tenure of their offices, and the amount and payment of their salaries." The Declaration of Independence ¶ 11. The Framers undertook in Article III to protect citizens subject to the judicial power of the new Federal Government from a repeat of those abuses. By appointing judges to serve without term limits, and restricting the ability of the other branches to remove judges or diminish their salaries, the Framers sought to ensure that each judicial decision would be rendered, not with an eye toward currying favor with Congress or the Executive, but rather with the "[c]lear heads ... and honest hearts" deemed "essential to good judges." 1 Works of James Wilson 363 (J. Andrews ed. 1896).

[5] Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial decisionmaking if the other branches of the Federal Government could confer the Government's "judicial Power" on entities outside Article III. That is why we have long recognized that, in general, Congress may not "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Murray's Lessee v. Hoboken Land & Improvement Co.,* 59 U.S. 272, 18 How. 272, 284, 15 L.Ed. 372 (1856). When a suit is made of "the stuff of the traditional actions at common law tried by the courts at Westminster in 1789," *Northern Pipeline,* 458 U.S., at 90, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment), and is brought within the bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III courts. The Constitution assigns that job—resolution of "the mundane as well as the glamorous, matters of common law and statute as well as constitutional law, issues of fact as well as issues of law"—to the Judiciary. *Id.,* at 86–87, n. 39, 102 S.Ct. 2858 (plurality opinion).

B

This is not the first time we have faced an Article III challenge to a bankruptcy court's resolution of a debtor's suit. In *Northern Pipeline,* we considered whether bankruptcy judges serving under the Bankruptcy Act of 1978—appointed by the President and confirmed by the Senate, but lacking the tenure and salary guarantees of Article III—could "constitutionally be vested with jurisdiction to decide [a] state-law contract claim" against an entity ***2610** that was not otherwise part of the bankruptcy proceedings. 458 U.S., at 53, 87, n. 40, 102 S.Ct. 2858 (plurality opinion); see *id.,* at 89–92, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment). The Court concluded that assignment of such state law claims for resolution by those judges "violates Art. III of the Constitution." *Id.,* at 52, 87, 102 S.Ct. 2858 (plurality opinion); *id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment).

The plurality in *Northern Pipeline* recognized that there was a category of cases involving "public rights" that Congress could constitutionally assign to "legislative" courts for resolution. That opinion concluded that this "public rights" exception extended "only to matters arising between" individuals and the Government "in connection with the performance of the constitutional functions of the executive or legislative departments ... that historically could have been determined exclusively by those" branches. *Id.,* at 67–68, 102 S.Ct. 2858 (internal quotation marks omitted). A full majority of the Court, while not agreeing on the scope of the exception, concluded that the doctrine did not encompass adjudication of the state law claim at issue in that case. *Id.,* at 69–72, 102 S.Ct. 2858; see *id.,* at 90–91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment) ("None of the [previous cases addressing Article III power] has gone so far as to sanction the type of adjudication to which Marathon will be subjected .... To whatever extent different powers granted under [the 1978] Act might be sustained under the 'public rights' doctrine of *Murray's Lessee* ... and succeeding cases, I am satisfied that the adjudication of Northern's lawsuit cannot be so sustained").[5]

5 The dissent is thus wrong in suggesting that less than a full Court agreed on the points pertinent to this case. *Post,* at 2622 (opinion of BREYER, J.).

A full majority of Justices in *Northern Pipeline* also rejected the debtor's argument that the bankruptcy court's exercise of jurisdiction was constitutional because the bankruptcy judge was acting merely as an adjunct of the district court or court of appeals. *Id.,* at 71–72, 81–86, 102 S.Ct. 2858 (plurality opinion); *id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment) ("the bankruptcy court is not an 'adjunct' of either the district court or the court of appeals").

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After our decision in *Northern Pipeline,* Congress revised the statutes governing bankruptcy jurisdiction and bankruptcy judges. In the 1984 Act, Congress provided that the judges of the new bankruptcy courts would be appointed by the courts of appeals for the circuits in which their districts are located. 28 U.S.C. § 152(a). And, as we have explained, Congress permitted the newly constituted bankruptcy courts to enter final judgments only in "core" proceedings. See *supra,* at 2603 – 2604.

With respect to such "core" matters, however, the bankruptcy courts under the 1984 Act exercise the same powers they wielded under the Bankruptcy Act of 1978 (1978 Act), 92 Stat. 2549. As in *Northern Pipeline,* for example, the newly constituted bankruptcy courts are charged under § 157(b)(2)(C) with resolving "[a]ll matters of fact and law in whatever domains of the law to which" a counterclaim may lead. 458 U.S., at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment); see, *e.g.,* 275 B.R., at 50–51 (noting that Vickie's counterclaim required the bankruptcy court to determine whether Texas recognized a cause of action for tortious interference with an *inter vivos* gift—something the Supreme Court of Texas had yet to do). As in *Northern Pipeline,* the new courts in core proceedings "issue final judgments, ***2611** which are binding and enforceable even in the absence of an appeal." 458 U.S., at 85–86, 102 S.Ct. 2858 (plurality opinion). And, as in *Northern Pipeline,* the district courts review the judgments of the bankruptcy courts in core proceedings only under the usual limited appellate standards. That requires marked deference to, among other things, the bankruptcy judges' findings of fact. See § 158(a); Fed. Rule Bkrtcy. Proc. 8013 (findings of fact "shall not be set aside unless clearly erroneous").

C

[6] Vickie and the dissent argue that the Bankruptcy Court's entry of final judgment on her state common law counterclaim was constitutional, despite the similarities between the bankruptcy courts under the 1978 Act and those exercising core jurisdiction under the 1984 Act. We disagree. It is clear that the Bankruptcy Court in this case exercised the "judicial Power of the United States" in purporting to resolve and enter final judgment on a state common law claim, just as the court did in *Northern Pipeline.* No "public right" exception excuses the failure to comply with Article III in doing so, any more than in *Northern Pipeline.* Vickie argues that this case is different because the defendant is a creditor in the bankruptcy. But the debtors' claims in the cases on which she relies were themselves federal claims under bankruptcy law, which would be completely resolved in the bankruptcy process of allowing or disallowing claims. Here Vickie's claim is a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of claim in bankruptcy. *Northern Pipeline* and our subsequent decision in *Granfinanciera,* 492 U.S. 33, 109 S.Ct. 2782, rejected the application of the "public rights" exception in such cases.

Nor can the bankruptcy courts under the 1984 Act be dismissed as mere adjuncts of Article III courts, any more than could the bankruptcy courts under the 1978 Act. The judicial powers the courts exercise in cases such as this remain the same, and a court exercising such broad powers is no mere adjunct of anyone.

1

Vickie's counterclaim cannot be deemed a matter of "public right" that can be decided outside the Judicial Branch. As explained above, in *Northern Pipeline* we rejected the argument that the public rights doctrine permitted a bankruptcy court to adjudicate a state law suit brought by a debtor against a company that had not filed a claim against the estate. See 458 U.S., at 69–72, 102 S.Ct. 2858 (plurality opinion); *id.,* at 90–91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment). Although our discussion of the public rights exception since that time has not been entirely consistent, and the exception has been the subject of some debate, this case does not fall within any of the various formulations of the concept that appear in this Court's opinions.

We first recognized the category of public rights in *Murray's Lessee v. Hoboken Land & Improvement Co.,* 59 U.S. 272, 18 How. 272, 15 L.Ed. 372 (1856). That case involved the Treasury Department's sale of property belonging to a customs collector who had failed to transfer payments to the Federal Government that he had collected on its behalf. *Id.,* at 274, 275. The plaintiff, who claimed title to the same land through a different transfer, objected that the Treasury Department's calculation of the deficiency

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and sale of the property was void, because it was a judicial act that could not be assigned to the Executive under Article III. *Id.,* at 274–275, 282–283.

***2612** "To avoid misconstruction upon so grave a subject," the Court laid out the principles guiding its analysis. *Id.,* at 284. It confirmed that Congress cannot "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Ibid.* The Court also recognized that "[a]t the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." *Ibid.*

As an example of such matters, the Court referred to "[e]quitable claims to land by the inhabitants of ceded territories" and cited cases in which land issues were conclusively resolved by Executive Branch officials. *Ibid.* (citing *Foley v. Harrison,* 56 U.S. 433, 15 How. 433, 14 L.Ed. 761 (1854); *Burgess v. Gray,* 57 U.S. 48, 16 How. 48, 14 L.Ed. 839 (1854)). In those cases "it depends upon the will of congress whether a remedy in the courts shall be allowed at all," so Congress could limit the extent to which a judicial forum was available. *Murray's Lessee,* 18 How., at 284. The challenge in *Murray's Lessee* to the Treasury Department's sale of the collector's land likewise fell within the "public rights" category of cases, because it could only be brought if the Federal Government chose to allow it by waiving sovereign immunity. *Id.,* at 283–284. The point of *Murray's Lessee* was simply that Congress may set the terms of adjudicating a suit when the suit could not otherwise proceed at all.

Subsequent decisions from this Court contrasted cases within the reach of the public rights exception—those arising "between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments"—and those that were instead matters "of private right, that is, of the liability of one individual to another under the law as defined." *Crowell v. Benson,* 285 U.S. 22, 50, 51, 52 S.Ct. 285, 76 L.Ed. 598 (1932).[6] See ***2613** *Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n,* 430 U.S. 442, 458, 97 S.Ct. 1261, 51 L.Ed.2d 464 (1977) (Exception extends to cases "where the Government is involved in its sovereign capacity under ... [a] statute creating enforceable public rights," while "[w]holly private tort, contract, and property cases, as well as a vast range of other cases ... are not at all implicated"); *Ex parte Bakelite Corp.,* 279 U.S. 438, 451–452, 49 S.Ct. 411, 73 L.Ed. 789 (1929). See also *Northern Pipeline, supra,* at 68, 102 S.Ct. 2858 (plurality opinion) (citing *Ex parte Bakelite Corp.* for the proposition that the doctrine extended "only to matters that historically could have been determined exclusively by" the Executive and Legislative Branches).

6 Although the Court in *Crowell* went on to decide that the facts of the private dispute before it could be determined by a non-Article III tribunal in the first instance, subject to judicial review, the Court did so only after observing that the administrative adjudicator had only limited authority to make specialized, narrowly confined factual determinations regarding a particularized area of law and to issue orders that could be enforced only by action of the District Court. 285 U.S., at 38, 44–45, 54, 52 S.Ct. 285; see *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 78, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion). In other words, the agency in *Crowell* functioned as a true "adjunct" of the District Court. That is not the case here. See *infra,* at 2618 – 2619.
Although the dissent suggests that we understate the import of *Crowell* in this regard, the dissent itself recognizes—repeatedly—that *Crowell* by its terms addresses the determination of *facts* outside Article III. See *post,* at 2623 (*Crowell* "upheld Congress' delegation of primary factfinding authority to the agency"); *post,* at 2627 (quoting *Crowell,* 285 U.S., at 51, 52 S.Ct. 285, for the proposition that " 'there is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges' "). *Crowell* may well have additional significance in the context of expert administrative agencies that oversee particular substantive federal regimes, but we have no occasion to and do not address those issues today. See *infra,* at 2615. The United States apparently agrees that any broader significance of *Crowell* is not pertinent in this case, citing to *Crowell* in its brief only once, in the last footnote, again for the limited proposition discussed above. Brief for United States as *Amicus Curiae* 32, n. 5.

[7] Shortly after *Northern Pipeline,* the Court rejected the limitation of the public rights exception to actions involving the Government as a party. The Court has continued, however, to limit the exception to cases in which the claim at issue derives from a federal regulatory scheme, or in which resolution of the claim by an expert government agency is deemed essential to a limited regulatory objective within the agency's authority. In other words, it is still the case that what makes a right "public" rather than private is that the right is integrally related to particular federal government action. See *United States v. Jicarilla Apache Nation,* 564 U.S. ——, —— - ——, 131 S.Ct. 2313, 180 L.Ed.2d 187, 2011 WL 2297786, *8–9 (2011) ("The distinction

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between 'public rights' against the Government and 'private rights' between private parties is well established," citing *Murray's Lessee* and *Crowell*).

Our decision in *Thomas v. Union Carbide Agricultural Products Co.,* for example, involved a data-sharing arrangement between companies under a federal statute providing that disputes about compensation between the companies would be decided by binding arbitration. 473 U.S. 568, 571–575, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985). This Court held that the scheme did not violate Article III, explaining that "[a]ny right to compensation ... results from [the statute] and does not depend on or replace a right to such compensation under state law." *Id.,* at 584, 105 S.Ct. 3325.

Commodity Futures Trading Commission v. Schor concerned a statutory scheme that created a procedure for customers injured by a broker's violation of the federal commodities law to seek reparations from the broker before the Commodity Futures Trading Commission (CFTC). 478 U.S. 833, 836, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986). A customer filed such a claim to recover a debit balance in his account, while the broker filed a lawsuit in Federal District Court to recover the same amount as lawfully due from the customer. The broker later submitted its claim to the CFTC, but after that agency ruled against the customer, the customer argued that agency jurisdiction over the broker's counterclaim violated Article III. *Id.,* at 837–838, 106 S.Ct. 3245. This Court disagreed, but only after observing that (1) the claim and the counterclaim concerned a "single dispute"—the same account balance; (2) the CFTC's assertion of authority involved only "a narrow class of common law claims" in a " 'particularized area of law' "; (3) the area of law in question was governed by "a specific and limited federal regulatory scheme" as to which the agency had "obvious expertise"; (4) the parties had freely elected to resolve their differences before the CFTC; and (5) CFTC orders were "enforceable only by order of the district court." *Id.,* at 844, 852–855, 106 S.Ct. 3245 (quoting *Northern Pipeline,* 458 U.S., at 85, 102 S.Ct. 2858); see 478 U.S., at 843–844; 849–857, 106 S.Ct. 3245. Most significantly, ***2614** given that the customer's reparations claim before the agency and the broker's counterclaim were competing claims to the same amount, the Court repeatedly emphasized that it was "necessary" to allow the agency to exercise jurisdiction over the broker's claim, or else "the reparations procedure would have been confounded." *Id.,* at 856, 106 S.Ct. 3245.

