. Jones (In re Special Value Continuation Partners, L.P.)</i> , Adv. No. 11-3304, 2011 Bankr. LEXIS 4475 (Bankr. S.D. Tex. Nov. 10, 2011) – bankruptcy court abstained and remanded to Texas state court various state law “related to” claims by nondebtors against nondebtors; <i>Stern</i> negates the notion that “related to” matters can be more easily, expeditiously, and inexpensively tried in front of the home bankruptcy court.	Cautionary

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State Law Issues	5th Bankr. N.D. Tex. Houser	Nov. 28, 2011	<i>Reed v. Linehan (In re Soporex, Inc.)</i> , Adv. No. 11-3306-BJH, 2011 Bankr. LEXIS 4695 (Bankr. N.D. Tex. Nov. 28, 2011) – bankruptcy court submitted proposed findings of fact and conclusions of law on various state law claims; claims were “related to” and thus 28 U.S.C. § 157(c)(1) permitted the bankruptcy court to submit proposed findings and conclusions to the district court; to the extent that a category of “core but unconstitutional” exists, it is absurd to think that bankruptcy courts can do nothing with these claims.	Neutral
State Law Issues	5th Bankr. S.D. Tex. Isgur	Nov. 7, 2011	<i>West v. Avery (In re Noram Resources Inc.)</i> , Adv. No. 10-03701, 2011 Bankr. LEXIS 4268 (Bankr. S.D. Tex. Nov. 7, 2011) – bankruptcy court determined that it had authority to decide motion to dismiss even though <i>Stern</i> prevented it from adjudicating the merits of the claim (whether directors breached their duty of care through their compensation decisions).	Neutral
State Law Issues	6th Bankr. N.D. Ohio Harris	Sept. 6, 2011	<i>In re Sw. Sports Ctr., Inc.</i> , Adv. No. 10-1312, 2011 Bankr. LEXIS 3404 (Bankr. N.D. Ohio Sept. 6, 2011) – bankruptcy court granted abstention motion; parties did not consent to bankruptcy court adjudication; plaintiff’s claims were state-law based (i.e., claims for fraud, conspiracy, and negligence) and would not be resolved in the resolution of the creditor’s claim (i.e., claim based on a judgment lien).	Neutral
State Law Issues	6th Bankr. E.D. Ky. Scott	Sept. 21, 2011	<i>McKinstry v. Sargent (In re Black Diamond Mining Co., LLC)</i> , Adv. No. 11-07010, 2011 Bankr. LEXIS 3645 (Bankr. E.D. Ky. Sept. 21, 2011) – bankruptcy court denied motion for stay of abstention order pending appeal; bankruptcy court could not constitutionally treat state law claims against movant as core proceedings where resolution of the state law claims did not bear on the allowability of proof of claim; <i>Stern</i> casts doubt that bankruptcy courts have supplemental jurisdiction simply because those claims relate to the same case or controversy as a cause of action pending before the bankruptcy court.	Expansive

