How to Analyze the Treatment of a Creditor's Claim in Bankruptcy

1. What is the amount of the claim as of the date the bankruptcy was filed?

A. Bankruptcy Form 10 – Proof of Claim. This form will provide evidence of the amount and basis of the claim. It will require a listing of the amount owed as of the filing date itemized between principal, interest and other charges.

B. Detailed Payment Ledger. The best way to obtain this information is to ask the creditor to provide you with a "Detailed Payment Ledger". Most creditors have software that can generate a report showing all of the transactions occurring on a given loan for the life of the loan and the resulting balance after each transaction. Using this report, find the balance that is nearest to the date the bankruptcy was filed. Then either add or subtract the interest that accrued each day in the intervening days between the most recent balance adjustment and the filing date of the bankruptcy.

I. Most loan documents will specify whether interest is calculated on a 360 day/year or 365 day/year basis. Calculate the per diem interest by multiplying the principal loan balance near the filing date times the current interest rate and divide that number by either 360 or 365.

C. Supporting Documents. The promissory note along with any evidence of security and perfection of the security interest must be included with the proof of claim. Don't forget to redact social security numbers and all but the last four digits of any loan numbers apparent on the loan documents.

2. Is the claim secured or unsecured?

A. Bifurcating the Secured Claim and the Unsecured Claim. 11 U.S.C. 506(a) provides that "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

I. In lay person terms, this means the claim is secured up to the value of the collateral and the remaining portion of the claim that exceeds the value of the collateral is unsecured.

II. An oversecured creditor is one whose collateral exceeds the value of its claim and is thereby not subject to bifurcation under 11 U.S.C. § 506(a) and consequently holds no unsecured claim.

III. An undersecured creditor is one whose collateral is worth less than the full amount of its claim meaning that it holds both a secured claim and an unsecured claim by virtue of 11 U.S.C. § 506(a).

IV. An unsecured creditor is one who has no collateral or the collateral is worthless meaning their entire claim is unsecured.

B. Impact of Bifurcating the Claim. An oversecured creditor is entitled by virtue of 11 U.S.C. § 506(b) to include in its claim pre-petition and post-petition attorney's fees at least until the point where the claim with the addition of attorney's fees has reached or exceeded the value of the collateral.

I. Approval of post-petition attorney's fees by a secured creditor is subject to Rule 2016 and requires application setting forth the hours and rate and approval by the Court. In re Loy, 2007 Bankr. LEXIS 4180 (Bankr. D. Kan. 2007); In re *Biazo*, 314 B.R. 451 (Bankr. D. Kan. 2004).

a. An oversecured Creditor is entitled to contract-rate interest up until the time a Chapter 13 Plan is confirmed, then, that contract rate interest is included in the secured claim and the creditor is entitled to the *Till* rate of interest after confirmation until the claim is paid in full. See In re *Montemayor*, 2010 Bankr. LEXIS 4819, * (Bankr. D. Tex. 2010).

i. *Till v. SCS Credit Corp* 541 U.S. 465 (2004). The appropriate interest rate for installment payments under a Chapter 13 plan is the national prime rate plus an adjustment to reflect the risks inherent to bankruptcy debtors. The risk adjustment is presumed to be 1.5%. Courts should "select a rate high enough to compensate the creditor for its risks but not so high as to doom the plan." *Till*, 541 U.S. at 480. Factors to consider when adding risk include: rate of collateral depreciation, liquidity of the collateral market, debtor's financial prospects, Lender's risk factors and lost opportunity costs, and pre-petition mortgage arrearage. *Till*, 541 U.S. at 479-80.

ii. A creditor in bankruptcy is entitled to its secured claim as of the filing date. The interest component is to compensate for the loss associated with being paid over time rather than being able to repossess and sell collateral immediately. The goal is equal treatment regardless if collateral is surrendered

immediately at the filing date or the value of the collateral is paid over time.