The most recent case in which we considered application of the public rights exception—and the only case in which we have considered that doctrine in the bankruptcy context since *Northern Pipeline*—is *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989). In *Granfinanciera* we rejected a bankruptcy trustee's argument that a fraudulent conveyance action filed on behalf of a bankruptcy estate against a noncreditor in a bankruptcy proceeding fell within the "public rights" exception. We explained that, "[i]f a statutory right is not closely intertwined with a federal regulatory program Congress has power to enact, and if that right neither belongs to nor exists against the Federal Government, then it must be adjudicated by an Article III court." *Id.,* at 54–55, 109 S.Ct. 2782. We reasoned that fraudulent conveyance suits were "quintessentially suits at common law that more nearly resemble state law contract claims brought by a bankrupt corporation to augment the bankruptcy estate than they do creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res." *Id.,* at 56, 109 S.Ct. 2782. As a consequence, we concluded that fraudulent conveyance actions were "more accurately characterized as a private rather than a public right as we have used those terms in our Article III decisions." *Id.,* at 55, 109 S.Ct. 2782. [7]

7 We noted that we did not mean to "suggest that the restructuring of debtor-creditor relations is in fact a public right." 492 U.S., at 56, n. 11, 109 S.Ct. 2782. Our conclusion was that, "even if one accepts this thesis," Congress could not constitutionally assign resolution of the fraudulent conveyance action to a non-Article III court. *Ibid.* Because neither party asks us to reconsider the public rights framework for bankruptcy, we follow the same approach here.

Vickie's counterclaim—like the fraudulent conveyance claim at issue in *Granfinanciera*—does not fall within any of the varied formulations of the public rights exception in this Court's cases. It is not a matter that can be pursued only by grace of the other branches, as in *Murray's Lessee,* 18 How., at 284, or one that "historically could have been determined exclusively by" those branches, *Northern Pipeline, supra,* at 68, 102 S.Ct. 2858 (citing *Ex parte Bakelite Corp.,* 279 U.S., at 458, 49 S.Ct. 411). The claim is instead one under state common law between two private parties. It does not "depend[ ] on the will of congress," *Murray's Lessee, supra,* at 284; Congress has nothing to do with it.

In addition, Vickie's claimed right to relief does not flow from a federal statutory scheme, as in *Thomas,* 473 U.S., at 584–585, 105 S.Ct. 3325, or *Atlas Roofing,* 430 U.S., at 458, 97 S.Ct. 1261. It is not "completely dependent upon" adjudication of a claim

created by federal law, as in *Schor,* 478 U.S., at 856, 106 S.Ct. 3245. And in contrast to the objecting party in *Schor, id.,* at 855–856, 106 S.Ct. 3245, Pierce did not truly consent to resolution of Vickie's claim in the bankruptcy court proceedings. He had nowhere else to go if he wished to recover from Vickie's estate. See *Granfinanciera, supra,* at 59, n. 14, 109 S.Ct. 2782 (noting that "[p]arallel reasoning [to *Schor*] is unavailable in the context of bankruptcy proceedings, because creditors lack an alternative forum ***2615** to the bankruptcy court in which to pursue their claims"). [8]

8 Contrary to the claims of the dissent, see *post,* at 2627 – 2628, Pierce did not have another forum in which to pursue his claim to recover from Vickie's prebankruptcy assets, rather than take his chances with whatever funds might remain after the Title 11 proceedings. Creditors who possess claims that do not satisfy the requirements for nondischargeability under 11 U.S.C. § 523 have no choice but to file their claims in bankruptcy proceedings if they want to pursue the claims at all. That is why, as we recognized in *Granfinanciera,* the notion of "consent" does not apply in bankruptcy proceedings as it might in other contexts.

Furthermore, the asserted authority to decide Vickie's claim is not limited to a "particularized area of the law," as in *Crowell, Thomas,* and *Schor. Northern Pipeline,* 458 U.S., at 85, 102 S.Ct. 2858 (plurality opinion). We deal here not with an agency but with a court, with substantive jurisdiction reaching any area of the *corpus juris.* See *ibid.*; *id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment). This is not a situation in which Congress devised an "expert and inexpensive method for dealing with a class of questions of fact which are particularly suited to examination and determination by an administrative agency specially assigned to that task." *Crowell,* 285 U.S., at 46, 52 S.Ct. 285; see *Schor, supra,* at 855–856, 106 S.Ct. 3245. The "experts" in the federal system at resolving common law counterclaims such as Vickie's are the Article III courts, and it is with those courts that her claim must stay.

The dissent reads our cases differently, and in particular contends that more recent cases view *Northern Pipeline* as " 'establish[ing] only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review.' " *Post,* at 2624 (quoting *Thomas, supra,* at 584, 105 S.Ct. 3325). Just so: Substitute "tort" for "contract," and that statement directly covers this case.

We recognize that there may be instances in which the distinction between public and private rights—at least as framed by some of our recent cases—fails to provide concrete guidance as to whether, for example, a particular agency can adjudicate legal issues under a substantive regulatory scheme. Given the extent to which this case is so markedly distinct from the agency cases discussing the public rights exception in the context of such a regime, however, we do not in this opinion express any view on how the doctrine might apply in that different context.

What is plain here is that this case involves the most prototypical exercise of judicial power: the entry of a final, binding judgment *by a court* with broad substantive jurisdiction, on a common law cause of action, when the action neither derives from nor depends upon any agency regulatory regime. If such an exercise of judicial power may nonetheless be taken from the Article III Judiciary simply by deeming it part of some amorphous "public right," then Article III would be transformed from the guardian of individual liberty and separation of powers we have long recognized into mere wishful thinking.

2

Vickie and the dissent next attempt to distinguish *Northern Pipeline* and *Granfinanciera* on the ground that Pierce, unlike the defendants in those cases, had filed a proof of claim in the bankruptcy proceedings. Given Pierce's participation in those proceedings, Vickie argues, the Bankruptcy ***2616** Court had the authority to adjudicate her counterclaim under our decisions in *Katchen v. Landy,* 382 U.S. 323, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966), and *Langenkamp v. Culp,* 498 U.S. 42, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990) (*per curiam*).

We do not agree. As an initial matter, it is hard to see why Pierce's decision to file a claim should make any difference with respect to the characterization of Vickie's counterclaim. " '[P]roperty interests are created and defined by state law,' and '[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.' " *Travelers Casualty & Surety Co. of America v. Pacific*

Gas & Elec. Co., 549 U.S. 443, 451, 127 S.Ct. 1199, 167 L.Ed.2d 178 (2007) (quoting *Butner v. United States,* 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979)). Pierce's claim for defamation in no way affects the nature of Vickie's counterclaim for tortious interference as one at common law that simply attempts to augment the bankruptcy estate—the very type of claim that we held in *Northern Pipeline* and *Granfinanciera* must be decided by an Article III court.

Contrary to Vickie's contention, moreover, our decisions in *Katchen* and *Langenkamp* do not suggest a different result. *Katchen* permitted a bankruptcy referee acting under the Bankruptcy Acts of 1898 and 1938 (akin to a bankruptcy court today) to exercise what was known as "summary jurisdiction" over a voidable preference claim brought by the bankruptcy trustee against a creditor who had filed a proof of claim in the bankruptcy proceeding. See 382 U.S., at 325, 327–328, 86 S.Ct. 467. A voidable preference claim asserts that a debtor made a payment to a particular creditor in anticipation of bankruptcy, to in effect increase that creditor's proportionate share of the estate. The preferred creditor's claim in bankruptcy can be disallowed as a result of the preference, and the amounts paid to that creditor can be recovered by the trustee. See *id.,* at 330, 86 S.Ct. 467; see also 11 U.S.C. §§ 502(d), 547(b).

Although the creditor in *Katchen* objected that the preference issue should be resolved through a "plenary suit" in an Article III court, this Court concluded that summary adjudication in bankruptcy was appropriate, because it was not possible for the referee to rule on the creditor's proof of claim without first resolving the voidable preference issue. 382 U.S., at 329–330, 332–333, and n. 9, 334, 86 S.Ct. 467. There was no question that the bankruptcy referee could decide whether there had been a voidable preference in determining whether and to what extent to allow the creditor's claim. Once the referee did that, "nothing remains for adjudication in a plenary suit"; such a suit "would be a meaningless gesture." *Id.,* at 334, 86 S.Ct. 467. The plenary proceeding the creditor sought could be brought into the bankruptcy court because "the same issue [arose] as part of the process of allowance and disallowance of claims." *Id.,* at 336, 86 S.Ct. 467.

It was in that sense that the Court stated that "he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that procedure." *Id.,* at 333, n. 9, 86 S.Ct. 467. In *Katchen* one of those consequences was resolution of the preference issue as part of the process of allowing or disallowing claims, and accordingly there was no basis for the creditor to insist that the issue be resolved in an Article III court. See *id.,* at 334, 86 S.Ct. 467. Indeed, the *Katchen* Court expressly noted that it "intimate[d] no opinion concerning whether" the bankruptcy ***2617** referee would have had "summary jurisdiction to adjudicate a demand by the [bankruptcy] trustee for affirmative relief, all of the substantial factual and legal bases for which ha[d] not been disposed of in passing on objections to the [creditor's proof of] claim." *Id.,* at 333, n. 9, 86 S.Ct. 467.

Our *per curiam* opinion in *Langenkamp* is to the same effect. We explained there that a preferential transfer claim can be heard in bankruptcy when the allegedly favored creditor has filed a claim, because *then* "the ensuing preference action by the trustee become[s] integral to the restructuring of the debtor-creditor relationship." 498 U.S., at 44, 111 S.Ct. 330. If, in contrast, the creditor has not filed a proof of claim, the trustee's preference action does *not* "become[ ] part of the claims-allowance process" subject to resolution by the bankruptcy court. *Ibid.*; see *id.,* at 45, 111 S.Ct. 330.

In ruling on Vickie's counterclaim, the Bankruptcy Court was required to and did make several factual and legal determinations that were not "disposed of in passing on objections" to Pierce's proof of claim for defamation, which the court had denied almost a year earlier. *Katchen, supra,* at 332, n. 9., 86 S.Ct. 467 There was some overlap between Vickie's counterclaim and Pierce's defamation claim that led the courts below to conclude that the counterclaim was compulsory, 600 F.3d, at 1057, or at least in an "attenuated" sense related to Pierce's claim, 264 B.R., at 631. But there was never any reason to believe that the process of adjudicating Pierce's proof of claim would necessarily resolve Vickie's counterclaim. See *id.,* at 631, 632 (explaining that "the primary facts at issue on Pierce's claim were the relationship between Vickie and her attorneys and her knowledge or approval of their statements," and "the counterclaim raises issues of law entirely different from those raise[d] on the defamation claim"). The United States acknowledges the point. See Brief for United States as *Amicus Curiae,* p. (I) (question presented concerns authority of a bankruptcy court to enter final judgment on a compulsory counterclaim "when adjudication of the counterclaim requires resolution of issues that are not implicated by the claim against the estate"); *id.,* at 26.

The only overlap between the two claims in this case was the question whether Pierce had in fact tortiously taken control of his father's estate in the manner alleged by Vickie in her counterclaim and described in the allegedly defamatory statements. From the outset, it was clear that, even assuming the Bankruptcy Court would (as it did) rule in Vickie's favor on that question, the court could not enter judgment for Vickie unless the court additionally ruled on the questions whether Texas recognized tortious interference with an expected gift as a valid cause of action, what the elements of that action were, and whether those elements were met in this case. 275 B.R., at 50–53. Assuming Texas accepted the elements adopted by other jurisdictions, that meant Vickie would need to prove, above and beyond Pierce's tortious interference, (1) the existence of an expectancy of a gift; (2) a reasonable certainty that the expectancy would have been realized but for the interference; and (3) damages. *Id.,* at 51; see 253 B.R., at 558–561. Also, because Vickie sought punitive damages in connection with her counterclaim, the Bankruptcy Court could not finally dispose of the case in Vickie's favor without determining whether to subject Pierce to the sort of "retribution," "punishment[,] and deterrence," *Exxon Shipping Co.,* 554 U.S., at 492, 504, 128 S.Ct. 2605 (internal quotation marks omitted), those damages are designed to impose. There thus was never reason to believe that the process of ruling ***2618** on Pierce's proof of claim would necessarily result in the resolution of Vickie's counterclaim.