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State Law Issues	7th Bankr. E.D. Wis. Kelley	Sept. 27, 2011	<i>In re Pro-Pac, Inc.</i> , 456 B.R. 894 (Bankr. E.D. Wis. 2011) – bankruptcy court adjudicated state law claims involving breach of fiduciary duty on express consent of defendants; <i>Stern</i> confirms that the bankruptcy court has the authority to render final judgments even in non-core proceedings with the consent of the parties.	Narrow
State Law Issues	9th Bankr. D. Haw. Faris	Oct. 18, 2011	<i>Hawaii Nat’l Bancshares, Inc. v. Sunra Coffee LLC (In re Sunra Coffee LLC)</i> , Adv. No. 10-90009, 2011 Bankr. LEXIS 4047 (Bankr. D. Haw. Oct. 18, 2011) – bankruptcy court entered findings of fact and conclusions of law on exempt status of judgment debtor’s assets; defendant impliedly consented to bankruptcy court adjudication because defendant had the opportunity and obligation to respond to notice of removal but did not, and defendant requested an evidentiary hearing.	Neutral
State Law Issues	9th Bankr. W.D. Wash. Overstreet	Oct. 26, 2011	<i>In re Reinke</i> , Adv. No. 09-01541, 2011 Bankr. LEXIS 4142 (Bankr. W.D. Wash. Oct. 26, 2011) – bankruptcy court entered final judgment on state law claims; defendant gave oral consent to bankruptcy court’s entry of a final judgment on all claims and thus <i>Stern</i> not implicated.	Neutral
State Law Issues	10th Bankr. D. Colo. Romero	Sept. 9, 2011	<i>In re Howarth</i> , No. 10-36974, 2011 Bankr. LEXIS 3445 (Bankr. D. Colo. Sept. 9, 2011) – bankruptcy court determined that the matters before it were neither core or “related to”; court previously ruled that the property at issue was not property of the estate.	Neutral
State Law Issues	10th Bankr. D. Colo. Romero	Sept. 23, 2011	<i>In re Blakely</i> , No. 11–13674 MER, 2011 Bankr. LEXIS 3646 (Bankr. D. Colo. Sept. 23, 2011) – bankruptcy court, in dicta, determined that state law issues may not be within a bankruptcy court’s jurisdiction post- <i>Stern</i> ; testator’s intent in his will is more properly before a probate court; bankruptcy court’s jurisdiction was limited to determining whether the debtor’s interest in the will was property of the estate.	Cautionary

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State Law Issues	10th Bankr. D. Colo. Brown	Nov. 14, 2011	<i>Hertzler v. Hoopes (In re Hoopes)</i> , Adv. No. 11-01477, 2011 Bankr. LEXIS 4442 (Bankr. D. Colo. Nov. 14, 2011) – bankruptcy court denied motions to dismiss; bankruptcy court was required to adjudicate state law claims to determine nondischargeability action; Supreme Court itself recognized <i>Stern</i> 's limited holding.	Narrow
State Law Issues	D.C. Cir. Bankr. D.D.C. Teel	Oct. 4, 2011	<i>Adams Nat'l Bank v. GB Herdon and Assocs., Inc. (In re GB Herdon and Assocs., Inc.)</i> , 459 B.R. 148 (Bankr. D.D.C. 2011) – bankruptcy court entered judgment in favor of defendant on removed state law action prior to <i>Stern</i> and debtor moved to reconsider; bankruptcy court denied motion because unlike in <i>Stern</i> where the non-debtor party did not consent to the counterclaim, the debtor removed the state court action and thus consented the bankruptcy court adjudication under 28 U.S.C. § 157(c)(2) or waived its right to Article III judicial determination.	Narrow
Counterclaims	2nd Bankr. E.D.N.Y. Rosenthal	Oct. 6, 2011	<i>Citron v. Harriet Citron (In re Citron)</i> , Adv. No. 09-8125-jbr, 2011 Bankr. LEXIS 3934 (Bankr. E.D.N.Y. Oct. 6, 2011) – bankruptcy court denied motion to dismiss complaint; debtor-plaintiff filed various avoidance actions against defendant who did not file a proof of claim but did counterclaim seeking setoff; unlike the counterclaim in <i>Stern</i> , the defendant's counterclaim was not independent of the Bankruptcy Code and relied upon a finding of liability pursuant to plaintiff's bankruptcy claims; defendant had consented to bankruptcy court adjudication pre- <i>Stern</i> .	Narrow
Counterclaims	4th Bankr. S.D.S.C. Burris	Nov. 3, 2011	<i>Fort v. SunTrust Bank (In re Int'l Payment Group, Inc.)</i> , Adv. No. 10–80049–HB, 2011 Bankr. LEXIS 4269 (Bankr. S.D.S.C. Nov. 3, 2011) – bankruptcy court denied the defendant's motion to dismiss adversary proceeding subject to a 14-day objection period to file a motion to withdraw the reference; plaintiff's counterclaims were state-law based; like <i>Stern</i> , adjudicating counterclaims was not necessary to resolve proofs of claim.	Neutral