C. Value of Collateral Can Impact Amount to be Received Under Plan. 11 U.S.C. 1325(a)(5)(B)(ii) permits a Chapter 13 debtor to retain non-residence collateral by paying the amount of a creditor's secured claim over the life of the plan. In combination with 11 U.S.C. § 506(a) this means that the debtor simply has to pay the lesser of the amount of the claim or the value of the collateral. If the collateral is less than the amount of the claim, this scenario is referred to as a "lien strip" or "cramdown". The Chapter 13 Plan bifurcates the claim based on the value of the collateral and pays the creditor a secured claim for the amount of the value of the collateral plus interest and the unsecured portion is grouped with all other unsecured creditors who generally receive only cents on the dollar.

I. Many objections to plan confirmation involve a disagreement between the debtor and creditor as to the value of the collateral and the resulting cramdown.

II. The collateral should be valued as of the filing date for a commercial claim and as of the hearing date for a consumer claim. In re *Cook*, 415 B.R. 529 (Bankr. D. Kan. 2009).

III. The starting point for vehicles is either Kelly Blue Book Private Party Value or NADA Clean Retail with adjustments based on the unique condition of the vehicle. In re *Cook*, 415 B.R. 529 (Bankr. D. Kan. 2009) (NADA clean retail).

IV. Valuing real estate will require a licensed appraiser to prepare an appraisal and submit appraisal testimony at an evidentiary hearing.

3. Is the claim treatment supported by law?

A. Paradigm for Treatment of a Secured Claim. Treatment of a secured claim in Chapter 13 generally takes one of three forms: (1) the creditor accepts whatever treatment is proposed by not objecting; (2) the value of the collateral is paid over time plus interest; or (3) the collateral is surrendered to the creditor. 11 U.S.C. 1325(a)(5) sets forth the requirements for treatment of a secured claim in Chapter 13 as follows: "with respect to each allowed secured claim provided for by the plan— (A) the holder of such claim has accepted the plan; (B) (i) the plan provides that— (I) the holder of such claim retain the lien securing such claim until the earlier of— (aa) the payment of the underlying debt determined under nonbankruptcy law; or (bb) discharge under section 1328; and (II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; (ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the

allowed amount of such claim; and (iii) if— (I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and (II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or (C) the debtor surrenders the property securing such claim to such holder . . ."

a. What this means is that essentially the debtor may propose the following plan treatment: (A) if the secured creditor doesn't file an objection to the plan, it can be treated however the debtor deems fit, including treating it as entirely unsecured; (B) the debtor can pay the secured creditor the lesser of the amount of its claim or the value of the collateral and the creditor's lien will remain on the collateral until the earlier of when that amount is paid or the debtor receives a discharge. Note: the debtor won't receive a discharge until he has paid the lesser of the claim amount or the value of the collateral; or (C) surrender the collateral to the creditor.

B. Anti-Modification Clause. 1322(b)(2) prevents the modification of "a claim secured ***only*** by a security interest in real property that is the debtor's principal residence." This means that a debtor retaining his or her home must pay the full amount of the claim in Chapter 13 as opposed to simply paying the value of the collateral. However, this section limits its protection to loans secured only by the debtor's home. If the loan documents reflect cross collateralization of a home mortgage with a vehicle security agreement, 1322(b)(2) should not apply.

C. Lien Strip-off. Using the bifurcation concept in 506(a), if there is no equity to secure the claim, a debtor is entitled to render a second mortgage entirely unsecured and thereby satisfy the mortgage lien by paying the claim it secures entirely as an unsecured claim. With respect to the debtor's primary residence, if a second mortgage is partially secured to any extent, then under 11 U.S.C. 1322(b) the claim cannot be modified as a result of the anti-modification provision. It is only if the second mortgage is "wholly unsecured" that it becomes eligible for a lien strip wherein the court values the secured and unsecured portion of the lien using 11 U.S.C. 506(a) and then upon finding it wholly unsecured deems it outside the protection of 1322(b) which bars modification of claims "secured" by debtor's principal residence and therefore making it eligible to be treated entirely as an unsecured claim. The blueprint case for how this is to be done in Kansas is In re *Woodling*, 2004 Bankr. LEXIS 1751 (Bankr. D. Kan. 2004) wherein it is said "this Court will use the vehicle of this case to inform the bar how it wishes to handle lien stripping". The opinion lays out the requirements of how a debtor should litigate a lien strip which according to the Judge should be by a noticed motion as opposed to plan language or an adversary proceeding. This case says that the strip will not be effective until discharge; however, some courts allow the lien strip even if the debtor is not eligible for discharge. See In re *Fisette*, 455 B.R. 177, 182-187 (8th Cir. BAP 2011). The latest 10th Circuit case on lien