In both *Katchen* and *Langenkamp,* moreover, the trustee bringing the preference action was asserting a right of recovery created by federal bankruptcy law. In *Langenkamp*, we noted that "the trustee instituted adversary proceedings under 11 U.S.C. § 547(b) to recover, as avoidable preferences," payments respondents received from the debtor before the bankruptcy filings. 498 U.S., at 43, 111 S.Ct. 330; see, *e.g.,* § 547(b)(1) ("the trustee may avoid any transfer of an interest of the debtor in property—(1) to or for the benefit of a creditor"). In *Katchen,* "[t]he Trustee ... [asserted] that the payments made [to the creditor] were preferences inhibited by Section 60a of the Bankruptcy Act." Memorandum Opinion (Feb. 8, 1963), Tr. of Record in O.T.1965, No. 28, p. 3; see 382 U.S., at 334, 86 S.Ct. 467 (considering impact of the claims allowance process on "action by the trustee under § 60 to recover the preference"); 11 U.S.C. § 96(b) (1964 ed.) (§ 60(b) of the then-applicable Bankruptcy Act) ("preference may be avoided by the trustee if the creditor receiving it or to be benefited thereby ... has, at the time when the transfer is made, reasonable cause to believe that the debtor is insolvent"). Vickie's claim, in contrast, is in no way derived from or dependent upon bankruptcy law; it is a state tort action that exists without regard to any bankruptcy proceeding.

[8] In light of all the foregoing, we disagree with the dissent that there are no "relevant distinction[s]" between Pierce's claim in this case and the claim at issue in *Langenkamp. Post,* at 2628. We see no reason to treat Vickie's counterclaim any differently from the fraudulent conveyance action in *Granfinanciera.* 492 U.S., at 56, 109 S.Ct. 2782. *Granfinanciera* 's distinction between actions that seek "to augment the bankruptcy estate" and those that seek "a pro rata share of the bankruptcy res," *ibid.,* reaffirms that Congress may not bypass Article III simply because a proceeding may have *some* bearing on a bankruptcy case; the question is whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process. Vickie has failed to demonstrate that her counterclaim falls within one of the "limited circumstances" covered by the public rights exception, particularly given our conclusion that, "even with respect to matters that arguably fall within the scope of the 'public rights' doctrine, the presumption is in favor of Art. III courts." *Northern Pipeline,* 458 U.S., at 69, n. 23, 77, n. 29, 102 S.Ct. 2858 (plurality opinion).

3

Vickie additionally argues that the Bankruptcy Court's final judgment was constitutional because bankruptcy courts under the 1984 Act are properly deemed "adjuncts" of the district courts. Brief for Petitioner 61–64. We rejected a similar argument in *Northern Pipeline,* see 458 U.S., at 84–86, 102 S.Ct. 2858 (plurality opinion); *id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment), and our reasoning there holds true today.

To begin, as explained above, it is still the bankruptcy court itself that exercises the essential attributes of judicial power over a matter such as Vickie's counterclaim. See *supra,* at 2610. The new bankruptcy courts, like the old, do not "ma[k]e only specialized, narrowly confined factual determinations regarding a particularized area of law" or engage in "statutorily channeled factfinding functions." *Northern Pipeline,* 458 U.S., at 85, 102 S.Ct. 2858 (plurality opinion). Instead, bankruptcy courts under

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the 1984 Act resolve ***2619** "[a]ll matters of fact and law in whatever domains of the law to which" the parties' counterclaims might lead. *Id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment).

In addition, whereas the adjunct agency in *Crowell v. Benson* "possessed only a limited power to issue compensation orders ... [that] could be enforced only by order of the district court," *Northern Pipeline, supra,* at 85, 102 S.Ct. 2858, a bankruptcy court resolving a counterclaim under 28 U.S.C. § 157(b)(2)(C) has the power to enter "appropriate orders and judgments"—including final judgments—subject to review only if a party chooses to appeal, see §§ 157(b)(1), 158(a)-(b). It is thus no less the case here than it was in *Northern Pipeline* that "[t]he authority—and the responsibility—to make an informed, final determination ... remains with" the bankruptcy judge, not the district court. 458 U.S., at 81, 102 S.Ct. 2858 (plurality opinion) (internal quotation marks omitted). Given that authority, a bankruptcy court can no more be deemed a mere "adjunct" of the district court than a district court can be deemed such an "adjunct" of the court of appeals. We certainly cannot accept the dissent's notion that judges who have the power to enter final, binding orders are the "functional [ ]" equivalent of "law clerks[ ] and the Judiciary's administrative officials." *Post,* at 2627. And even were we wrong in this regard, that would only confirm that such judges should not be in the business of entering final judgments in the first place.

It does not affect our analysis that, as Vickie notes, bankruptcy judges under the current Act are appointed by the Article III courts, rather than the President. See Brief for Petitioner 59. If—as we have concluded—the bankruptcy court itself exercises "the essential attributes of judicial power [that] are reserved to Article III courts," *Schor,* 478 U.S., at 851, 106 S.Ct. 3245 (internal quotation marks omitted), it does not matter who appointed the bankruptcy judge or authorized the judge to render final judgments in such proceedings. The constitutional bar remains. See The Federalist No. 78, at 471 ("Periodical appointments, however regulated, or by whomsoever made, would, in some way or other, be fatal to [a judge's] necessary independence").

D

[9] Finally, Vickie and her *amici* predict as a practical matter that restrictions on a bankruptcy court's ability to hear and finally resolve compulsory counterclaims will create significant delays and impose additional costs on the bankruptcy process. See, *e.g.,* Brief for Petitioner 34–36, 57–58; Brief for United States as *Amicus Curiae* 29–30. It goes without saying that "the fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." *INS v. Chadha,* 462 U.S. 919, 944, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983).

In addition, we are not convinced that the practical consequences of such limitations on the authority of bankruptcy courts to enter final judgments are as significant as Vickie and the dissent suggest. See *post,* at 2630. The dissent asserts that it is important that counterclaims such as Vickie's be resolved "in a bankruptcy court," and that, "to be effective, a single tribunal must have broad authority to restructure [debtor-creditor] relations." *Post,* at 2628, 2629 (emphasis deleted). But the framework Congress adopted in the 1984 Act already contemplates that certain state law matters in bankruptcy cases will be resolved by judges other than those of the bankruptcy courts. ***2620** Section 1334(c)(2), for example, requires that bankruptcy courts abstain from hearing specified non-core, state law claims that "can be timely adjudicated[ ] in a State forum of appropriate jurisdiction." Section 1334(c)(1) similarly provides that bankruptcy courts may abstain from hearing any proceeding, including core matters, "in the interest of comity with State courts or respect for State law."

As described above, the current bankruptcy system also requires the district court to review *de novo* and enter final judgment on any matters that are "related to" the bankruptcy proceedings, § 157(c)(1), and permits the district court to withdraw from the bankruptcy court any referred case, proceeding, or part thereof, § 157(d). Pierce has not argued that the bankruptcy courts "are barred from 'hearing' all counterclaims" or proposing findings of fact and conclusions of law on those matters, but rather that it must be the district court that "finally decide[s]" them. Brief for Respondent 61. We do not think the removal of counterclaims such as Vickie's from core bankruptcy jurisdiction meaningfully changes the division of labor in the current statute; we agree with the United States that the question presented here is a "narrow" one. Brief for United States as *Amicus Curiae* 23.

If our decision today does not change all that much, then why the fuss? Is there really a threat to the separation of powers where Congress has conferred the judicial power outside Article III only over certain counterclaims in bankruptcy? The short but

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emphatic answer is yes. A statute may no more lawfully chip away at the authority of the Judicial Branch than it may eliminate it entirely. "Slight encroachments create new boundaries from which legions of power can seek new territory to capture." *Reid v. Covert,* 354 U.S. 1, 39, 77 S.Ct. 1222, 1 L.Ed.2d 1148 (1957) (plurality opinion). Although "[i]t may be that it is the obnoxious thing in its mildest and least repulsive form," we cannot overlook the intrusion: "illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure." *Boyd v. United States,* 116 U.S. 616, 635, 6 S.Ct. 524, 29 L.Ed. 746 (1886). We cannot compromise the integrity of the system of separated powers and the role of the Judiciary in that system, even with respect to challenges that may seem innocuous at first blush.

* * *

Article III of the Constitution provides that the judicial power of the United States may be vested only in courts whose judges enjoy the protections set forth in that Article. We conclude today that Congress, in one isolated respect, exceeded that limitation in the Bankruptcy Act of 1984. The Bankruptcy Court below lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

Justice SCALIA, concurring.

I agree with the Court's interpretation of our Article III precedents, and I accordingly join its opinion. I adhere to my view, however, that—our contrary precedents notwithstanding—"a matter of public rights ... must at a minimum arise between the government and others," *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 65, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989) (SCALIA, J., concurring in part and concurring in judgment) (internal quotation marks omitted).

***2621** The sheer surfeit of factors that the Court was required to consider in this case should arouse the suspicion that something is seriously amiss with our jurisprudence in this area. I count at least seven different reasons given in the Court's opinion for concluding that an Article III judge was required to adjudicate this lawsuit: that it was one "under state common law" which was "not a matter that can be pursued only by grace of the other branches," *ante,* at 2614; that it was "not 'completely dependent upon' adjudication of a claim created by federal law," *ibid.;* that "Pierce did not truly consent to resolution of Vickie's claim in the bankruptcy court proceedings," *ibid.;* that "the asserted authority to decide Vickie's claim is not limited to a 'particularized area of the law,' " *ante,* at 2615; that "there was never any reason to believe that the process of adjudicating Pierce's proof of claim would necessarily resolve Vickie's counterclaim," *ante,* at 2617; that the trustee was not "asserting a right of recovery created by federal bankruptcy law," *ante,* at 2618; and that the Bankruptcy Judge "ha[d] the power to enter 'appropriate orders and judgments'—including final judgments—subject to review only if a party chooses to appeal," *ante,* at 2619.

Apart from their sheer numerosity, the more fundamental flaw in the many tests suggested by our jurisprudence is that they have nothing to do with the text or tradition of Article III. For example, Article III gives no indication that state-law claims have preferential entitlement to an Article III judge; nor does it make pertinent the extent to which the area of the law is "particularized." The multifactors relied upon today seem to have entered our jurisprudence almost randomly.

Leaving aside certain adjudications by federal administrative agencies, which are governed (for better or worse) by our landmark decision in *Crowell v. Benson,* 285 U.S. 22, 52 S.Ct. 285, 76 L.Ed. 598 (1932), in my view an Article III judge is required in *all* federal adjudications, unless there is a firmly established historical practice to the contrary. For that reason—and not because of some intuitive balancing of benefits and harms—I agree that Article III judges are not required in the context of territorial courts, courts-martial, or true "public rights" cases. See *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 71, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) (plurality opinion). Perhaps historical practice permits non-Article III judges to process claims against the bankruptcy estate, see, *e.g.,* Plank, Why Bankruptcy Judges Need Not and Should Not Be Article III Judges, 72 Am. Bankr.L.J. 567, 607–609 (1998); the subject has not been briefed, and so I state no position on the matter. But Vickie points to no historical practice that authorizes a non-Article III judge to adjudicate a counterclaim of the sort at issue here.

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Justice BREYER, with whom Justice GINSBURG, Justice SOTOMAYOR, and Justice KAGAN, join dissenting.

Pierce Marshall filed a claim in Federal Bankruptcy Court against the estate of Vickie Marshall. His claim asserted that Vickie Marshall had, through her lawyers, accused him of trying to prevent her from obtaining money that his father had wanted her to have; that her accusations violated state defamation law; and that she consequently owed Pierce Marshall damages. Vickie Marshall filed a compulsory counterclaim in which she asserted that Pierce Marshall had unlawfully interfered with her husband's efforts to grant her an *inter vivos* gift and that he consequently owed her damages.

The Bankruptcy Court adjudicated the claim and the counterclaim. In doing so, ***2622** the court followed statutory procedures applicable to "core" bankruptcy proceedings. See 28 U.S.C. § 157(b). And ultimately the Bankruptcy Court entered judgment in favor of Vickie Marshall. The question before us is whether the Bankruptcy Court possessed jurisdiction to adjudicate Vickie Marshall's counterclaim. I agree with the Court that the bankruptcy statute, § 157(b)(2)(C), authorizes a bankruptcy court to adjudicate the counterclaim. But I do not agree with the majority about the statute's constitutionality. I believe the statute is consistent with the Constitution's delegation of the "judicial Power of the United States" to the Judicial Branch of Government. Art. III, § 1. Consequently, it is constitutional.

I

My disagreement with the majority's conclusion stems in part from my disagreement about the way in which it interprets, or at least emphasizes, certain precedents. In my view, the majority overstates the current relevance of statements this Court made in an 1856 case, *Murray's Lessee v. Hoboken Land & Improvement Co.,* 59 U.S. 272, 18 How. 272, 15 L.Ed. 372 (1856), and it overstates the importance of an analysis that did not command a Court majority in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,* 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982), and that was subsequently disavowed. At the same time, I fear the Court understates the importance of a watershed opinion widely thought to demonstrate the constitutional basis for the current authority of administrative agencies to adjudicate private disputes, namely, *Crowell v. Benson,* 285 U.S. 22, 52 S.Ct. 285, 76 L.Ed. 598 (1932). And it fails to follow the analysis that this Court more recently has held applicable to the evaluation of claims of a kind before us here, namely, claims that a congressional delegation of adjudicatory authority violates separation-of-powers principles derived from Article III. See *Thomas v. Union Carbide Agricultural Products Co.,* 473 U.S. 568, 105 S.Ct. 3325, 87 L.Ed.2d 409 (1985); *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986).