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Counterclaims	5th Bankr. N.D. Miss. Houston	Sept. 13, 2011	<i>In re Oxford Expositions, LLC</i> , Adv. No. 11-01095, 2011 Bankr. LEXIS 3490 (Bankr. N.D. Miss. Sept. 13, 2011) – <i>Stern</i> does not prevent bankruptcy court from entering a final judgment on a state law counterclaim with parties’ consent; consent in “related to” matters should be no less effective than contractual arbitration agreements; as to causes of action involving non-debtor parties, absent consent, the court lacked authority to enter a final order or judgment.	Narrow
Counterclaims	5th Bankr. E.D. Tex. Rhoades	Sept. 30, 2011	<i>In re Mandel</i> , No. 10-40219, 2011 Bankr. LEXIS 3829 (Bankr. E.D. Tex. Sept. 30, 2011) – the bankruptcy court lacked constitutional authority to determine state law counterclaims because under <i>Stern</i> , resolution of such counterclaims was not necessary for ruling on proofs of claim.	Neutral
Counterclaims	9th D. Ariz. Campbell	Sept. 8, 2011	<i>Corwin v. Gorilla Co. LLC (In re Gorilla Co. LLC)</i> , No. CV-10-1029-PHX, 2011 U.S. Dist. LEXIS 101308 (D. Ariz. Sept. 8, 2011) – district court denied motion for hearing on bankruptcy court’s adjudication of proofs of claim and counterclaims; bankruptcy court concluded that adjudication of counterclaims was necessary for resolution of proofs of claim.	Neutral
Federal Bankruptcy Issues	2nd Bankr. S.D.N.Y. Chapman	Sept. 23, 2011	<i>In re Ambac Fin. Group, Inc.</i> , 457 B.R. 299 (Bankr. S.D.N.Y. 2011) – bankruptcy court entered an order on a 9019 motion to approve settlement of shareholder derivative claims; debtor was not asking the bankruptcy court to hear and adjudicate the claims; <i>Stern</i> has become the mantra of every litigant who would rather be elsewhere.	Narrow
Federal Bankruptcy Issues	3rd Bankr. D. Del. Walrath	Sept. 13, 2011	<i>In re Washington Mut., Inc.</i> , --- B.R. ---, No. 08-12229 (MFW), 2011 Bankr. LEXIS 3361 (Bankr. D. Del. Sept. 13, 2011) – bankruptcy court determined that it had jurisdiction over plan confirmation that included settlement of state law claims under Rule 9019; confirmation is a core proceeding; approval of settlement is not adjudication of underlying claim; bankruptcy court has jurisdiction to decide whether disputed property is, in fact, property of the estate.	Narrow