stripping is In re *Woolsey*, 2012 US App. LEXIS 18597 (Sept. 4 2012) which says that a wholly unsecured lien strip cannot be done under 506 in a 13 but probably can be done under 1322(b).

D. The "Hanging" Paragraph of 1325, aka 910/1 year claims. This provision creates an exception to the bifurcation concept for certain debts incurred shortly before bankruptcy. It states "For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day period preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing."

E. Conduit Plans. Standing Order 11-2 ("S.O. 11-2") was adopted by the bankruptcy Judges to provide uniform treatment of claims secured by a mortgage on the debtors' primary residence and for which the debtors are delinquent at the time of filing bankruptcy. Under S.O. 11-2, the debtors are required to make payments directly to the trustee as "conduit payments" in the normal monthly payment amount. The trustee will then distribute these and other payments to the creditor. S.O. 11-2 segregates the creditor's claim into three distinct parts: (1) pre-petition arrearage; (2) the first and second payments due post-petition and (3) the third and all subsequent payments due post-petition and prior to completion of the re-organization plan. The first payment the creditor should expect to receive is the third mortgage payment that becomes due after the bankruptcy filing. Thereafter, the creditor should receive the normal monthly payment amount on or about the due date for each month thereafter over the life of the re-organization plan. The first and second payments that become due after the bankruptcy filing along with two late fees and contract rate interest thereon are paid at a later date as funds are available. The pre-petition arrearage is paid over the life of the re-organization plan as funds are available and typically with interest on the principal portion of the arrearage but not on the non-principal portion of the arrearage unless the loan documents provide otherwise. See In re *Andrews*, 2007 Bankr. LEXIS 3290 (Bankr. D. Kan. 2007). After successful payment of all amounts described above and completion of the re-organization plan, the note will be deemed current and the creditor will be barred from declaring a default based on events arising prior to or during the bankruptcy. The real property creditor is required by S.O. 11-2 to provide the trustee, the debtors and their attorney with 45 days advance notice before changing the monthly payment amount or interest rate. Notice must also be given within 30 days after charging servicing expenses to the note. However, the creditor may continue sending monthly statements to the debtors. Also, a creditor must apply payments received to the particular monthly payment or arrearage specified by the trustee or to the next post-petition payment due under the terms of the note and without penalty. The trustee will not distribute payments until a proof of claim is filed along with Exhibit "C" Addendum for Residential Home Mortgage Debt Paid through the Chapter 13 Trustee.

F. Unsecured claim. The holder of a general unsecured claim is generally limited to receiving whatever distribution is available to unsecured creditors under the plan. In many cases, this may mean little or no distribution to the unsecured creditor regardless of what chapter the bankruptcy is filed under.

4. Should relief from the automatic stay be considered?

A. Injunction. 11 U.S.C. 362 imposes an injunction barring: "(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title; (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate; (4) any act to create, perfect, or enforce any lien against property of the estate; (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title; (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title; (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title."

B. Relief from the Automatic Stay is Granted Under 11 U.S.C. 362(d). This subsection provides: "On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest; (2) with respect to a stay of an act against property under subsection (a) of this section, if— (A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization."