I shall describe these cases in some detail in order to explain why I believe we should put less weight than does the majority upon the statement in *Murray's Lessee* and the analysis followed by the *Northern Pipeline* plurality and instead should apply the approach this Court has applied in *Crowell, Thomas,* and *Schor.*

A

In *Murray's Lessee*, the Court held that the Constitution permitted an executive official, through summary, nonjudicial proceedings, to attach the assets of a customs collector whose account was deficient. The Court found evidence in common law of "summary method[s] for the recovery of debts due to the crown, and especially those due from receivers of the revenues," 18 How., at 277, and it analogized the Government's summary attachment process to the kind of self-help remedies available to private parties, *id.*, at 283. In the course of its opinion, the Court wrote:

> "[W]e do not consider congress can either withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty; nor, on the other hand, can it bring under the judicial power a matter which, from its nature, is not a subject for judicial determination. At the same time there are matters, involving public rights, which may be presented in such form that the judicial power is capable of acting on them, and which are susceptible of judicial determination, but which congress may or may not bring within the cognizance of ***2623** the courts of the United States, as it may deem proper." *Id.,* at 284.

The majority reads the first part of the statement's first sentence as authoritatively defining the boundaries of Article III. *Ante,* at 2609. I would read the statement in a less absolute way. For one thing, the statement is in effect dictum. For another, it is the remainder of the statement, announcing a distinction between "public rights" and "private rights," that has had the more lasting impact. Later Courts have seized on that distinction when *upholding* non-Article III adjudication, not when striking it down. See *Ex parte Bakelite Corp.,* 279 U.S. 438, 451–452, 49 S.Ct. 411, 73 L.Ed. 789 (1929) (Court of Customs Appeals); *Williams v. United States,* 289 U.S. 553, 579–580, 53 S.Ct. 751, 77 L.Ed. 1372 (1933) (Court of Claims). The one exception is *Northern Pipeline,* where the Court struck down the Bankruptcy Act of 1978. But in that case there was no majority. And a plurality, not a majority, read the statement roughly in the way the Court does today. See 458 U.S., at 67–70, 102 S.Ct. 2858.

B

At the same time, I believe the majority places insufficient weight on *Crowell,* a seminal case that clarified the scope of the dictum in *Murray's Lessee.* In that case, the Court considered whether Congress could grant to an Article I administrative agency the power to adjudicate an employee's workers' compensation claim against his employer. The Court assumed that an Article III court would review the agency's decision *de novo* in respect to questions of law but it would conduct a less searching review (looking to see only if the agency's award was "supported by evidence in the record") in respect to questions of fact. *Crowell,* 285 U.S., at 48–50, 52 S.Ct. 285. The Court pointed out that the case involved a dispute between private persons (a matter of "private rights") and (with one exception not relevant here) it upheld Congress' delegation of primary factfinding authority to the agency.

Justice Brandeis, dissenting (from a here-irrelvant portion of the Court's holding), wrote that the adjudicatory scheme raised only a due process question: When does due process require decision by an Article III judge? He answered that question by finding constitutional the statute's delegation of adjudicatory authority to an agency. *Id.,* at 87, 52 S.Ct. 285.

Crowell has been hailed as "the greatest of the cases validating administrative adjudication." Bator, The Constitution as Architecture: Legislative and Administrative Courts Under Article III, 65 Ind. L.J. 233, 251 (1990). Yet, in a footnote, the majority distinguishes *Crowell* as a case in which the Court upheld the delegation of adjudicatory authority to an administrative agency simply because the agency's power to make the "specialized, narrowly confined factual determinations" at issue arising in a "particularized area of law," made the agency a "true 'adjunct' of the District Court." *Ante,* at 2612, n. 6. Were *Crowell's* holding as narrow as the majority suggests, one could question the validity of Congress' delegation of authority to adjudicate disputes among private parties to other agencies such as the National Labor Relations Board, the Commodity Futures Trading Commission, the Surface Transportation Board, and the Department of Housing and Urban Development, thereby resurrecting important legal questions previously thought to have been decided. See 29 U.S.C. § 160; 7 U.S.C. § 18; 49 U.S.C. § 10704; 42 U.S.C. § 3612(b).

C

The majority, in my view, overemphasizes the precedential effect of the plurality ***2624** opinion in *Northern Pipeline. Ante,* at 2609 – 2610. There, the Court held unconstitutional the jurisdictional provisions of the Bankruptcy Act of 1978 granting adjudicatory authority to bankruptcy judges who lack the protections of tenure and compensation that Article III provides. Four Members of the Court wrote that Congress could grant adjudicatory authority to a non-Article III judge only where (1) the judge sits on a "territorial cour[t]" (2) the judge conducts a "courts-martial," or (3) the case involves a "public right," namely, a "matter" that "at a minimum arise[s] 'between the government and others.' " 458 U.S., at 64–70, 102 S.Ct. 2858 (plurality opinion) (quoting *Ex parte Bakelite Corp., supra,* at 451, 49 S.Ct. 411). Two other Members of the Court, without accepting these limitations, agreed with the result because the case involved a breach-of-contract claim brought by the bankruptcy trustee on behalf of the bankruptcy estate against a third party who was not part of the bankruptcy proceeding, and none of the Court's preceding cases (which, the two Members wrote, "do not admit of easy synthesis") had "gone so far as to sanction th[is] type of adjudication." 458 U.S., at 90–91, 102 S.Ct. 2858 (Rehnquist, J. concurring in judgment).

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Three years later, the Court held that *Northern Pipeline*

> "establishes only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review." *Thomas,* 473 U.S., at 584, 105 S.Ct. 3325.

D

Rather than leaning so heavily on the approach taken by the plurality in *Northern Pipeline,* I would look to this Court's more recent Article III cases *Thomas* and *Schor*—cases that commanded a clear majority. In both cases the Court took a more pragmatic approach to the constitutional question. It sought to determine whether, in the particular instance, the challenged delegation of adjudicatory authority posed a genuine and serious threat that one branch of Government sought to aggrandize its own constitutionally delegated authority by encroaching upon a field of authority that the Constitution assigns exclusively to another branch.

1

In *Thomas,* the Court focused directly upon the nature of the Article III problem, illustrating how the Court should determine whether a delegation of adjudicatory authority to a non-Article III judge violates the Constitution. The statute in question required pesticide manufacturers to submit to binding arbitration claims for compensation owed for the use by one manufacturer of the data of another to support its federal pesticide registration. After describing *Northern Pipeline* 's holding in the language I have set forth above, *supra,* at 2624, the Court stated that "*practical attention to substance* rather than doctrinaire reliance on formal categories should inform application of Article III." *Thomas,* 473 U.S., at 587, 105 S.Ct. 3325 (emphasis added). It indicated that Article III's requirements could not be "determined" by "the identity of the parties alone," *ibid.,* or by the "private rights"/"public rights" distinction, *id.,* at 585–586, 105 S.Ct. 3325. And it upheld the arbitration provision of the statute.

The Court pointed out that the right in question was created by a federal statute, it "represent[s] a pragmatic solution to the difficult problem of spreading [certain] costs," and the statute "does not preclude review of the arbitration proceeding by an ***2625** Article III court." *Id.*, at 589–592, 105 S.Ct. 3325. The Court concluded:

> "Given the nature of the right at issue and the concerns motivating the Legislature, we do not think this system threatens the independent role of the Judiciary in our constitutional scheme." *Id.*, at 590, 105 S.Ct. 3325.

2

Most recently, in *Schor,* the Court described in greater detail how this Court should analyze this kind of Article III question. The question at issue in *Schor* involved a delegation of authority to an agency to adjudicate a counterclaim. A customer brought before the Commodity Futures Trading Commission (CFTC) a claim for reparations against his commodity futures broker. The customer noted that his brokerage account showed that he owed the broker money, but he said that the broker's unlawful actions had produced that debit balance, and he sought damages. The broker brought a counterclaim seeking the money that the account showed the customer owed. This Court had to decide whether agency adjudication of such a counterclaim is consistent with Article III.

In doing so, the Court expressly "declined to adopt formalistic and unbending rules." *Schor,* 478 U.S., at 851, 106 S.Ct. 3245. Rather, it "weighed a number of factors, none of which has been deemed determinative, with an eye to the practical effect that the congressional action will have on the constitutionally assigned role of the federal judiciary." *Ibid.* Those relevant factors include (1) "the origins and importance of the right to be adjudicated"; (2) "the extent to which the non-Article III forum exercises the range of jurisdiction and powers normally vested only in Article III courts"; (3) the extent to which the delegation nonetheless reserves judicial power for exercise by Article III courts; (4) the presence or "absence of consent to an initial adjudication before

a non-Article III tribunal"; and (5) "the concerns that drove Congress to depart from" adjudication in an Article III court. *Id.*, at 849, 851, 106 S.Ct. 3245.

The Court added that where "private rights," rather than "public rights" are involved, the "danger of encroaching on the judicial powers" is greater. *Id.*, at 853–854, 106 S.Ct. 3245 (internal quotation marks omitted). Thus, while non-Article III adjudication of "private rights" is not necessarily unconstitutional, the Court's constitutional "examination" of such a scheme must be more "searching." *Ibid.*

Applying this analysis, the Court upheld the agency's authority to adjudicate the counterclaim. The Court conceded that the adjudication might be of a kind traditionally decided by a court and that the rights at issue were "private," not "public." *Id.*, at 853, 106 S.Ct. 3245. But, the Court said, the CFTC deals only with a " 'particularized area of law' "; the decision to invoke the CFTC forum is "left entirely to the parties"; Article III courts can review the agency's findings of fact under "the same 'weight of the evidence' standard sustained in *Crowell* " and review its "legal determinations ... *de novo* "; and the agency's "counterclaim jurisdiction" was necessary to make "workable" a "reparations procedure," which constitutes an important part of a congressionally enacted "regulatory scheme." *Id.*, at 852–856, 106 S.Ct. 3245. The Court concluded that for these and other reasons "the magnitude of any intrusion on the Judicial Branch can only be termed *de minimis.*" *Id.*, at 856, 106 S.Ct. 3245.

II

A

This case law, as applied in *Thomas* and *Schor,* requires us to determine pragmatically ***2626** whether a congressional delegation of adjudicatory authority to a non-Article III judge violates the separation-of-powers principles inherent in Article III. That is to say, we must determine through an examination of certain relevant factors whether that delegation constitutes a significant encroachment by the Legislative or Executive Branches of Government upon the realm of authority that Article III reserves for exercise by the Judicial Branch of Government. Those factors include (1) the nature of the claim to be adjudicated; (2) the nature of the non-Article III tribunal; (3) the extent to which Article III courts exercise control over the proceeding; (4) the presence or absence of the parties' consent; and (5) the nature and importance of the legislative purpose served by the grant of adjudicatory authority to a tribunal with judges who lack Article III's tenure and compensation protections. The presence of "private rights" does not automatically determine the outcome of the question but requires a more "searching" examination of the relevant factors. *Schor, supra,* at 854, 106 S.Ct. 3245.

Insofar as the majority would apply more formal standards, it simply disregards recent, controlling precedent. *Thomas, supra,* at 587, 105 S.Ct. 3325 ("[P]ractical attention to substance rather than doctrinaire reliance on formal categories should inform application of Article III"); *Schor, supra,* at 851, 106 S.Ct. 3245 ("[T]he Court has declined to adopt formalistic and unbending rules" for deciding Article III cases).

B

Applying *Schor'* s approach here, I conclude that the delegation of adjudicatory authority before us is constitutional. A grant of authority to a bankruptcy court to adjudicate compulsory counterclaims does not violate any constitutional separation-of-powers principle related to Article III.

First, I concede that *the nature of the claim to be adjudicated* argues against my conclusion. Vickie Marshall's counterclaim—a kind of tort suit—resembles "a suit at the common law." *Murray's Lessee,* 18 How., at 284. Although not determinative of the question, see *Schor,* 478 U.S., at 853, 106 S.Ct. 3245, a delegation of authority to a non-Article III judge to adjudicate a claim of that kind poses a heightened risk of encroachment on the Federal Judiciary, *id.,* at 854, 106 S.Ct. 3245.

At the same time the significance of this factor is mitigated here by the fact that bankruptcy courts often decide claims that similarly resemble various common-law actions. Suppose, for example, that ownership of 40 acres of land in the bankruptcy

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debtor's possession is disputed by a creditor. If that creditor brings a claim in the bankruptcy court, resolution of that dispute requires the bankruptcy court to apply the same state property law that would govern in a state court proceeding. This kind of dispute arises with regularity in bankruptcy proceedings.

Of course, in this instance the state-law question is embedded in a debtor's counterclaim, not a creditor's claim. But the counterclaim is "compulsory." It "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. Rule Civ. Proc. 13(a); Fed. Rule Bkrtcy. Proc. 7013. Thus, resolution of the counterclaim will often turn on facts identical to, or at least related to, those at issue in a creditor's claim that is undisputedly proper for the bankruptcy court to decide.

Second, *the nature of the non-Article III tribunal* argues in favor of constitutionality. That is because the tribunal is made up of judges who enjoy considerable protection ***2627** from improper political influence. Unlike the 1978 Act which provided for the appointment of bankruptcy judges by the President with the advice and consent of the Senate, 28 U.S.C. § 152 (1976 ed., Supp. IV), current law provides that the federal courts of appeals appoint federal bankruptcy judges, § 152(a)(1) (2006 ed.). Bankruptcy judges are removable by the circuit judicial counsel (made up of federal court of appeals and district court judges) and only for cause. § 152(e). Their salaries are pegged to those of federal district court judges, § 153(a), and the cost of their courthouses and other work-related expenses are paid by the Judiciary, § 156. Thus, although Congress technically exercised its Article I power when it created bankruptcy courts, functionally, bankruptcy judges can be compared to magistrate judges, law clerks, and the Judiciary's administrative officials, whose lack of Article III tenure and compensation protections do not endanger the independence of the Judicial Branch.

