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May a Bankruptcy Court Exercise Supplemental Jurisdiction Predicated on its Referred "Related To" Jurisdiction?

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We must not give jurisdictional statutes a more expansive interpretation than their text warrants...[I]t is just as important not to adopt an artificial construction that is narrower than what the text provides. [1]

I. INTRODUCTION

Federal courts are courts of limited jurisdiction. [2] Each only has the power to hear and adjudicate those cases authorized and defined by Article III of the Constitution and affirmatively granted to it by federal statute. [3] Unless Congress has expressly vested an inferior [4] federal court with subject matter jurisdiction, the court is presumed to lack authority over the case. [5]

The policy underlying a limited federal judiciary traces back to the founders, who were steadfast regarding the need to establish a national judicial infrastructure but fearful of creating an "instrument of tyranny." [6] In their minds, federal court jurisdiction had to be narrowly crafted to achieve specific goals. [7] Since Congress's enactment of the First Judiciary Act, it has recognized the need to proceed cautiously in establishing new or expanding existing federal jurisdiction. [8] By way of example, federal question jurisdiction [9] was not enacted until nearly 100 years after the founding [10] and, in the ensuing years, was generally limited to protecting U.S interests, guarding its citizens' fundamental rights, implementing federal regulatory schemes, and enforcing federal criminal statutes. [11] In short, federal question jurisdiction was historically designed to be "a system designed...to adjudicate small numbers of disputes involving national interests and calling for deliberative consideration." [12]

One such national interest relates to Congress's plenary legislative power "on the subject of Bankruptcies." [13] Congress has utilized inferior federal courts to implement and administer its bankruptcy powers from the enactment of the first federal bankruptcy statute in 1800. [14] The first express statutory grant of federal court jurisdiction over "bankruptcy proceedings" occurred under the Bankruptcy Act of 1841 (the 1841 Act). [15] Ever since the 1841 Act, federal court jurisdiction over "bankruptcy proceedings" has persisted. [16] The National Bankruptcy Act of 1898 (the 1898 Act) established "courts of bankruptcy" to effectuate a national uniform bankruptcy law, [17] and the 1978 Bankruptcy Reform Act (the 1978 Act) "vested in a new bankruptcy court jurisdiction of all civil proceedings 'arising under' title 11 or 'arising in' or 'related to' cases under title 11." [18]

"Although the scope of bankruptcy jurisdiction was broad [under the 1978 Act], it [was] not without limits." [19] The 1978 Act failed to confer Article III status on the judges of this new bankruptcy court because the judges were not afforded life tenure. [20] This set the stage for *Northern Pipeline Construction v Marathon Pipe Line Co.* (*Marathon*), [21] "which held

that non-Article III courts could not adjudicate state-created created rights and thus invalidated the [1978 Act's] broad grant of jurisdiction to the non-Article bankruptcy judges." [22]

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (the 1984 Amendments) was intended to address *Marathon* and remedy the constitutional infirmity caused by the 1978 Act. [23] The 1984 Amendments bifurcated federal bankruptcy jurisdiction between the district courts and the bankruptcy courts established under the 1978 Act. [24] As will be discussed in greater detail infra, Article III district courts were authorized under the 1984 Amendments to delegate their Bankruptcy Code jurisdiction to Article I bankruptcy judges. [25] In instances where the proceedings "arose under" or "arose in" the Bankruptcy Code, this delegation was essentially absolute. [26] In cases where the proceedings were "related to" a case under the Bankruptcy Code, bankruptcy courts could not enter final judgments or orders without the consent of all parties to the proceedings. [27] Where the parties did not consent, the district court would be called upon to enter final orders or judgments after considering the findings of fact and conclusions of law of the bankruptcy judge de novo. [28]

Based against this backdrop, and in light of the limited jurisdiction conferred by §§ 1334(b) and 157 of Title 28, [29] a bankruptcy court presumably lacks authority over a proceeding [30] unless it "arises in" or "arises under" the Bankruptcy Code or "relates to a case" brought under the Bankruptcy Code. However, bankruptcy decisional law has in certain instances recognized the expansion of the bankruptcy court's jurisdictional boundaries by way of the "supplemental jurisdiction" provisions contained in § 1367 of Title 28 (the Supplemental Jurisdiction Statute). [31] Under the Supplemental Jurisdiction Statute, "district courts have supplemental jurisdiction over all other claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." [32]

