

V. JURISDICTION AND AUTHORITY OF THE BANKRUPTCY COURT

As originally enacted, the Code gave bankruptcy courts pervasive jurisdiction, despite the fact that bankruptcy judges do not enjoy the protections afforded to Article III judges (*e.g.*, lifetime tenure, protection from salary diminution). The Code was designed to eliminate the major failings of the prior bankruptcy referee system, including the difficulty in determining the jurisdiction of the bankruptcy court and the perceived lack of status of bankruptcy judges.

In 1982, the U.S. Supreme Court held unconstitutional at least a portion of that broad grant of jurisdiction.¹¹¹ In 1984, Congress responded to the *Marathon* decision by passing the Bankruptcy Amendments and Federal Judgeship Act of 1984 (the BAFJA).

Section 157(b) of title 28 now sets out the statutory framework for the jurisdictional authority of bankruptcy judges. It provides, in part:

- (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under §158 of this title [title 28].
- (2) Core proceedings include, but are not limited to—
 - (A) matters concerning the administration of the estate;
 - (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12 or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

111 *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

- (C) counterclaims by the estate against persons filing claims against the estate;
 - (D) orders with respect to obtaining credit;
 - (E) orders to turn over property of the estate;
 - (F) proceedings to determine, avoid, or recover preferences;
 - (G) motions to terminate, annul, or modify the automatic stay;
 - (H) proceedings to determine, avoid, or recover fraudulent conveyances;
 - (I) determinations as to the dischargeability of particular debts;
 - (J) objections to discharges;
 - (K) determinations of the validity, extent, or priority of liens;
 - (L) confirmations of plans;
 - (M) orders approving the use or lease of property, including the use of cash collateral;
 - (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
 - (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security-holder relationship, except personal injury tort or wrongful death claims; and
 - (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.
- (3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by state law.

Section §157(c) of title 28 provides for a bankruptcy judge's jurisdiction in matters other than core proceedings:

(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing *de novo* those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under §158 of this title.

A. Case vs. Proceeding

The term “case” refers only to the bankruptcy case initiated by the filing of a petition. The term “proceeding” refers only to matters that are a part of the main “case,” such as motions and adversaries. Technically speaking, the term “bankruptcy proceeding” should not be used to refer to the “bankruptcy case.”

There are four categories of cases or proceedings:

- (1) “Cases under title 11”: the original bankruptcy petition from which all bankruptcy proceedings arise.¹¹²
- (2) “Proceedings arising under title 11”: the type of proceeding that springs from the operation and application of the Code itself.¹¹³
- (3) “Proceedings arising in or related to a case under title 11”: a type of proceeding that springs secondarily from a

¹¹² See 28 U.S.C. §157(a).

¹¹³ See *id.*

pending bankruptcy case;¹¹⁴ and

- (4) “Related proceedings”: proceedings that do not arise under title 11, but are nonetheless “related” to a case under title 11.¹¹⁵

B. Core vs. Noncore

Every proceeding can also be classified as “core” or “noncore.” Even though a bankruptcy court may hear matters in any of the four categories listed above, it may only resolve by entry of a final order (1) cases under title 11, (2) core proceedings arising under title 11, and (3) core proceedings arising in or related to a case under title 11. If a matter is determined to be both noncore and nonrelated, the bankruptcy court will lack jurisdiction to enter final orders or judgments—unless the parties consent. If a bankruptcy judge may not enter a final judgment, the bankruptcy court may submit proposed findings of fact and conclusions of law to the district court, which in turn enters the final judgment.¹¹⁶ If all parties consent to the bankruptcy court’s jurisdiction, the bankruptcy court may enter a final judgment in related noncore proceedings.¹¹⁷ Consent need not be express. In fact, one source has noted that the 1984 amendments to the Code brought about the “apparent reincarnation” of “jurisdiction by ambush.”¹¹⁸

1. DEFINITION OF “CORE” PROCEEDINGS

Pursuant to 28 U.S.C. §157(b)(1), a bankruptcy court has authority to enter final orders and judgments over “core” proceedings. In a “noncore” proceeding that is “otherwise related” to a case under title 11, 28 U.S.C. §157(c)(1) provides that a bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court for *de novo* review. What is a “core” proceeding?

28 U.S.C. §157(b)(2) identifies 16 types of proceedings that are

¹¹⁴ See *id.*

¹¹⁵ See 28 U.S.C. §157(c)(1).

¹¹⁶ 28 U.S.C. §157(c)(1).

¹¹⁷ 28 U.S.C. §157(c)(2).