Third, *the control exercised by Article III judges over bankruptcy proceedings* argues in favor of constitutionality. Article III judges control and supervise the bankruptcy court's determinations—at least to the same degree that Article III judges supervised the agency's determinations in *Crowell,* if not more so. Any party may appeal those determinations to the federal district court, where the federal judge will review all determinations of fact for clear error and will review all determinations of law *de novo.* Fed. Rule Bkrtcy. Proc. 8013; 10 Collier on Bankruptcy ¶ 8013.04 (16th ed.2011). But for the here-irrelevant matter of what *Crowell* considered to be special "constitutional" facts, the standard of review for factual findings here ("clearly erroneous") is more stringent than the standard at issue in *Crowell* (whether the agency's factfinding was "supported by evidence in the record"). 285 U.S., at 48, 52 S.Ct. 285; see *Dickinson v. Zurko,* 527 U.S. 150, 152, 153, 119 S.Ct. 1816, 144 L.Ed.2d 143 (1999) ("unsupported by substantial evidence" more deferential than "clearly erroneous" (internal quotation marks omitted)). And, as *Crowell* noted, "there is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges." 285 U.S., at 51, 52 S.Ct. 285.

Moreover, in one important respect Article III judges maintain greater control over the bankruptcy court proceedings at issue here than they did over the relevant proceedings in any of the previous cases in which this Court has upheld a delegation of adjudicatory power. The District Court here may "withdraw, in whole or in part, any case or proceeding referred [to the Bankruptcy Court] ... on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. § 157(d); cf. *Northern Pipeline,* 458 U.S., at 80, n. 31, 102 S.Ct. 2858 (plurality opinion) (contrasting pre–1978 law where "power to withdraw the case from the [bankruptcy] referee" gave district courts "control" over case with the unconstitutional 1978 statute, which provided no such district court authority).

Fourth, the fact that *the parties have consented* to Bankruptcy Court jurisdiction argues in favor of constitutionality, and strongly so. Pierce Marshall, the counterclaim defendant, is not a stranger to the litigation, forced to appear in Bankruptcy Court against his will. Cf. *id.,* at 91, 102 S.Ct. 2858 (Rehnquist, J., concurring in judgment) (suit was litigated in Bankruptcy Court "over [the defendant's] objection"). Rather, he appeared voluntarily in Bankruptcy Court as one of Vickie Marshall's creditors, seeking a favorable resolution of his claim against Vickie Marshall to the detriment of her other creditors. ***2628** He need not have filed a claim, perhaps not even at the cost of bringing it in the future, for he says his claim is "nondischargeable," in which case he could have litigated it in a state or federal court after distribution. See 11 U.S.C. § 523(a)(6). Thus, Pierce Marshall likely had "an alternative forum to the bankruptcy court in which to pursue [his] clai[m]." *Granfinanciera, S.A. v. Nordberg,* 492 U.S. 33, 59, n. 14, 109 S.Ct. 2782, 106 L.Ed.2d 26 (1989).

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The Court has held, in a highly analogous context, that this type of consent argues strongly in favor of using ordinary bankruptcy court proceedings. In *Granfinanciera,* the Court held that when a bankruptcy trustee seeks to void a transfer of assets from the debtor to an individual on the ground that the transfer to that individual constitutes an unlawful "preference," the question of whether the individual has a right to a jury trial "depends upon whether the creditor has submitted a claim against the estate." *Id.*, at 58, 109 S.Ct. 2782. The following year, in *Langenkamp v. Culp,* 498 U.S. 42, 111 S.Ct. 330, 112 L.Ed.2d 343 (1990) *(per curiam),* the Court emphasized that when the individual files a claim against the estate, that individual has

> "trigger[ed] the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power. If the creditor is met, in turn, with a preference action from the trustee, that action becomes part of the claims-allowance process which is triable only in equity. In other words, the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's *equity jurisdiction*." *Id.*, at 44, 111 S.Ct. 330 (quoting *Granfinanciera,* 492 U.S., at 58, 109 S.Ct. 2782; citations omitted).

As we have recognized, the jury trial question and the Article III question are highly analogous. See *id.*, at 52–53, 111 S.Ct. 330. And to that extent, *Granfinanciera* 's and *Langenkamp* 's basic reasoning and conclusion apply here: Even when private rights are at issue, non-Article III adjudication may be appropriate when both parties consent. Cf. *Northern Pipeline, supra,* at 80, n. 31, 102 S.Ct. 2858 (plurality opinion) (noting the importance of consent to bankruptcy jurisdiction). See also *Schor,* 478 U.S., at 849, 106 S.Ct. 3245 ("[A]bsence of consent to an initial adjudication before a non-Article III tribunal was relied on [in *Northern Pipeline*] as a significant factor in determining that Article III forbade such adjudication"). The majority argues that Pierce Marshall "did not truly consent" to bankruptcy jurisdiction, *ante,* at 2614 – 2615, but filing a proof of claim was sufficient in *Langenkamp* and *Granfinanciera,* and there is no relevant distinction between the claims filed in those cases and the claim filed here.

Fifth, *the nature and importance of the legislative purpose served* by the grant of adjudicatory authority to bankruptcy tribunals argues strongly in favor of constitutionality. Congress' delegation of adjudicatory powers over counterclaims asserted against bankruptcy claimants constitutes an important means of securing a constitutionally authorized end. Article I, § 8, of the Constitution explicitly grants Congress the "Power To ... establish ... uniform Laws on the subject of Bankruptcies throughout the United States." James Madison wrote in the Federalist Papers that the

> "power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the ***2629** parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question." The Federalist No. 42, p. 271 (C. Rossiter ed.1961).

Congress established the first Bankruptcy Act in 1800. 2 Stat. 19. From the beginning, the "core" of federal bankruptcy proceedings has been "the restructuring of debtor-creditor relations." *Northern Pipeline, supra,* at 71, 102 S.Ct. 2858 (plurality opinion). And, to be effective, a single tribunal must have broad authority to restructure those relations, "having jurisdiction of the parties to controversies brought before them," "decid[ing] all matters in dispute," and "decree[ing] complete relief." *Katchen v. Landy,* 382 U.S. 323, 335, 86 S.Ct. 467, 15 L.Ed.2d 391 (1966) (internal quotation marks omitted).

The restructuring process requires a creditor to file a proof of claim in the bankruptcy court. 11 U.S.C. § 501; Fed. Rule Bkrtcy. Proc. 3002(a). In doing so, the creditor "triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp, supra,* at 44, 111 S.Ct. 330 (quoting *Granfinanciera, supra,* at 58, 109 S.Ct. 2782). By filing a proof of claim, the creditor agrees to the bankruptcy court's resolution of that claim, and if the creditor wins, the creditor will receive a share of the distribution of the bankruptcy estate. When the bankruptcy estate has a related claim against that creditor, that counterclaim may offset the creditor's claim, or even yield additional damages that augment the estate and may be distributed to the other creditors.

The consequent importance to the total bankruptcy scheme of permitting the trustee in bankruptcy to assert counterclaims against claimants, *and resolving those counterclaims in a bankruptcy court,* is reflected in the fact that Congress included "counterclaims by the estate against persons filing claims against the estate" on its list of "[c]ore proceedings." 28 U.S.C.

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§ 157(b)(2)(C). And it explains the difference, reflected in this Court's opinions, between a claimant's and a nonclaimant's constitutional right to a jury trial. Compare *Granfinanciera, supra,* at 58–59, 109 S.Ct. 2782 ("Because petitioners ... have not filed claims against the estate" they retain "their Seventh Amendment right to a trial by jury"), with *Langenkamp, supra,* at 45, 111 S.Ct. 330 ("Respondents filed claims against the bankruptcy estate" and "[c]onsequently, they were not entitled to a jury trial").

Consequently a bankruptcy court's determination of such matters has more than "some bearing on a bankruptcy case." *Ante,* at 2618 (emphasis deleted). It plays a critical role in Congress' constitutionally based effort to create an efficient, effective federal bankruptcy system. At the least, that is what Congress concluded. We owe deference to that determination, which shows the absence of any legislative or executive motive, intent, purpose, or desire to encroach upon areas that Article III reserves to judges to whom it grants tenure and compensation protections.

Considering these factors together, I conclude that, as in *Schor,* "the magnitude of any intrusion on the Judicial Branch can only be termed *de minimis.*" 478 U.S., at 856, 106 S.Ct. 3245. I would similarly find the statute before us constitutional.

III

The majority predicts that as a "practical matter" today's decision "does not change all that much." *Ante,* at 2619 – 2620. But I doubt that is so. Consider a typical case: A tenant files for bankruptcy. The landlord files a claim for unpaid rent. The tenant asserts a counterclaim for damages ***2630** suffered by the landlord's (1) failing to fulfill his obligations as lessor, and (2) improperly recovering possession of the premises by misrepresenting the facts in housing court. (These are close to the facts presented in *In re Beugen,* 81 B.R. 994 (Bkrtcy.Ct.N.D.Cal.1988).) This state-law counterclaim does not "ste[m] from the bankruptcy itself," *ante,* at 2618, it would not "necessarily be resolved in the claims allowance process," *ibid.*, and it would require the debtor to prove damages suffered by the lessor's failures, the extent to which the landlord's representations to the housing court were untrue, and damages suffered by improper recovery of possession of the premises, cf. *ante,* at 2617 – 2618. Thus, under the majority's holding, the federal district judge, not the bankruptcy judge, would have to hear and resolve the counterclaim.

Why is that a problem? Because these types of disputes arise in bankruptcy court with some frequency. See, *e.g., In re CBI Holding Co.,* 529 F.3d 432 (C.A.2 2008) (state-law claims and counterclaims); *In re Winstar Communications, Inc.,* 348 B.R. 234 (Bkrtcy.Ct.Del.2005) (same); *In re Ascher,* 128 B.R. 639 (Bkrtcy.Ct.N.D.Ill.1991) (same); *In re Sun West Distributors, Inc.,* 69 B.R. 861 (Bkrtcy.Ct.S.D.Cal.1987) (same). Because the volume of bankruptcy cases is staggering, involving almost 1.6 million filings last year, compared to a federal district court docket of around 280,000 civil cases and 78,000 criminal cases. Administrative Office of the United States Courts, J. Duff, Judicial Business of the United States Courts: Annual Report of the Director 14 (2010). Because unlike the "related" non-core state law claims that bankruptcy courts must abstain from hearing, *see ante,* at 2619, compulsory counterclaims involve the same factual disputes as the claims that may be finally adjudicated by the bankruptcy courts. Because under these circumstances, a constitutionally required game of jurisdictional ping-pong between courts would lead to inefficiency, increased cost, delay, and needless additional suffering among those faced with bankruptcy.

For these reasons, with respect, I dissent.

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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In re: GLOBAL TECHNOVATIONS INCORPORATED; ONKYO AMERICA INCORPORATED,
Debtors.

ONKYO EUROPE ELECTRONICS GMBH; ONKYO MALAYSIA SDN BHD; ONKYO CORPORATION,
Appellants,

v.

GLOBAL TECHNOVATIONS INCORPORATED,
Appellee.

No. 11-1582

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:10-cv-12781—Marianne O. Battani, District Judge.

Argued: May 31, 2012

Decided and Filed: September 13, 2012

Before: BOGGS, NORRIS, and KETHLEDGE, Circuit Judges.

COUNSEL

ARGUED: Michael R. Limrick, BINGHAM McHALE LLP, Indianapolis, Indiana, for Appellants. Glenn M. Kurtz, WHITE & CASE LLP, New York, New York, for Appellee. Jeffrey A. Clair, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus Curiae **ON BRIEF:** Michael R. Limrick, John F. McCauley, BINGHAM McHALE LLP, Indianapolis, Indiana, for Appellants. Glenn M. Kurtz, WHITE & CASE LLP, New York, New York, Charles C. Kline, Jason R. Domark, WHITE & CASE LLP, Miami, Florida, for Appellee. Sarang V. Damle, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Amicus Curiae.

OPINION

BOGGS, Circuit Judge. Global Technovations Incorporated ("GTI") went bankrupt after it purchased Onkyo America Incorporated ("OAI"), a subsidiary of Onkyo Corporation ("Onkyo"). GTI had purchased OAI for $13 million in cash and $12 million in three-year promissory notes. Onkyo attempted to recover the remainder of the purchase price from GTI's bankruptcy estate by filing a proof of claim for $12 million. GTI responded by suing Onkyo under the theory that the OAI purchase was a fraudulent, voidable transaction. The bankruptcy court agreed. The court found that OAI was worth $6.9 million at the time of the transaction, not $25 million. As a result, the court voided GTI's obligation to pay the remainder of the purchase price. It also ordered Onkyo to repay GTI $6.1 million—the difference between the $13 million GTI had paid and the $6.9 million the bankruptcy court determined that OAI was worth.

The United States District Court for the Eastern District of Michigan affirmed the bankruptcy court's decision. After wrestling with a debate about the extent of the bankruptcy court's jurisdiction to order relief, we also affirm.

I

A

OAI, an Indiana-based supplier of car-stereo equipment, was a subsidiary of Onkyo and two of its other subsidiaries, Onkyo Europe and Onkyo Malaysia. In the late 1990's, Onkyo began trying to sell OAI. Onkyo's chairman and CEO, Naoto Otsuki, wanted to take Onkyo public and selling OAI would allow Onkyo to realize a gain, which in turn would allow it to utilize a tax-loss carryforward languishing on its books.

