Amended Standing Order of Reference, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012).

February 6, 2012 by Joseph Zujkowski

On January 31, 2012, Southern District of New York Chief Judge Loretta A. Preska issued an Amended Standing Order of Reference, providing that (i) bankruptcy judges may submit proposed findings of fact and conclusions of law with respect to "core" matters over which bankruptcy courts do not have constitutional authority to enter final judgments and (ii) the district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event that the district court determines that entry of a final order by the bankruptcy court would be inconsistent with Article III of the United States Constitution.

Without specific reference to the Supreme Court's decision in Stern v. Marshall,[1] the amended order resolves, at least in the Southern District of New York, the post-*Stern* debate as to whether Bankruptcy Code section 157(c), which authorizes a bankruptcy court to issue to the district court proposed findings of fact and conclusions of law with respect to non-core matters, permits the bankruptcy court to do so with respect to core matters that the bankruptcy court does not have constitutional authority to adjudicate (such as the state-law counterclaim at issue in Stern). As a result of the amended order, bankruptcy courts in the Southern District of New York may treat such core claims as non-core claims insofar as they may hear the claim and propose findings of fact and conclusions of law to the district court.[2]

In further providing more generally that the bankruptcy court may issue proposed findings of fact and conclusions of law in other circumstances where the Southern District of New York determines that the bankruptcy court would not have constitutional authority to issue a final order, the Southern District of New York implicitly reinforced principles of judicial economy and its hesitancy to withdraw the reference with respect to claims that bankruptcy courts routinely resolve.[3]

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[1] Stern v. Marshall, _ U.S. _, 131 S. Ct. 2595 (2011).

[2] Compare In re Blixseth, No. 10-00088, 2011 WL 3274042 (Bankr. D. Mont. Aug. 1, 2011) (noting that while bankruptcy courts may hear non-core claims they otherwise have no constitutional authority to adjudicate pursuant to section 157 of the Bankruptcy Code, there is no parallel statutory provision allowing a bankruptcy court to hear a core claim it has no constitutional authority to adjudicate) with Coudert Brothers Trust v. Baker & McKenzie, et al., No. 11-2785, 2011 U.S. Dist. LEXIS 110425 (S.D.N.Y. Sept. 23, 2011) (the district court treated the bankruptcy court's order with respect to fraudulent transfer claims over which the district court determined the bankruptcy court could not constitutionally adjudicate, as proposed findings of fact and conclusions of law).

[3] See Walker, Truesdell, Roth & Assocs. v. Blackstone Group, L.P. (In re Extended Stay, Inc.), 11 Civ. 5394 (SAS), 2011 U.S. Dist. LEXIS 131349 (S.D.N.Y. Nov. 10, 2011) (denying motions seeking withdrawal of the reference of fraudulent transfer claims, citing considerations of efficiency).