¹¹⁸ Hendel & Reinhardt, *Evolution of Bankruptcy Court Jurisdiction After the Bankruptcy Amendments and Federal Judgeship Act of 1984*, 90 COM. L. J. 272 (1985).

considered “core.” However, the statute is clear that this list is not exhaustive.¹¹⁹ Various courts have found that a proceeding is core if it invokes a substantive bankruptcy right or a matter that could only arise in a bankruptcy case.¹²⁰

In *In re Wood*, the Fifth Circuit Court of Appeals reasoned that:

[i]f the proceeding involves a right created by the federal bankruptcy law, it is a core proceeding; for example, an action by the trustee to avoid a preference. If the proceeding is one that would arise only in bankruptcy, it is also a core proceeding; for example, the filing of a proof of claim or an objection to the discharge of a particular debt. If the proceeding does not invoke a substantive right created by the federal bankruptcy law and is one that could exist outside of bankruptcy it is not a core proceeding; it may be *related* to the bankruptcy because of its potential effect, but under §157(c)(1) it is an “otherwise related” or noncore proceeding.¹²¹

Examples of core proceedings not explicitly mentioned in 28 U.S.C. §157(b)(2) include: (1) a declaratory judgment action against pre-petition insurance companies seeking a distribution as to coverage was found to be core because it affected asset allocations;¹²² (2) an action to enforce a contractual subordination agreement where both creditors had filed proofs of claim;¹²³ (3) a malpractice claim against the debtor’s counsel;¹²⁴ and (4) a dispute over renewal of a franchise agreement.¹²⁵

119 28 U.S.C. §157(b) (“[c]ore proceedings include, *but are not limited to*...”)(emphasis added).

120 *Corestates Bank, N.A. v. Huls Am., Inc.*, 176 F.3d 187, 196 (3d Cir. 1999) (citing *Torkelson v. Maggion (In re Guild & Gallery Plus, Inc.)*, 72 F.3d 1171, 1178 (3d Cir. 1996)); *In re Noletto*, 244 B.R. 845, 857 (Bankr. S.D. Ala. 2000) (citing *Aiello v. Providian Fin. Corp. (In re Aiello)*, 231 B.R. 693, 704 (Bankr. N.D. Ill. 1999)); *In re SPI Communications & Marketing, Inc.*, 112 B.R. 507 (Bankr. N.D.N.Y. 1990).

121 825 F.2d 90, 97 (5th Cir. 1987).

122 *In re U.S. Lines, Inc.*, 197 F.3d 631 (2d Cir. 1999), *cert. denied*, 529 U.S. 1038 (2000).

123 *Resolution Trust Corp. v. Best Prods. Co., Inc. (In re Best Prods. Co., Inc.)*, 68 F.3d 26 (2d Cir. 1995).

124 *Southmark Corp. v. Coopers & Lybrand (In re Southmark Corp.)*, 163 F.3d 925 (5th Cir. 1999).

125 *Vylene Enters., Inc. v. Naugles, Inc. (In re Vylene Enters., Inc.)*, 90 F.3d 1472 (9th Cir. 1996).

2. *WITHDRAWAL OF REFERENCE*

Under the basic bankruptcy jurisdictional scheme, the district court has jurisdiction over the four categories of cases and proceedings, and it may “refer” any and all such cases and proceedings to the bankruptcy court. Most, if not all, district courts have entered an order of automatic reference to the bankruptcy court in the same jurisdiction. The reference of any case or proceeding may be withdrawn by the district court and in some cases must be withdrawn.

a. Statutory Authority

28 U.S.C. §157(a) provides:

Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

28 U.S.C. §§157(b)(4) and (5) provide:

(4) Noncore proceedings under §157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of §1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending

28 U.S.C. §157(d) provides:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if

the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. §157(d) provides for both permissive and mandatory withdrawal of reference. Permissive withdrawal may involve an entire bankruptcy case, while mandatory withdrawal is limited to a proceeding. The mandatory withdrawal provisions appear to be triggered only by a timely motion by a party. Permissive withdrawal may occur on the court's own motion. If a creditor files a proof of claim, it has submitted to the equitable jurisdiction of the bankruptcy court.¹²⁶ If no proof of claim is filed, a creditor may be entitled to withdraw the reference to the bankruptcy court and have a jury trial conducted by a district court.¹²⁷ The reference need not be withdrawn, however, in order to obtain a jury trial. A bankruptcy judge may conduct a jury trial with the consent of all parties.¹²⁸

b. Mandatory Withdrawal of Reference

Withdrawal of the reference is mandated only if (1) the proceeding involves a substantial and material question of both title 11 and nonbankruptcy federal law (nonbankruptcy federal law alone is insufficient) and (2) the nonbankruptcy federal law has more than a de minimis effect on interstate commerce.¹²⁹

For example, in *In re Anthony Tammaro Inc.*,¹³⁰ the court withdrew

¹²⁶ See *Langenkamp*, 498 U.S. at 45 (when a party files a claim, it loses its 7th Amendment right to a jury trial and submits itself to the equitable jurisdiction of the bankruptcy court); *S.G. Phillips Constructors, Inc. v. City of Burlington, Vermont (In re S.G. Phillips Constructors, Inc.)*, 45 F.3d 702, 705 (2d Cir. 1995). But see *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo Enters., Inc.)*, 96 F.3d 346 (9th Cir. 1996).