Onkyo management approached GTI about buying OAI because the companies had done business before. Onkyo told GTI that OAI had strong cash flows and generated approximately $6.9 million in revenue per year.

GTI needed cash—its primary investor no longer wanted to invest with the company and it was not generating sufficient revenue. GTI was in danger of being delisted by the American Stock Exchange, a consequence it wished to avoid. Therefore, GTI expressed interest when Onkyo approached it about purchasing OAI.

Because OAI was a private company and no public information was available, GTI relied on the assertions made by Onkyo management, specifically, president Shinobu Shimojima and CFO Doug Pillow, during negotiations and due diligence. GTI relied on OAI's projection that as of August 31, 2000, the month of the sale, OAI's trailing-12-month earnings before interest, taxes, depreciation and amortization (EBITDA) would be $6.8 million. However, as time passed, the numbers actually earned came in below what OAI had projected. As a result, the price of the acquisition was lowered and it was difficult for the parties to secure financing.

Once financing was secured, third-party due diligence was performed by Deloitte & Touche. Deloitte & Touche reported that it believed OAI would remain solvent, but it conditioned this conclusion on the accuracy and completeness of the information given by OAI's management, stating that it had taken no independent steps to verify the information provided by OAI's management. Deloitte & Touche also evaluated cost-saving measures touted to GTI by OAI; however, Deloitte & Touche did not analyze the feasibility of these measures—they "assumed the proposed cost saving measures were viable, and confirmed the mathematical accuracy of the projected impact of the cost savings on OAI's financial statements."

On August 23, 2000, Onkyo and GTI executed an amended Share Purchase Agreement, a contract for sale. In exchange for all 569,000 shares of OAI's common stock, which was owned by Onkyo Europe, Onkyo Malaysia, and Onkyo Japan, GTI agreed to pay $13 million in cash and to provide a $12 million obligation, payable in August 2003. The obligation took the form of three promissory notes—one to Onkyo Europe, one to Onkyo Malaysia, and one to Onkyo Japan, each in proportion to their ownership of OAI.

After the purchase, GTI made several unpleasant discoveries about OAI's financial health. First, accounting errors and adjustments reduced OAI's trailing-12-month EBITDA figure by 29%. Of the $1.3 million OAI's management projected would be earned in July and August, only $475,000 was actually achieved. The court agreed with GTI's expert witness that "the existence and severity of this miss [in earnings] would have become apparent to OAI's management in the course of their day-to-day liquidity analysis . . . [and] establishes that the Onkyo Defendants either knew or should have known about this significant and material performance miss before the closing of the acquisition. But they failed to disclose the anticipated miss to GTI." Another error was a roughly $650,000 double counting of inventory. Pillow, OAI's CFO, knew about the double counting, but he chose not to disclose it to GTI.

Second, GTI discovered that the cost-saving measures projected by OAI's management—$2.7 million annually—were dramatically overstated. Neither OAI management nor Deloitte & Touche analyzed the feasibility of these measures to ascertain their true value. After the acquisition, it became apparent that most of the savings were based on projections from measures that were not viable.

Third, OAI's sales forecasts were not met. For example, OAI had projected a $5.1 million increase in sales revenues for 2000, even though it had not met its prior, lower, sales goals. An OAI sales manager had written to the OAI's president to inform him that the sales forecasts were "unreasonable and unattainable." The increase in sales failed to materialize.

Finally, GTI discovered that OAI's management had undisclosed conflicts of interest during the acquisition. Pillow, OAI's CFO, was offered a one-time payment of $100,000 by Onkyo's management, if and only if OAI was sold to GTI. Pillow was paid $100,000 after the acquisition. Also undisclosed was the fact that OAI's president, Shimojima, owned 300,000 shares of stock in Onkyo, and stood to benefit if Onkyo improved its books and went public. Shimojima was also an active member of Onkyo's board of directors.

Sixteen months after the acquisition, on December 18, 2001, GTI filed a voluntary petition for bankruptcy under Chapter 11. The next day, OAI, now wholly owned by GTI, did the same.

An entity's act of filing a petition for bankruptcy operates as a "stay" of actions that could have been filed against the entity to recover claims. 11 U.S.C.A. § 362(a). Similarly, once a petition is filed, judgments cannot be enforced against the debtor, the debtor's property cannot be repossessed or foreclosed on, and liens cannot be perfected or enforced against the debtor's property. *Ibid.* Therefore, once GTI filed for bankruptcy, Onkyo was unable to recover the $12 million obligation that GTI still owed for OAI.

However, Onkyo petitioned the bankruptcy court to allow it to recover the $12 million. Onkyo filed proofs of claim in the bankruptcy court, requesting that the court lift the stay. A bankruptcy court can lift the stay for cause, after notice and a hearing, if a party requests. 11 U.S.C.A. § 362(d)(1).

GTI then filed the instant suit in the bankruptcy court.

B

1. The Bankruptcy Court Proceeding

On July 14, 2010, GTI filed a suit in bankruptcy court. GTI sought to avoid the $12 million obligation that it incurred and recover the $13 million payment it made to Onkyo when it purchased OAI, on the basis that the sale was a fraudulent transfer. Second, and relatedly, GTI asked that the bankruptcy court disallow the proofs of claim that Onkyo filed in the bankruptcy court, as they were based on the allegedly fraudulent transfer.

Chapter 11 allows a bankruptcy trustee to avoid any transfer (excepting certain charitable contributions) participated in by the debtor that is "voidable under applicable law by a creditor holding an unsecured claim that is allowable under [11 U.S.C.] § 502." 11 U.S.C. § 544(b)(2). Therefore, a trustee can avoid a transfer if a hypothetical

unsecured creditor of the debtor could void it under an applicable law. GTI claimed that an unsecured creditor could void both its payment of $13 million and its obligation of $12 million under the Florida Uniform Fraudulent Transfer Act, FLA. STAT. § 726.101 et seq. The Florida Uniform Fraudulent Transfer Act was "applicable law" under the bankruptcy code because GTI had its principal place of business in Florida.[1]

The Florida Uniform Fraudulent Transfer Act provides, in relevant part:

> A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

FLA. STAT. § 726.106(1). To prove that the obligation incurred by GTI to Onkyo was the result of a fraudulent transfer, then, the bankruptcy court required GTI to prove three elements:

> 1) That an actual creditor existed whose claim arose before the transfer was made and the obligation was incurred,
>
> 2) that GTI received less than reasonably equivalent value in exchange for the transfer and obligations,[2] and
>
> 3) that GTI was insolvent at the time, or became insolvent as a result of, the transfer and obligations.

The bankruptcy court conducted an 17-day bench trial to determine whether Onkyo's sale of OAI for $25 million was a fraudulent transfer. GTI presented extensive testimony from its officers and from its expert, Van Conway. Onkyo countered with extensive cross-examination and proffered its own expert, Jeffrey Risius.

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[1] A corporation is "deemed to be a citizen . . . of the State or foreign state where it has its principal place of business . . . ." 28 U.S.C. § 1332(c)(1).

[2] Under Florida law, as well as the law of the Fifth and Eleventh Circuit, if the debtor has received 70% or less of the value it gave in the transfer, then it has not, as a general rule, received "reasonably equivalent" value. *See Bakst v. Levenson (In re Goldberg)*, 229 B.R. 877, 884–85 (Bankr. S.D. Fla. 1998) (collecting cases).

On June 30, 2010, the court filed its trial opinion. The trial court made the following key findings:

- OAI was worth $6.9 million at the time of the transfer.[3]
- GTI paid $21.6 million in value for OAI. This value was the sum of the $13 million in cash GTI paid and the $8.6 million value that the court determined to be the present discounted value of the $12 million in promissory notes. Risius, Onkyo's expert, put a present discounted value on the notes of $8.6 million; Conway, GTI's expert, stated that the present discounted value should be the same as the face value—$12 million. The court credited the value of Onkyo's expert, Risius.
- The value of the indirect benefits Onkyo argued GTI received in the transaction was zero.

Based on these findings, the bankruptcy court determined that GTI had not received reasonably equivalent value when it purchased OAI because the $6.9 million in value GTI received was well under 70% of the $21.6 million given up ($13 million in cash augmented by the $8.6 million the court determined the promissory notes were worth). The court ordered that GTI's obligation to pay the $12 million in promissory notes be avoided, and ordered that Onkyo repay GTI $6.1 million—the difference between the $13 million in cash Onkyo had received and the $6.9 million the court determined OAI had been worth.

Onkyo appealed the judgment to the United States District Court for the Eastern District of Michigan. The district court had jurisdiction under 28 U.S.C. § 158(a).

2. The District Court Proceeding

The appellants pursued two lines of attack : Onkyo argued first, that GTI did in fact receive equivalent value when it purchased OAI for $25 million, and second, that GTI failed to prove that it was rendered insolvent due to the transaction.

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[3]This value was the highest of three possible values (resulting from three different methods of valuation) offered by Conway, GTI's expert.

To show that GTI received reasonably equivalent value when it purchased OAI, Onkyo argued that the bankruptcy court overestimated how much value GTI paid. Specifically, it argued that the bankruptcy court incorrectly used Onkyo's expert's estimate for the face value of GTI's $12 million in promissory notes. It argued that using their expert's number was impermissible because the bankruptcy court did not also credit his testimony that the transaction did not make GTI insolvent. The appellants argued that the "conclusion about what GTI paid out depends entirely on Risius' [sic] other conclusion—which the court flatly rejected—that GTI remained solvent after the transaction." Further, Onkyo argued that GTI failed to put forth its own evidence regarding the value of the notes.

To show that GTI received reasonably equivalent value in the transaction, Onkyo also argued that the bankruptcy court underestimated the amount of value GTI received. It claimed the "indirect benefits" that GTI received, which the bankruptcy court had decided were worth "less than zero," were actually worth more. Onkyo also argued that the bankruptcy court used hindsight in valuing the indirect benefits and that this made its valuation wrong as a matter of law. Finally, Onkyo argued that the bankruptcy court should have rejected GTI's expert testimony about the indirect benefits' value.

For their second line of attack, Onkyo argued that GTI failed to prove that it was rendered insolvent as a result of purchasing OAI. Specifically, it argued that the bankruptcy court erred when it admitted GTI's expert's testimony on the matter. Though Onkyo's brief suggests that the bankruptcy court erred when it did not credit its expert's opinion that GTI was not insolvent at the time it bought OAI, Onkyo only raises this argument in regard to proving the valuation of GTI's promissory notes. Onkyo appears to have abandoned any independent argument that GTI failed to prove that it was insolvent, and we deem the argument to be waived. *Brown v. Konteh*, 567 F.3d 191, 212 (6th Cir. 2009) ("[I]ssues not adequately developed or argued in the appellate briefs are deemed abandoned and are thus not addressed by this court."), *cert. denied*, 130 S. Ct. 1081 (2010).

On March 31, 2011, the district court filed an opinion affirming the bankruptcy court's decision. The court held that GTI had satisfied its burden of establishing both the value of the assets received and the value of the assets transferred. *Menchise v. Clark (In re Dealers Agency Servs. Inc.)*, 380 B.R. at 608, 620, 622 (Bankr. M.D. Fla. 2007) (explaining the burden in a fraudulent-transfer case).

The district court held that the bankruptcy court did not err when it used the valuation of the note provided by Onkyo's expert, Risius. Using Risius's value for the notes without adopting his separate opinion that GTI was not rendered insolvent by the transaction was not error, the district court reasoned, noting, "[t]here is no requirement that the trier of fact must adopt an expert's opinion in its entirety."

The district court next held that the bankruptcy court did not err in valuing the indirect benefits GTI received from OAI at zero. The court disagreed that the bankruptcy court used hindsight in determining the value, determining that it assessed the value of the indirect benefits based on the information known to OAI at the time of acquisition. The court determined that OAI's management knew that OAI would be such a financial drain on GTI as of the time of closing and that any value from indirect benefits "was undermined by the cash drain on GTI."

Finally, the district court also disagreed with Onkyo that GTI's expert did not provide a "substantive analysis" of the indirect benefits. The court stated that Conway "saw no evidence of [the indirect benefits'] value because the representations made by OAI's management, who had undisclosed ties to Onkyo Japan and undisclosed financial incentives for selling OAI to GTI, lacked a factual basis." The court determined that the "bankruptcy court 'had sufficient evidence to conclude, based on the totality of the circumstances, that the benefits to the debtor were minimal . . . .'" *Onkyo U.S.A. Corp. v. Global Technovations, Inc. (In re Global Technovations, Inc.)*, Civil Case No. 10-12781, 2011 WL 1297356, at *7 (E.D. Mich. Mar. 31, 2011) (quoting *Pension Transfer Corp. v. Beneficiaries to Fruehauf Trailer Corp. Ret. Plan No. 003 (In re Fruehauf Trailer Corp.)*, 444 F.3d 203, 214 (3d Cir. 2006)).

Onkyo filed this timely appeal. This court has jurisdiction to hear bankruptcy appeals once the judgments of the bankruptcy court and the district court are final. 28 U.S.C. § 158(d)(1); *Cottrell v. Schilling (In re Cottrell)*, 876 F.2d 540, 541 (6th Cir. 1989).

II

On appeal, Onkyo reiterates its arguments that GTI failed to establish the value it paid and the value it received in the OAI transaction. Specifically, Onkyo makes three primary arguments: (1) GTI failed to prove the value of its promissory notes; (2) the bankruptcy court's valuation of OAI's stock was derived using hindsight; and (3) GTI failed to prove the value of all the economic benefits it received.

