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Three More for the Core:
Wellness, *Caulkett*, and *Bullard*

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Introduction

The Supreme Court decided a bumper crop of bankruptcy cases in its October 2014 Term. This paper looks at three of them: *Wellness Int'l Network, Ltd. v. Sharif*,[1] *Bank of America, N.A. v. Caukett*[2],; and *Bullard v. Blue Hills Bank.*[3] These cases add to our core understanding of how bankruptcy works. They deal with the authority of a bankruptcy court (*Wellness*), the scope of secured claims in bankruptcy (*Caulkett*), and the proper relationship between the bankruptcy court and the courts that review its work (*Bullard*). This paper it draws heavily on writing that I and others have done for the *Bankruptcy Law Letter*; indeed, it is a heavily edited version of those longer pieces. Consult the footnotes for the issues and a broader discussion.[4]

I will discuss each case in turn.

I. Wellness

A. Wellness and Its Basic Effect

With *Wellness International Network, Ltd. v. Sharif*,[5] the Supreme Court has now "fixed" the two most pressing and troublesome potential problems raised by its 2011 *Stern v. Marshall*[6] case:

> (1) the supposed "statutory gap" for so-called *Stern* claims—statutory "core" matters for which it would be unconstitutional for a non-Article III bankruptcy judge to enter final judgment as authorized in § 157(b)(1) of the Judicial Code, and
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> (2) whether it is constitutional for non-Article III bankruptcy judges to enter final judgment with the consent of the litigants on noncore (and *Stern*) claims as authorized by Judicial Code § 157(c)(2).

Last summer in *Executive Benefits Insurance Agency v. Arkison*,[7] the Court plugged the purported statutory gap for *Stern* claims, unanimously holding that the "statute permits *Stern* claims to proceed as non-core within the meaning of § 157(c)."[8]

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[1] 135 S. Ct. 1932 (2015).
[2] 135 S. Ct. 1995 (2015).
[3] 135 S. Ct. 1686 (2015).
[4] Large portions of this article were taken from several editions of the *Bankruptcy Law Letter*, a publication for which I am a contributing editor. Portions of the material on *Bullard* are reprinted from *Bankruptcy Law Letter*, Volume 35, No. 6, June 2015, with permission. Copyright © (2015) Thomson Reuters/West. Portions of the material on *Caulkett* are reprinted from *Bankruptcy Law Letter*, Volume 35, No. 8, August 2015, with permission. Copyright © (2015) Thomson Reuters/West. Finally, portions of the material on *Wellness* are reprinted from *Bankruptcy Law Letter*, Volume 35, No. 9, September 2015, with permission. Copyright © (2015) Thomson Reuters/West. For more information about these publications please visit www.legalsolutions.thomsonreuters.com.
[5] *Wellness Int'l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).
[6] *Stern v. Marshall*, 131 S. Ct. 2594 (2011).
[7] *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014).
[8] *Arkison*, 134 S. Ct. at 2173. "Thus, § 157(c) may be applied naturally to *Stern* claims." *Id*. "If the [*Stern*] claim satisfies the criteria of § 157(c)(1)" because it is "related to" the debtor's bankruptcy case, then "the bankruptcy court simply treats the claim[] as non-core: The bankruptcy court should hear the proceeding

In *Wellness*, a more divided 6-3 Court, confirmed the constitutional validity of § 157(c)(2), holding "that Article III is not violated when the parties knowingly and voluntarily consent to adjudication by a bankruptcy judge."[9] *Wellness* also held that neither the Constitution nor § 157(c)(2) require that such consent must be express; rather, the requisite consent can be implied if '''the litigant or counsel were made aware of the need for consent and the right to refuse it, and still voluntarily appeared to try the case' before the non-Article III" bankruptcy judge.[10]

B. The Pre-Bankruptcy Federal Court Litigation

The protracted litigation that produced *Wellness* has spanned more than a decade and involved numerous federal courts in two different circuits, as well as an Illinois state court. Wellness International Network, Ltd. is a manufacturer of health and wellness products, and Wellness had a distributorship agreement with Richard Sharif. That relationship soured, though, and in 2003 Sharif and others sued Wellness and its founders (collectively, "Wellness") in federal district court in the Northern District of Illinois claiming that Wellness was running a pyramid scheme and seeking damages of nearly $1 million.

Wellness successfully moved to compel arbitration of some of the claims asserted in that suit,[11] and the remaining claims were dismissed without prejudice pursuant to forum-selection clauses in the parties' contracts.[12]

Sharif and his coplaintiffs then refiled their remaining claims in federal district court in the Northern District of Texas. Sharif and his coplaintiffs initiated no discovery in their Texas suit and repeatedly ignored Wellness' discovery requests, for which they were ultimately sanctioned

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and submit proposed findings of fact and conclusions of law to the district court for *de novo* review and entry of judgment." *Id*.

Moreover, as the Court noted in *Wellness*, even "when the bankruptcy court improperly enters final judgment" on a *Stern* claim, on appeal district court judges "are not required to restart proceedings entirely." *Wellness*, 135 S. Ct. at 1942 n.6. Rather, "the district courts may [also] treat *Stern* claims like non-core claims," regarding the bankruptcy court's judgment as the equivalent of proposed findings and conclusions that are subjected to *de novo* review before entry of final judgment by the district court. *Id*. *See Arkison*, 134 S. Ct. at 2175 (holding that "even if EBIA is correct that the Bankruptcy Court's entry of judgment was invalid, the District Court's *de novo* review and entry of its own valid final judgment cured any error").

The *Arkison* Court specifically noted that the statutory process for a noncore claim—heard by a non-Article III bankruptcy judge who submits proposed findings and conclusions for *de novo* review by an Article III district court judge before entry of final judgment in the district court—"does not implicate the constitutional defect identified by *Stern*." *Arkison*, 134 S. Ct. at 2170. Presumably, the bankruptcy court's limited involvement in the adjudication of such a noncore claim is constitutionally valid under the non-Article III "adjunct" theory originating in the Court's seminal decision of *Crowell v. Benson*, 285 U.S. 22 (1932). *See* Ralph Brubaker, *A "Summary" Statutory and Constitutional Theory of Bankruptcy Judges' Core Jurisdiction After Stern v. Marshall*, 86 Am. Bankr. L.J. 121, 158-60 (2012); Ralph Brubaker, *Article III's Bleak House (Part II): The Constitutional Limits of Bankruptcy Judges' Core Jurisdiction*, 31 Bankr. L. Letter No. 9, at 1, 6-7 (Sept. 2011).

[9] *Wellness*, 135 S. Ct. at 1939.

[10] *Wellness*, 135 S. Ct. at 1948.

[11] *See Sharif v. Wellness Int'l Network, Ltd.*, 376 F.3d 720 (7th Cir. 2004).

[12] *See Muzumdar v. Wellness Intern. Network, Ltd*., 438 F.3d 759 (7th Cir. 2006).

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