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Federal Bankruptcy Issues	3rd Bankr. D. Del. Gross	Nov. 2, 2011	<i>Moore v. Paladini (In re CD Liquidation Co., LLC)</i> , --- B.R. --- , Adv. No. 11-51643(KG), 2011 Bankr. LEXIS 4155 (Bankr. D. Del. Nov. 2, 2011) – bankruptcy court issued preliminary injunction enforcing its confirmation order; Supreme Court urged a narrow reading of <i>Stern</i> ; no state law counterclaims in this matter.	Narrow
Federal Bankruptcy Issues	4th Bankr. M.D.N.C. Waldrep	Oct. 26, 2011	<i>Walter v. Freeway Foods Inc. (In re Freeway Foods of Greensboro, Inc.)</i> , Adv. No. 10-02057, 2011 Bankr. LEXIS 4189 (Bankr. M.D.N.C. Oct. 26, 2011) – bankruptcy court held that under <i>Stern</i> , it had authority to enter judgment with respect to state-law based causes of action that formed the basis for the plaintiff’s proof of claim but could only submit proposed findings of fact and conclusions of law that were “related to” but not “arising in” or “arising under.”	Neutral
Federal Bankruptcy Issues	5th Bankr. N.D. Tex. Houser	Oct. 3, 2011	<i>Faulkner v. Kornman, et al. (In re Heritage Org., L.L.C.)</i> , Adv. No. 06-3377, 2011 Bankr. LEXIS 3832 (Bankr. N.D. Tex. Oct. 3, 2011) – bankruptcy court denied motion to vacate final judgment entered years prior to the motion; even if <i>Stern</i> were a problem, defendants consented to the bankruptcy court’s exercise of jurisdiction and entry of a final judgment.	Neutral
Federal Bankruptcy Issues	5th W.D. Tex. Sparks	Nov. 28, 2011	<i>Mahanna v. Bynum</i> , --- F. Supp. 2d --- , No. A-11-CA-815-SS, 2011 U.S. Dist. LEXIS 139861 (W.D. Tex. Nov. 28, 2011) – district court affirmed bankruptcy court order dismissing bankruptcy case; dismissal of a bankruptcy case is a “core” proceeding even though it is not listed in 28 U.S.C. § 157(b)(2); <i>Stern</i> considered the very different issue of whether a bankruptcy court could issue a final order regarding a state-law counterclaim.	Neutral
Federal Bankruptcy Issues	5th Bankr. S.D. Tex. Bohm	Nov. 21, 2011	<i>In re Whitley</i> , No. 08-60098, 2011 Bankr. LEXIS 4545 (Bankr. S.D. Tex. Nov. 21, 2011) – bankruptcy court held that <i>Stern</i> did not prevent it from adjudicating compensation issue related to attorney disclosures because the dispute was not based on state common law and was not a counterclaim or arising out of state law; alternatively, the public rights exception applied because the rights adjudicated were created by the Bankruptcy Court.	Neutral

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Federal Bankruptcy Issues	5th Bankr. S.D. Tex. Bohm	Nov. 21, 2011	<i>In re Gow Ming Chao</i> , No. 11–38131, 2011 Bankr. LEXIS 4543 (Bankr. S.D. Tex. Nov. 21, 2011) – bankruptcy court converted chapter 11 case to a chapter 7; no state law issues involved; conversion to preserve property of the estate and to maximize distribution to creditors fits within the “public rights” exception and therefore the bankruptcy court could enter a final order.	Neutral
Federal Bankruptcy Issues	6th Bankr. W.D. Mich. Dales	Sept. 6, 2011	<i>Hagan v. Smith (In re Naughton)</i> , Adv. No. 11–80237, 2011 Bankr. LEXIS 3762 (Bankr. W.D. Mich. Sept. 6, 2011) – bankruptcy court submitted a report and recommendation on a Section 363 sale rather than enter an order; court and trustee were concerned about possible collateral attack on sale order in light of <i>Stern</i> .	Expansive
Federal Bankruptcy Issues	6th Bankr. W.D. Mich. Dales	Nov. 2, 2011	<i>In re Borin</i> , --- B.R. ---, No. DT 11–03122, 2011 Bankr. LEXIS 4225 (Bankr. W.D. Mich. Nov. 2, 2011) – bankruptcy court entered final judgment on chapter 13 debtor’s claim objection; objection to claims was a core proceeding within the meaning of 11 U.S.C. § 157(b)(2)(B); <i>Stern</i> did not undermine the court’s authority to enter a final order on disputes integral to the restructuring of the debtor-creditor relationship.	Neutral
Federal Bankruptcy Issues	7th Bankr. N.D. Ill. Hollis	Sept. 29, 2011	<i>Szilagyi v. Chicago Am. Mfg., LLC (In re Lakewood Eng’g & Mfg. Co. Inc.)</i> , --- B.R. ---, Adv. No. 09 A 341, 2011 Bankr. LEXIS 3757 (Bankr. N.D. Ill. Sept. 29, 2011) – bankruptcy court entered final judgment on complaint asserting various state and federal law claims; the complaint concern issues related to rejection of the agreement that was the subject of the dispute; defendant filed proof of claim, but unlike in <i>Stern</i> , the bankruptcy court was not ruling on counterclaim.	Narrow
Federal Bankruptcy Issues	7th Bankr. N.D. Ill. Schmeterer	Nov. 15, 2011	<i>In re Boricich</i> , --- B.R. ---, Adv. No. 08 A 00728, 2011 Bankr. LEXIS 4356 (Bankr. N.D. Ill. Nov. 15, 2011) – bankruptcy court entered final money judgment in a nondischargeability action because such action is directly under and defined by the Bankruptcy Code with no jury trial right; <i>Stern</i> involved an action for which a party might demand a jury trial.	Narrow

