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## Relying on *Stern v. Marshall*, Supreme Court Upholds Ninth Circuit Decision

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**June 9, 2014** - In a unanimous opinion written by Justice Clarence Thomas, the Supreme Court today upheld a Ninth Circuit decision allowing a bankruptcy court to issue proposed findings of fact and conclusions of law on issues outside their constitutional jurisdiction for *de novo* review by the district court. As previously reported here, the Supreme Court was presented with two questions: (i) whether Article III permits the exercise of the judicial power of the United States by bankruptcy courts on the basis of litigant consent, and, if so, whether “implied consent” based on a litigant’s conduct, where the statutory scheme provides the litigant no notice that its consent is required, is sufficient to satisfy Article III; and (ii) whether a bankruptcy judge may submit proposed findings of fact and conclusions of law for *de novo* review by a district court in a “core” proceeding under 28 U.S.C. § 157(b).

In reaching its decision, the Court relied on the reasoning set forth in *Stern v. Marshall*, a landmark bankruptcy decision on the constitutional limitations of bankruptcy judges’ power arising from the legal dispute between Anna Nicole Smith and the heirs of her former husband, the late J. Howard Marshall II. In *Stern*, the Supreme Court held that, notwithstanding statutory authority granted by Congress, a bankruptcy court lacked constitutional authority to finally adjudicate certain claims reserved for Article III judges. But, because the statute only explicitly allowed bankruptcy courts to issue findings of fact and conclusions of law on issues defined by the statute as “non-core,” the lower courts found a “statutory gap” in the treatment of claims defined by the statute as “core” that were outside of the scope of the bankruptcy court’s constitutional jurisdiction under *Stern*. Applying the severability clause of the statute, the Court concluded:

We hold today that when, under *Stern*’s reasoning, the Constitution does not permit a bankruptcy court to enter final judgment on a bankruptcy related claim, the relevant statute nevertheless permits a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court.

Because it was not necessary to reach the first question presented, the Court “reserve[d] . . . for another day” the question of whether a party can consent to the Bankruptcy Court’s adjudication of a *Stern* claim.

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