I. What is Adequate Protection. Adequate protection essentially concerns the effect of time and other factors on the amount of a secured claim. If the amount of the secured claim will diminish with the passage of time, the claim is not adequately protected. This is usually the result of having collateral that is presently worth less than the amount of the claim and that is depreciating with time and use. A vehicle loan usually lacks adequate protection because the collateral depreciates over time. If the lender goes

months without a payment while the debtor is trying to get a plan confirmed but the vehicle is still being driven and declining in value due to use, the amount the creditor may ultimately recover by proceeding against the collateral is declining as the value of the collateral declines. In this situation, the lender is not adequately protected and has a good cause for seeking relief from the automatic stay. Lack of adequate protection also might result if the debtor lets insurance lapse on the collateral. See LBR 4070.1 (Failure to furnish proof of insurance constitutes prima facie evidence of irreparable injury for purposes of expedited relief from the automatic stay) The opposite scenario is a real estate loan where the real estate is appreciating in value over time. Under that scenario, the amount that could be recovered by the collateral is not diminishing over time and therefore the lender is adequately protected.

a. Sometimes a creditor will want to pursue relief from the automatic stay at the same time it is defending a cramdown on the basis of the value of the collateral. These two approaches would require inconsistent proof.

b. Lack of adequate protection is one example of cause for relief from stay. See In re *Holt*, 2010 Bankr. LEXIS 2846, 15-17 (Bankr. D. Mont. Aug. 20, 2010 (collecting cases); In re *Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985); In re *Avila*, 311 B.R. 81, 83 (Bankr. N.D. Cal. 2004). An equity cushion of at least 20% constitutes adequate protection. In re *Timbers of Inwood Forest*, 793 F.2d 1380, 1387 (5th Cir. 1986), aff'd, 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), In re *Mellor*, 734 F.2d at 1401, *Avila*, 311 B.R. at 83. An equity cushion is adequate protection irrespective of payment history. *Avila*, 311 B.R. at 83; In re *Mellor*, 734 F.2d 1396, 1400 (9th Cir.1984). In re *McCollum*, 76 B.R. 797, 799 (Bankr. D. Or. 1987); In re *Le May* 18 B.R. 659 (Bankr. D. Mass. 1982) (7% equity cushion is not adequate); *Ukrainian Sav. And Loan Ass'n* v. *Trident Corp*., 22 B.R. 491 (Bankr. D.D. Pa., 1982) (8.3% equity cushion is insufficient); In re *Jug End in Berkshires, Inc*.., 46 B.R. 892, 900 (Bankr. D. Mass. 1985) (8.5% is insufficient); *Suntrust Bank v. Den-Mark Constr., Inc.*, 406 B.R. 683, 700-701 (E.D. N.C. 2009) (11% equity cushion inadequate due to other financial factors, including a $12,000 monthly interest payment.).

C. Automatic Stay Relief under 362(h). This subsection provides "(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521 (a)(2)— (A) to file timely any statement of intention required under section 521 (a)(2) with respect to such personal property

or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524 (c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365 (p) if the trustee does not do so, as applicable; and (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms. (2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521 (a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion."

D. Failure to Reaffirm in a Chapter 7. It is important to know that regardless what Chapter of the Bankruptcy Code the debtor files, a properly secured lien will remain enforceable against the collateral even post-discharge until payment of the allowed secured claim in full. A debtor may not simply keep the collateral without making payments because they chose not to reaffirm. If a Chapter 7 debtor fails to reaffirm, a secured creditor can enforce its default provisions against the collateral even post-discharge provided the bankruptcy stay has terminated. A debtor and creditor may memorialize the post-discharge/no reaffirmation relationship with a non-recourse promissory note without violating the discharge injunction.