Cases Discussing *Stern v. Marshall*: September 1, 2011 through November 30, 2011

Subject	Circuit Court Judge	Decision Date	Case/Comment	Holding Type
Federal Bankruptcy Issues	9th E.D. Cal. Mueller	Sept. 26, 2011	<i>Turturici v. Nat'l Mortgage Serv., LP</i> , No. CIV S-10-2853 KJM, 2011 U.S. Dist. LEXIS 109242 (E.D. Cal. Sept. 26, 2011) – district court affirmed bankruptcy court’s decision to abstain from adversary proceeding seeking to set aside prepetition foreclosure sale; <i>Stern</i> has potentially enormous implications for bankruptcy courts and litigation in the federal courts; unlike in <i>Stern</i> , bankruptcy court abstained.	Cautionary
Federal Bankruptcy Issues	9th Bankr. E.D. Wash. Williams	Sept. 8, 2011	<i>In re LLS Am.</i> , No. 09-06194, 2011 Bankr. LEXIS 3429 (Bankr. E.D. Wash. Sept. 8, 2011) – bankruptcy court held that <i>Stern</i> did not prevent it from entering an order for substantive consolidation because it does not exist outside the context of a bankruptcy proceeding.	Narrow
Federal Bankruptcy Issues	9th Bankr. D. Montana Peterson	Nov. 10, 2011	<i>Atigeo LLC v. Samson (In re Blixseth)</i> , Adv. No. 09-00105, 2011 Bankr. LEXIS 4390 (Bankr. D. Mont. Nov. 10, 2011) – bankruptcy court denied motion to reconsider 9019 order; movant argued that <i>Stern</i> prevented the court from dismissing its causes of action in adversary; defendant had waived and forfeited its right to challenge the court’s authority to decide claims asserted in the adversary proceeding. Note: This is not the same judge that wrote the decision in the <i>Blixseth</i> opinion found at 2011 Bankr. LEXIS 2953.	Neutral
Federal Bankruptcy Issues	11th Bankr. S.D. Fla. Isicoff	Nov. 23, 2011	<i>Bankunited Fin. Corp. v. Fed. Dep. Ins. Corp. (In re Bankunited Fin. Corp.)</i> , Adv. No. 10-02872-BKC-LMI, 2011 Bankr. LEXIS 4531 (Bankr. S.D. Fla. Nov. 23, 2011) – bankruptcy court entered summary judgment determining whether tax refunds were property of the estate; what is or is not property of a bankruptcy estate is an issue that stems from the bankruptcy itself (“arising in”); resolution of tax refunds analyzing state law was necessary to determine proofs of claim filed by defendant.	Narrow

Cases Discussing *Stern v. Marshall*: September 1, 2011 through November 30, 2011

Subject	Circuit Court Judge	Decision Date	Case/Comment	Holding Type
Other: Judicial Determinations	7th Bankr. W.D. Wis. Martin	Nov. 17, 2011	<i>In re Horsfall</i> , Adv. No. 1000179, 2011 Bankr. LEXIS 4570 (Bankr. W.D. Wis. Nov. 17, 2011) – bankruptcy court may impose sanctions under 28 U.S.C. § 1927 because §1927 does not confer Article III power on a bankruptcy court, and instead, references “courts of the United States.”	Narrow