¹²⁷ *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989).

¹²⁸ 28 U.S.C. §157(e).

¹²⁹ 11 U.S.C. §157(d).

¹³⁰ 56 B.R. 999, 703-05 (D. N.J. 1986). *Accord Wooten v. Dept. of the Interior*, 52 B.R. 74, 75 (W.D. La. 1985); *Tedesco v. Mishkin*, 53 B.R. 120, 123 (S.D.N.Y. 1985); *Nat'l Mediation Bd. V. Cont'l Airlines Corp. (In re Cont'l Airlines Corp.)*, 50 B.R. 342, 360 (Bankr. S.D. Tex. 1985).

the reference where the key issue was whether a trust established by the Perishable Agriculture Commodities Act (PACA) should be considered part of the bankruptcy estate. The question was one of first impression as neither the U.S. Supreme Court nor the Third Circuit had determined the status of a PACA trust.¹³¹ The court noted that had either of those courts already addressed the issue, it would not withdraw the reference as resolution of the issue would not require substantial and material consideration of nonbankruptcy federal law, “but merely the application of that binding law to the facts.”¹³² The courts appear to be consistent in holding that withdrawal is not mandated when a proceeding would simply require “consideration” of nonbankruptcy federal law.

c. Permissive Withdrawal

28 U.S.C. §157(d) states that the district court may withdraw the reference for cause shown. The Code does not, however, define the concept of “cause shown.” Withdrawal of the reference pursuant to 28 U.S.C. §157(d) is discretionary. While the specific guidelines for withdrawal of the reference vary between jurisdictions, the following general principles have been cited by various courts:

- (a) judicial economy;
- (b) promoting uniformity in bankruptcy administration;
- (c) reducing forum shopping and confusion;
- (d) fostering economical use of debtors’ and creditors’ resources;
- (e) expediting the bankruptcy process;
- (f) “the outer boundary of original referred jurisdiction of bankruptcy courts” provided by *Marathon*; and
- (g) whether a jury trial has been requested.¹³³

¹³¹ *Tammaro*, 56 B.R. at 1007 n.11.

¹³² *Id.*

¹³³ See *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1101 (2d Cir. 1993) (citations omitted); *Holland Am. Ins. Co. v. Succession of Roy*, 777 F.2d 992, 998-999 (5th Cir. 1985); *Kenai Corp. v. Nat’l Union Fire Ins. Co. (In re Kenai Corp.)*, 136 B.R. 59, 61 (S.D.N.Y. 1992); *Wedtech Corp. v. Banco Popular de Puerto Rico (In re Wedtech Corp.)*, 94 B.R. 293, 296 (S.D.N.Y. 1988) (citing *Holland Am. Ins. Co.*, 777 F.2d at 999).

Courts are split on the issue of whether it is necessary to make a determination as to whether a proceeding is core or noncore before it can be determined whether cause has been shown. In other words, must the district court first determine that a proceeding is core or noncore before it weighs these factors? Some courts hold that the core/noncore determination is critical because it might influence factors such as judicial economy and efficiency.¹³⁴ Other courts do not view the core/noncore distinction to be as important when considering the issue of withdrawal.¹³⁵ Despite this split, courts consistently hold that the availability of *de novo* review in noncore proceedings is not a sufficient ground for withdrawal of reference.¹³⁶

d. Procedure

Rule 5011 of the Bankruptcy Rules governs the procedure for withdrawal of the reference and requires that withdrawal of reference must be considered by the district court.¹³⁷ As a general rule, the bankruptcy court will issue a report and recommendation on a motion for withdrawal of the reference.

¹³⁴ See *In re Delaware & Hudson Ry. Co.*, 122 B.R. 887, 891 (D. Del. 1991); *Hatzel & Buehler, Inc. v. Central Hudson Gas & Elec. Corp.*, 106 B.R. 367, 370 (D. Del. 1989).

¹³⁵ See *Styler v. Jean Bob Inc. (In re Concept Clubs, Inc.)*, 154 B.R. 581, 585 (D. Utah 1993); *In re Harbor Park Assocs. Ltd. P'ship*, 112 B.R. 555, 557 (Bankr. S.D.N.Y. 1990).

¹³⁶ See, e.g., *In re Southern Indus. Mech. Corp.*, 266 B.R. 827, 834 (W.D. Tenn. 2001); *In re Lion Capital Group*, 63 B.R. 199, 206 (S.D.N.Y. 1985).

¹³⁷ FED. R. BANKR. P. 5011.