I. *Hall v. Ford Motor Credit Co.*, 292 Kan. 176, 254 P.3d 526 (2011). Nine months after purchasing a new Ford F-150, Hall filed Chapter 7 bankruptcy and elected not to reaffirm his debt to Ford Motor Credit Co. ("Ford"). Hall received a discharge in bankruptcy and continued to make timely payments to Ford. Ford sought to repossess the F-150 on the basis that its collateral was significantly impaired. Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), when a debtor files a Chapter 7 bankruptcy and possesses a vehicle which is securing a purchase money loan, the bankruptcy code provides the debtor with three options: (1) relinquish possession of the vehicle; (2) redeem the vehicle by paying off the loan; or (3) reaffirm the debt and remain personally liable to the creditor following the discharge in bankruptcy. If the debtor fails to redeem or reaffirm generally within the first 60 days of the bankruptcy, the bankruptcy stay terminates automatically. This is true even if the debtor remains current on payments. Once the stay has terminated, a creditor's remedies will be depend entirely on state law. With respect to consumer credit transactions, K.S.A. § 16a-5-109 limits

contractual default provisions to either payment default or situations wherein the collateral has become substantially impaired. Since Hall was current on payments, Ford's only basis for declaring a default to allow repossession was to deem the collateral significantly impaired. Ultimately, the District Court for Saline County agreed with Ford that the collateral was significantly impaired as a result of (1) Hall having filed bankruptcy and being insolvent; (2) Hall's refusal to reaffirm the debt; (3) the debt being under-secured; and (4) Ford being enjoined from communicating with Hall regarding the debt because of the bankruptcy discharge. The Kansas Supreme Court affirmed the District Court.

5. Is the secured lien properly perfected?

A. Kansas Manufactured Housing Act, K.S.A. § 58-4201, et seq. The KMHA contains provisions for titling and perfecting security interests in mobile homes and manufactured homes similar to that of titled motor vehicles. Manufactured and mobile homes are personal property and a security interest is perfected by notation of the lien on the certificate of title. K.S.A. § 58-4204. "Manufactured homes" and "Mobile homes" are built on a permanent chassis and can be used as a dwelling with or without a permanent foundation. See K.S.A. § 58-4202(a) and (b). In contrast, a "Modular home" is designed for use on a permanent foundation and a permanent chassis is not required. K.S.A. § 58-4202(c). Modular homes are not subject to the KMHA and are real property secured by a mortgage. See In re *Brouillette*, 389 B.R. 214, 220 (Bankr. D. Kan. June 2, 2008). Manufactured homes and mobile homes can be converted from personal property to realty by eliminating the certificate of title pursuant to K.S.A. § 58-4214. The owners and lienholders must sign an affidavit consenting to the eliminating of the title. Lien avoidance actions on improperly perfected liens on mobile and manufactured homes are in favor currently with Chapter 7 bankruptcy trustees in Kansas.

B. Perfection of a Vehicle Lien. A non-purchase money vehicle lien: (i.e., a lien arising as a result of a refinance) is unperfected if omitted on the certificate of title *even if* the lienholder submitted the proper application for the title and the omission of the lien from the title was a clerical error on the part of the county or KDOR. It does not matter if the bank did everything it could to perfect its lien. *Morris v. Intrust Bank, N.A.* (In re *Anderson*), 351 B.R. 752 (Bankr. D. Kan. 2006); *Morris v. First Bank of Newton* (In re *Gaiser*), No. 05-19138, 2007 Bankr. LEXIS 630 (Bankr. D. Kan. Mar. 2, 2007). Purchase money liens: *Morris v. Hicks* (In re *Hicks*), No. 06-3243, 2007 U.S. App. LEXIS 15114 (10th Cir. June 25, 2007). Here, the Tenth Circuit held that a NOSI provides only temporary perfection and ceases to be the means of perfection when a certificate of title is issued. Thus, if KDOR issues a certificate of title omitting the lienholder listed in the NOSI, the lienholder's security interest becomes unperfected.

6. Are there any other issues to be considered?

A. Changing Claim Amounts Post Relief from Stay. The general practice of the Chapter 13 Trustees in Kansas is to allow a secured creditor to amend its proof of claim after obtaining stay relief and liquidating the collateral. The amended claim can reflect the deficiency balance remaining on the note so that the creditor will receive some distribution on account of the unsecured claim.