A

In a bankruptcy proceeding, the bankruptcy judge is the finder of fact. *Nicholson v. Isaacman (In re Isaacman)*, 26 F.3d 629, 631 (6th Cir. 1994). A district court on appeal reviews the bankruptcy court's factual findings for clear error. It reviews the bankruptcy court's legal conclusions de novo. *Ibid.* In an appeal from the district court, this court "consider[s] the judgment of the bankruptcy court directly, using the same standards of review as the district court." *Ibid.* (internal quotation marks omitted).

Therefore, we review the bankruptcy court's factual findings for clear error. The court's determination that these facts do or do not add up to a fraudulent transfer, however, is a question of law that we review de novo.

B

In order to resolve the parties' conflict efficiently, we find it useful to reorder Onkyo's arguments from back to front, addressing the value of indirect benefits first, then the bankruptcy court's alleged use of hindsight, and then the value of GTI's promissory notes.

We begin with Onkyo's argument that the bankruptcy court failed to require GTI to prove the value of the indirect benefits it received from OAI. Onkyo terms this a "methodological failure" that should be reviewed de novo.

Onkyo is incorrect that this issue should be reviewed de novo. Contrary to its assertions, the bankruptcy court did analyze the value of the indirect benefits GTI received from OAI. Their value was discussed at trial in detail. Therefore, the bankruptcy court did not fail to consider the value of the indirect benefits, which would have been a legal error. The bankruptcy court merely determined, after weighing the facts, that the correct value for the benefits was zero. This is a matter of *fact*. The court's determination of the amount of value is thus reviewed for clear error. *See, e.g.*, *Lisle v. John Wiley & Sons, Inc. (In re Wilkinson)*, 196 F. App'x 337, 341 (6th Cir. 2006).

The indirect benefits at issue, according to Onkyo, were the following:

1) Avoiding de-listing by the American Stock Exchange;

2) Access to substantial credit, leaving GTI with approximately $3 million in cash immediately after the transactions;

3) Exclusive distribution rights for Onkyo's automotive speakers in the Americas;

4) Access to Onkyo patents, trademarks, trade names, technologies, and technological assistance;

5) The ability to move production of GTI oil analyzers to a state-of-the-art production facility in Columbus, Indiana; and

6) Enhanced credibility in the eyes of automotive manufacturers—potential customers for GTI's other product lines.

The bankruptcy court stated that the only indirect benefit that was not "highly speculative and . . . unachievable" was GTI "temporarily avoiding being de-listed from the American Stock Exchange." The court also determined that "the net value to GTI of any such alleged other benefits from the acquisition of OAI was zero or less, because any value from these other benefits was outweighed by the economic damage GTI suffered from acquiring OAI . . . because, as the Court has found, OAI was a serious

cash *drain* on GTI from the time of the acquisition forward." This result, the court emphasized, was not based on hindsight but was "predictable from information known and available to OAI's management, but not disclosed to GTI's management, prior to the acquisition."

Onkyo protests on appeal that GTI failed to provide evidence of the value (or lack of value) for the indirect benefits and that the bankruptcy court refused to consider any value of these benefits. This is, it argues, citing a single Third Circuit case, reversible error. It argues that the value of the indirect benefits is critical because the direct benefits received by GTI (the stock, which was valued at $6.9 million by the bankruptcy court) already equals 53% of the cash paid by GTI. Onkyo therefore believes that the value of the indirect benefits could result in the total value of benefits to GTI reaching the crucial 70% level deemed presumptively reasonable.

It is true, as Onkyo reports, that the Third Circuit has held that a plaintiff has the burden to prove that a benefit is worth zero, and that it may fail to meet its burden if "no calculations are offered into evidence, and there is some evidence that the benefit conferred value." *In re Fruehauf,* 444 F.3d at 214. However, Onkyo is incorrect that the district and bankruptcy court's decisions must be reversed if GTI did not put forth a calculation of indirect benefits.

The first reason that Onkyo is incorrect is found within *Fruehauf* itself. *Fruehauf* specifically established an exception to its general requirement that the plaintiff proffer a calculation of the value of indirect befits:

> This general rule yields to common sense: in those cases where a court has sufficient evidence to conclude, based on a totality of the circumstances, that the benefits to the debtor are *minimal and certainly not equivalent to the value of a substantial outlay of assets*, the plaintiff need not prove the precise value of the benefit because such a calculation is unnecessary to the court's analysis. Moreover, . . . the trier of fact's ultimate determination of whether the values are reasonably equivalent is reviewed only for clear error, even if the court did not convert those values into precise cash quantities.

Ibid. (emphasis added).

Moreover, Onkyo is also incorrect because *Fruehauf* does not represent a uniformly applicable rule for establishing the value of indirect benefits in fraudulent-transfer cases. Some courts, in fact, require that the party who made the transfer—Onkyo, in this case—bear the burden of establishing the value of any supposed indirect benefits. *See, e.g., Kapila v. Clark (In re Trafford Distrib. Ctr.)*, 431 B.R. 263, 299 (Bankr. S.D. Fla. 2010) (holding that the party against whom the fraudulent transfer was claimed bore the burden, once the debtor showed that it had not received direct benefits in the transfer, of showing that the debtor received indirect benefits that would amount to reasonably equivalent value); *see also In re Wilkinson*, 196 F. App'x at 342 (acknowledging without adopting that defendants may be required to prove the value of indirect benefits). Because the bankruptcy court's decision withstands scrutiny under *Fruehauf* or the *Kapila* standard, we need not decide at this time this Circuit's position on the applicable burden of proof.

The district court decided that the exception articulated in *Fruehauf* applied to the bankruptcy court's decision. *See In re Global Technovations*, 2011 WL 1297356 at *6–*7. We agree that the court's decision falls under the exception, assuming without deciding that the *Fruehauf* standard is relevant. The court determined, after hearing extensive testimony from both parties' witnesses, that the value of the indirect benefits was "minimal"—in fact, the value was close to or equal to zero. Moreover, then, the value of the indirect benefits were "certainly not equivalent" to a "substantial outlay" of $6.02 million, the amount that would be needed to add to the $6.9 million in direct benefits GTI was deemed to have received in the transfer in order to equal $12.92 million, or 70% of the $21.6 that GTI agreed to pay.[4] Therefore, the bankruptcy court's determination that the indirect benefits were insubstantial was valid without the necessity of providing calculations. Onkyo's argument must fail. The court's method was correct as a matter of law and its finding was not clear error.

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[4] In fact, even if the promissory notes were valued at zero, as Onkyo argued for at trial, and the purchase price for OAI was deemed to have been GTI's $13 million cash payment, the indirect benefits would still have to amount to $2.2 million to add to the $6.9 million in direct benefits GTI was deemed to have received, thus totaling $9.1 million, which would be 70% of the $13 million GTI spent, to make the transfer presumptively reasonably equivalent in value. *In re Goldberg*, 229 B.R. at 884–85.

C

Onkyo's second argument is that the bankruptcy court impermissibly relied on hindsight in determining the value of OAI's stock, which the court valued at $6.9 million. Because the court relied on hindsight to determine the value of the stock, Onkyo argues, the court's determination that GTI did not receive equivalent value from Onkyo must be reversed.

Onkyo points to two key areas where it claims the bankruptcy court relied on hindsight: a multiple of earnings derived from transactions that Conway said were similar to the OAI transaction and Conway's calculation of OAI's trailing-12-month EBITDA.

Onkyo argues that the bankruptcy court's application of hindsight is part of the inquiry into the methodology the bankruptcy court used to determine value. Questions of methodology are questions of law to be reviewed de novo. *In re Wilkinson*, 196 F. App'x at 342; *Slone v. Dirks (In re Dirks)*, No. 08-8031, 2009 WL 103606, at *7 (B.A.P. 6th Cir. 2009) (relying on *In re Wilkinson*)).

Methodology, of course, refers to how the court assessed value. The Fifth Circuit describes as follows the methodology behind fraudulent-transfer analysis:

> [T]he clearly erroneous standard [that governs the bankruptcy court's findings of reasonably equivalent value] is subject to modification if the bankruptcy court invokes improper methodology in reaching its conclusion on the issue of reasonable equivalency. Consequently, we review de novo the methodology employed by the bankruptcy court in assigning values to the property transferred and the consideration received.
>
> In the instant case, the methodology employed by the bankruptcy court was appropriate. The bankruptcy court *heard testimony, on direct and cross-examination, from each party's expert appraiser as to his credentials, opinion of the proper valuation, considerations, assumptions, and sources of information.*

Texas Truck Ins. Agency, Inc. v. Cure (Matter of Dunham), 110 F.3d 286, 289 n.11 (5th Cir. 1997) (emphasis added).

We agree with the Fifth Circuit's description of methodology. As a result, we note that the bankruptcy court in this case followed an acceptable methodology. The court conducted a lengthy trial and heard days of testimony from each expert witness. The experts provided several methods for valuing OAI's stock and provided their reasons for each method. They were cross-examined regarding these methods and calculations. The court then credited the portions of expert testimony it believed to be correct.

Furthermore, GTI's expert, Conway, was explicitly cross-examined on the potential for hindsight in his calculations of the multiple and his calculations of OAI's trailing-12-month EBITDA. Conway explicitly stated that he was not relying on hindsight in his projections:

> Q: [Y]ou agree that actual results for [OAI] after 2000 have no support for your projections, is that true?
> A: After August 31st [the day of the transfer of OAI's stock to GTI].
> Q: Right.
> . . .
> A: . . . Actual results are *not to be used unless again you would have predicted those [results] based on information you would have known.* So you *have to put yourself back on August 31st of 2000 what you've* [sic] *known or should have known.*

Similarly, there was another discussion of hindsight later in the cross-examination, with regard to Conway's methodology for selecting a multiple:

> Q: Let's turn to your—the comparable transactions method now. Is it appropriate in using the comparable transaction method to use transactions that were announced *after the valuation date here*, August 31, 2000?
>
> A: It would be—it would be okay if they're within—you know, when you're looking for comparable transactions you're not going to find transactions on August 31st, so you can use them within a reasonable range of time. Otherwise you'd never be able to use this method.
>
> . . . You're not going to be able to go into the data bases and find transactions on August 31st. So you—you have to accept that within a couple of months, maybe even longer, recognizing that the farther out

> you go, there may be a risk of—of the value being different, but hopefully not materially different. . . .
>
> Q: There's no way that the *parties would know at the time of the transaction on August 31st, 2000 of a private transaction that had not been announced yet as of that date, right?*
>
> A: That's true.
>
> Q: And so in that sense you're applying hindsight by using transactions that were announced after August 31, 2000, right?
>
> A: I don't think so. Because in this situation yes, you wouldn't have known about a November transaction. But whenever anybody looks at the issue of value[, like] the Internal Revenue [Service], they come in to take a look and they can look at transactions within a reasonable time frame.
>
> Yes, you wouldn't have known at that time. But as part of the basis if one was to dispute value, I don't think it's unreasonable to pick transactions within the approximate time . . . Because the valuation disputes like this one are done after the fact. . . . We do have the benefit of hindsight here, but we're using transactions within the relevant time frame.
>
> . . .
>
> Q: [D]o you generally agree that it's generally better to use private transactions closer to the valuation date?
>
> . . .
>
> A: You'd love them on the same date, so the answer is yes.

The record demonstrates that the bankruptcy court was fully aware of Conway's qualifications, the methods he used to determine value, and of the potential problems with using hindsight to determine OAI's value. There is no indication that the

bankruptcy court's methodology was flawed.[5] As a result, we cannot agree with Onkyo that the bankruptcy court used hindsight as part of its methodology.

Thus, we are left with the question of whether the bankruptcy court settled on the best value for the OAI stock, and we are reluctant to second-guess the court's factual determination. Circuits generally apply either a clear-error or, if not, very deferential standard of review to a bankruptcy court's determination of reasonably equivalent value, considering the question to be one of fact. The First, Second, Fourth, Fifth, and Eighth Circuits apply a clear-error standard. *See Consove v. Cohen (In re Roco Corp.)*, 701 F.2d 978, 982 (1st Cir. 1983); *Klein v. Tabatchnick*, 610 F.2d 1043, 1047 (2d Cir. 1979) ("Fairness of consideration is generally a question of fact."); *Morrison v. Champion Credit Corp. (In re Barefoot)*, 952 F.2d 795, 800 (4th Cir. 1991); *Matter of Dunham*, 110 F.3d at 289; *Jacoway v. McIlroy* (*In re Ozark Rest. Equip. Co.)*, 850 F.2d 342, 344 (8th Cir. 1988). The Seventh Circuit, in contrast, gives "great deference" to a bankruptcy court's "findings on the fact-intensive issue of whether the debtor received reasonably equivalent value," but does not apply a clear-error standard. *Barber v. Golden Seed Co., Inc.*, 129 F.3d 382, 389 (7th Cir. 1997). The Eleventh and Tenth Circuits, also similarly, have held that "whether fair consideration has been given is 'largely a question of fact, as to which considerable latitude must be allowed to the trier of the facts.'" *Nordberg v. Arab Banking Corp. (In re Chase & Sanborn Corp.*), 904 F.2d 588, 593 (11th Cir. 1990); *see also Clark v. Sec. Pac. Bus. Credit, Inc. (In re Wes Dor, Inc.)*, 996 F.2d 237, 242 (10th Cir. 1993) (same).