B. Setting Aside a Chapter 13 Plan Confirmation Order. 11 U.S.C. § 1330 provides that a Chapter 13 Plan may be revoked within 180 days of confirmation if it was confirmed by fraud. There is a split of authority as to whether this precludes the use of FRCP 59 and 60 to set aside a confirmation order on the basis of clear error, excusable neglect, mistake, etc. See *Bank of Am. v. White*, 2012 Bankr. LEXIS 1105 at * 4; Contra In re *Smith*, 2009 Bankr. LEXIS 4167, *11 (Bankr. D. Kan. Jan. 27, 2009) (11 U.S.C. § 1330 limits relief under Fed. R. Bank. P. 9024); *Mason v. Young*, 237 B.R. 791, 803 (10th Cir. BAP 1999). Compare In re *Midkiff*, 342 F.3d 1194, 1199 (10th Cir. 2003) (11 U.S.C. § 1328 did not limit relief under Fed. R. Bankr. P. 9024).

C. Stern v. Marshall. *Stern v. Marshall*, 131 S. Ct. 2594 (June 23, 2011). Vickie Lynn Marshall, aka, Anna Nicole Smith was a Playboy model who married billionaire octogenarian J. Howard Marshall II ("Howard") who was 62 years her senior. Prior to the marriage Howard transferred all of his assets into a revocable trust benefiting certain charities and his son Pierce Marshall ("Pierce"). During the marriage, the revocable trust was changed to irrevocable and despite her claim that Howard intended to leave her half of his estate, Vickie was left with nothing. Vickie sued Howard's estate on the theory that Pierce tortuously interfered with her gift expectancy. In the meantime, a judgment was taken against Vickie for sexual harassment and she was forced to file bankruptcy in California. Pierce filed a proof of claim and a nondischargeability claim in Vickie's bankruptcy case alleging defamation. Vickie filed a counterclaim for tortious interference with gift expectancy – a cause of action recognized exclusively under Texas law. The defamation claim was denied on a summary judgment motion. After a trial in the bankruptcy court, Vickie was awarded $400 million on her gift expectancy claim. Pierce challenged the jurisdiction of the bankruptcy court to enter a final judgment on the gift expectancy claim. Pierce made two primary jurisdictional objections. First, he argued that the bankruptcy court lacked subject matter jurisdiction due to the federal common law probate exception which reserves to state courts exclusive jurisdiction for the administration of a decedent's estate. Second, he argued it was unconstitutional for a bankruptcy court to enter a final judgment on a claim based entirely on state law and unrelated to administration of the bankruptcy estate. Meanwhile, the Texas probate court exercising concurrent jurisdiction held a jury trial on the same gift expectancy claim and found in favor of Pierce. With respect to the litigation in bankruptcy court, the Supreme Court granted certiorari. Even the Bush administration became involved in the case and the United States Solicitor General filed an amicus brief in support of Vickie's legal position. In 2006, the Supreme Court held that the bankruptcy court did have jurisdiction to adjudicate the defamation claim because the claim did not involve

the administration of an estate and was therefore outside of the probate limitation on jurisdiction. The Supreme Court did not address the constitutional issue but permitted the Ninth Circuit to consider that issue on remand. After further briefing and consideration by the Ninth Circuit, the Supreme Court again granted cert to consider the constitutional issue and in 2011 held that while the bankruptcy court had statutory authority to enter a final judgment on the gift expectancy claim as a core proceeding under 11 U.S.C. § 157(b)(2)(C), it was unconstitutional for an Article I Judge to hear a state law action that was independent of bankruptcy law and could not be resolved entirely by a ruling on the creditor's proof of claim. As a result, the defamation judgment entered by the bankruptcy court was void and the findings of the Texas probate court became conclusive. The holding in *Stern* is narrow and does not overrule Supreme Court precedent that a bankruptcy court may constitutionally adjudicate lawsuits against creditors of the debtor wherein determination of every issue related is also necessary to rule on the creditor's proof of claim. Despite *Stern*, a bankruptcy court may continue to enter final orders "with respect to state law when determining a proof of claim in the bankruptcy, or when deciding a matter directly and conclusively related to the bankruptcy."