Only the Ninth Circuit has held that the determination of reasonably equivalent value is subject to de novo review. *See Maddox v. Robertson (In re Prejean)*, 994 F.2d

[5]Moreover, there is no indication that using comparable transactions from times preceding and postdating an allegedly fraudulent transaction equates to an impermissible use of hindsight. The "comparable transactions" method Conway used to determine OAI's value is a standard method employed in bankruptcy cases, whether in evaluating solvency or valuing assets. The "comparable transactions" method "examines recent transactions where [similar assets] have been bought and sold on the market . . . [and] is designed to yield the price the [asset] would carry in the marketplace based on similar transactions." *Lids Corp. v. Marathon Inv. Partners, L.P. (In re Lids Corp.)*, 281 B.R. 535, 545 (Bankr. D. Del. 2002). The methodology centers on transactions that are similar in nature, and there is no case law to suggest that a similar transaction that occurred after the transaction cannot be examined because to do so would draw on hindsight. *See, e.g., Chartwell Litig. Trust v. Addus Healthcare, Inc. (In re Med Diversified, Inc.)*, 346 B.R. 621, 642 (Bankr. E.D.N.Y. 2006) (describing the comparable-transactions methodology).

706, 708 (9th Cir. 1993). However, the Ninth Circuit Bankruptcy Panel recently ignored this precedent, assuming that the Circuit would now decide the issue differently. *Ehrenberg v. Tenzer (In re Heartbeat of the City, N.W., Inc.)*, Bankruptcy No. LA 99-45650-EC, 2006 WL 6810939, at *5 (B.A.P. 9th Cir. 2006) (noting that "[e]ight other circuits, and the leading treatise, consider the issue a question of fact" and presuming that "under the overwhelming weight of authority," the Circuit would consider "reasonably equivalent value of a transfer to be a question of fact subject to review under the clearly erroneous standard").

The Sixth Circuit has not squarely held that it applies the clear-error standard to a bankruptcy court's determination of reasonably equivalent value, but it has held in unpublished cases that "whether [a debtor] received reasonably equivalent value [in a fraudulent-transfer case] is a question of fact." *In re Wilkinson*, 196 F. App'x at 341 (citing *In re Humble*, 19 F. App'x 198, 200 (6th Cir. 2001) (unpublished) (stating that reasonably equivalent value should be "analy[zed] based upon the facts and circumstances of each particular case")). We take this opportunity to express our agreement with the majority of Circuits and adopt the clear-error standard of review.

The bankruptcy court's adoption of Conway's value based on the comparable-transactions method was not clearly erroneous. Onkyo's argument must fail.

D

Onkyo's final argument is that GTI failed to prove the value of its promissory notes. Onkyo states that "[i]t is undisputed that GTI failed to offer evidence of [the] actual value" of the notes. Onkyo argues that the bankruptcy court "plugged the hole" with its expert's value of $8.6 million. The "fundamental problem" with the court using Risius's value, though, according to Onkyo, is that the court rejected Risius's opinion that GTI was not insolvent at the time of or as a result of the transaction. Onkyo argues that the court's finding that the notes were worth $8.6 million cannot be squared with the court's finding that GTI was rendered insolvent "as an immediate result of the OAI acquisition." Onkyo argues that the bankruptcy court made a legal error, reviewable under a de novo standard, and that its judgment must be reversed.

Onkyo's argument is flawed. First, contrary to Onkyo's claim, GTI's expert did in fact place a value on the notes. GTI's expert stated at trial that the notes were worth $12 million in present value, an amount equal to their face value. At trial, Conway and Onkyo's counsel had the following exchange:

> Q: [The] final [purchase] price was $13,000,000 in cash and $12,000,000 in notes, is that right?
>
> A: Yes.
>
> . . .
>
> Q: To determine the value of those notes it is necessary to discount the cash due in the future to a present value at a market insurance rate, is that right?
>
> A: You mean if someone was going to purchase those notes for fair market value?
>
> Q: Yeah . . . .
>
> A: I think that's fair.
>
> Q: Have you calculated the market interest on unsecured notes issued by GTI as of the transaction date?
>
> A: I did not.
>
> Q: And without calculating that rate it is not possible to determine the value of the notes given by GTI as part of the consideration for the [OAI] stock, is that true?
>
> A: Well, that's—*that's not true*. Because *the value of the notes is the face value of the notes* . . . . They're of for [sic] short term duration. There's an expectation by the parties they can pay them, so why would one discount them? Why would one discount those three year notes? There *may be a de minimis discount* for the interest rate, but they're three year notes agreed to by the parties are [sic] to be paid.

(emphasis added). As evidenced by the record, Conway clearly argued that the present value of the notes was $12 million, and provided several reasons for his conclusion. Therefore, Onkyo is wrong that GTI put forth no evidence on the present value of the notes.

The next question is whether the bankruptcy court made a legal error by crediting Risius's value for the notes—$8.6 million—without also crediting his opinion that GTI was not rendered insolvent by the purchase of OAI. Onkyo has again failed to provide any authority stating that, as a matter of law, a bankruptcy court cannot credit certain aspects of expert testimony without crediting all of it, nor that promissory notes must be valued at zero in any fraudulent-transfer case in which the promisor is rendered insolvent at the time it acquires the asset at issue.

Because Onkyo has failed to show that it was legal error for the bankruptcy court to adopt only the value portion of Risius's testimony, the question again becomes one of fact. We must determine then whether the bankruptcy court committed clear error in finding that the notes were worth $8.6 million, in light of the fact that it also found that GTI was rendered insolvent as an immediate result of the OAI acquisition. This was not clear error. The bankruptcy court did not find that GTI was insolvent when it negotiated and executed the notes. *See Allard v. Flamingo Hilton (In re Chomakos)*, 69 F.3d 769, 770–71 (6th Cir. 1995) (stating that the "critical time" for determining whether reasonable equivalent value was given is when "the transfer is made"). It found that GTI was rendered insolvent as a *result* of the acquisition of OAI. The court determined that by adding OAI to its books, GTI became immediately insolvent. But it did not add OAI to the books until after it acquired OAI, and it did not acquire OAI until it paid for OAI—i.e., paid the cash and notes. The district court did not clearly err in finding that the notes were worth a significant percent of their face value when paid even though GTI was rendered insolvent soon after. Moreover, even if the notes were valued at zero, the $6.9 million in value GTI received for OAI was not 70% of the $13 million in cash it paid—therefore, the transfer would still fail to be presumptively reasonable. *In re Goldberg*, 229 B.R. at 884–85. Onkyo's last argument must also fail.

III

The panel has considered whether the bankruptcy court had jurisdiction to require Onkyo to pay GTI $6.1 million. After supplemental briefing and argument from the parties, we determine that it did.

The question arose in response to the Supreme Court's recent holdings in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). *Stern* dealt with the estate of Vickie Lynn Marshall. *Stern*, 131 S. Ct. at 2595. Marshall declared bankruptcy and Pierce Marshall, the son of Vickie's late husband, filed a proof of claim against her bankruptcy estate. He claimed that Vickie had defamed him, and requested damages from the bankrupt estate. Vickie responded to the proof of claim by arguing that what she had stated about Pierce had been true. *Id.* at 2601. She also filed an unrelated counterclaim against Pierce, claiming that Pierce had tortiously interfered with the gift she should have received from her husband's estate when he died. *Ibid.*

The Supreme Court determined that the bankruptcy court violated the Constitution when it decided the counterclaim for tortious interference. *Ibid.* The Court determined that, though the bankruptcy court was within the jurisdiction conferred by the bankruptcy statute, 28 U.S.C. § 157(b)(2)(C), hearing and determining the claim violated the Constitution because, "in general, Congress may not 'withdraw from [Article III] judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty.'" *Id.* at 2609 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. 272, 284 (1856)).

The Court noted that Vickie's counterclaim was the type of claim that the Court had previously held could not be withdrawn from an Article III court. In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 53 (1982), for example, the Court held that a bankruptcy court could not adjudicate a "state-law contract claim against an entity that was not otherwise part of the bankruptcy proceedings." *Stern*, 131 S. Ct. at 2609–10 (internal quotation marks removed). Additionally, an entity that *had not* submitted a claim against a bankruptcy estate was entitled to a jury trial when the estate sued it in bankruptcy to recover an allegedly fraudulent transfer, and the bankruptcy court did not use a jury as a factfinder. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 36, 50 (1989). *Stern*'s limited holding stated the following: When a claim is "a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor's proof of

claim in bankruptcy," the bankruptcy court cannot enter final judgment. *Id.* at 2611. In those cases, the bankruptcy court may only enter proposed findings of fact and conclusions of law. *Ibid.*

In our case, Onkyo filed a proof of claim against GTI's bankruptcy estate. Thus, the case is fundamentally unlike *Granfinanciera*, where the bankruptcy estate reached out to file a fraudulent-transfer claim against a party who had filed no claim against the estate. Onkyo brought itself voluntarily into the bankruptcy court. The state-law claim in this case, the Florida cause of action for fraudulent transfer, was GTI's defense against Onkyo's proof of claim. It is crystal clear that the bankruptcy court had constitutional jurisdiction under *Stern* to adjudicate whether the sale of GTI was a fraudulent transfer, because "it was not possible . . . to rule on [Onkyo's] proof of claim without first resolving" the fraudulent-transfer issue. *Stern*, 131 S. Ct. at 2616 (citing *Katchen v. Landy*, 382 U.S. 323, 329–30, 332–33, and n.9, 334 (1966)).

What is not crystal clear is whether the bankruptcy court had jurisdiction under *Stern* to make the additional finding that Onkyo was a "good-faith transferee" and a "good-faith obligee" under Florida law. Florida fraudulent-transfer law allows a good-faith transferee a credit—specifically, a "reduction in the amount of the liability on the judgment"—in the amount of the value the transferee gave to the debtor for the transfer or obligation. FLA. STAT. 726.109(4)(c). Thus, in many fraudulent-transfer cases, it will be necessary for the bankruptcy court to make the good-faith-transferee finding in order to determine exactly how much of the debtor's claim to disallow. That finding was not, strictly speaking, necessary here, because of the comparative value of OAI and the cash exchanged. (The bankruptcy court found that OAI was only worth $6.9 million—considerably less than the $13 million in cash that Onkyo had already received. Thus, the court necessarily disallowed the full $12 million in promissory notes that Onkyo sought from GTI in its proof of claim.) However, the bankruptcy court could not have known at the outset whether Onkyo's proof of claim would be disallowed in its entirety—such a determination depended on the amount the court determined OAI was worth. We do not believe that *Stern* requires a court to determine, in advance, which

facts will ultimately prove strictly necessary to resolve a creditor's proof of claim. Therefore, we hold that the bankruptcy court had authority to make the good-faith-transferee finding in the course of resolving GTI's fraudulent-transfer defense.

Stern cited with approval the Court's prior precedent holding that a bankruptcy court may award affirmative relief to a debtor after its creditor's proof of claim has been resolved and where "nothing remains for adjudication." 131 S. Ct. at 2616 (citing *Katchen*, 382 U.S. at 334). In this case, once the bankruptcy court determined that the sale of OAI had been a fraudulent transfer and Onkyo was a good-faith transferee, awarding GTI relief was a simple matter of subtraction. The bankruptcy court credited Onkyo the $6.9 million it determined OAI was worth at the time of the transfer, and then ordered Onkyo to pay back the remainder—$6.1 million—of the $13 million it had received from GTI. We hold that the court had jurisdiction under *Stern* to enter this judgment.

IV

For the foregoing reasons, the judgment of the district court is AFFIRMED.

456 B.R. 318
United States Bankruptcy Court,
W.D. Michigan.

In re TELESERVICES GROUP, INC., Debtor.
Marcia R. Meoli, Trustee, Plaintiff,
v.
The Huntington National Bank, Defendant.

Bankruptcy No. HG 05–00690. | Adversary No. 07–80037. | Aug. 17, 2011.

Synopsis

Background: Trustee sought to hold defendant liable under bankruptcy statute governing liability of transferees on avoided transfers, and defendant objected that court was without constitutional authority to enter multimillion judgment against it.

[Holding:] The Bankruptcy Court, Jeffrey R. Hughes, J., held that bankruptcy court, as non-Article III court, lacked constitutional authority to enter multimillion dollar judgment against transferee on avoided transfer except with parties' consent.

So ordered.

Attorneys and Law Firms

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James Moskal, Jeffrey O. Birkhold, Kevin M. Kileen, Matthew T. Nelson, Warner Norcross & Judd LLP, Grand Rapids, MI, for Defendant.

Opinion

OPINION RE: HUNTINGTON'S JULY 13, 2011 MOTION—AMENDMENT TO APRIL 28, 2009 PRETRIAL ORDER—CONSTITUTIONAL AUTHORITY

JEFFREY R. HUGHES, Bankruptcy Judge.

The Huntington National Bank ("Huntington") has filed a motion to amend my [1] April 28, 2009 pretrial order. The requested amendment would eliminate the order's designation of this adversary proceeding as a matter in which I can enter a final determination subject only to ordinary appellate review. Huntington contends that I lack the constitutional authority to enter what in this instance could be a multi-million dollar judgment against it arising from fraudulent transfers. For the reasons stated in this opinion, I agree that I do not have that authority. [2]

1 I typically write my opinions now in the third person in order to impress upon the reader that I am speaking on behalf of the court. However, Huntington's motion calls into question whether I am acting on behalf of any court. Therefore, I have chosen the first person in this instance.

2 Both parties have submitted comprehensive briefs. Although a hearing is scheduled for oral argument on September 1, 2011, I am cancelling that hearing because of the thoroughness of the written submissions.