This article maintains that district courts cannot properly refer jurisdictional authority derived from the Supplemental Jurisdiction Statute to bankruptcy courts and that bankruptcy courts otherwise lack statutory or constitutional authority to exercise jurisdiction pursuant to the Supplemental Jurisdiction Statute. Instead, the bankruptcy court's sole and exclusive jurisdictional authority is born from and resides in §§ 1334(b) and 157 of Title 28.

In support of this thesis, part I of the article revisits *Marathon* and the 1984 Amendments to gain an understanding of the limitations imposed by the current bankruptcy jurisdictional scheme then traces the history of ancillary and pendent jurisdiction leading up to the enactment of the Supplemental Jurisdiction Statute. Part II analyzes decisional law where both district courts and their adjuncts, the bankruptcy courts, are called upon to adjudicate proceedings under the Supplemental Jurisdictional Statute based on federal bankruptcy jurisdiction conferred under § 1334. The article concludes in Part II that while district courts have authority to exercise supplemental jurisdiction based on § 1334 jurisdiction, bankruptcy courts clearly do not. Part III discusses the bankruptcy court's "related-to" jurisdiction and advocates the utilization of a test similar to the one first articulated in *Pacor, Inc. v. Higgins* [33] to determine whether bankruptcy court jurisdiction exists over a claim that would otherwise only survive in district court under the Supplemental Jurisdiction Statute.

II. THE LIMITED JURISDICTION OF THE FEDERAL COURTS

A. Marathon *and the Origins of Sections 1334 and 157 of Title 28*

The bankruptcy court is an "adjunct" [34] of, and derives its jurisdiction from, "the primary branch of the district court." [35] As such, a bankruptcy court's jurisdiction is especially circumscribed by, wholly grounded in, and limited by

statute. [36] Critical to an appreciation of the bankruptcy courts' jurisdictional limitations is a renewed understanding of *Marathon* and the post-*Marathon* 1984 Amendments. As discussed in part I, supra, the 1978 Act established bankruptcy courts and vested them with broad jurisdiction in matters "over all civil proceedings arising under [the Bankruptcy Code] or arising in or related to cases under [the Bankruptcy Code]." [37] Included in this broad jurisdictional grant was the ability to adjudicate a wide array of cases involving "claims based on state law as well as those based on federal law." [38] "By combining jurisdiction over all bankruptcy-related proceedings into a court, the [1978 Act] sought to solve an 80-year old dilemma caused by the 'sprawling judicial landscape'--including state courts, federal district courts and federal bankruptcy courts--where such proceedings were resolved." [39]
The drafters of the 1978 Reform Act, somewhat ironically, thought that the powerful breadth of the jurisdictional provisions would leave no doubt as to the scope of the bankruptcy court's jurisdiction over disputes...The statutory grant of federal bankruptcy jurisdiction over any and all state-law claims "related to" a pending bankruptcy case was designed to be as broad as is constitutionally permissible. [40]

The 1978 Act, however, did not make the newly minted bankruptcy judges Article III judges, markedly denying them life tenure. [41] In *Marathon*, the Supreme Court held that the 1978 Act was unconstitutional, "at least insofar as it allowed a non-Article III court to entertain and decide a purely state-law claim." [42] Notably, the *Marathon* court was troubled by the broad grant of subject-matter jurisdiction to the bankruptcy judges.

> "[I]n contrast to the narrow, specialized jurisdiction exercised by the [bankruptcy referees of the 1898 Act], the subject-matter jurisdiction of the bankruptcy courts encompasses not only traditional matters of bankruptcy, but also all civil proceedings arising under title 11 or arising in or related to cases under title 11. In addition, [the referees] engaged in statutorily channeled factfinding functions, while the bankruptcy courts "exercise all of the jurisdiction" conferred by the Act on the district courts. [43]

In response to *Marathon*, Congress enacted the 1984 Amendments, which included § 1334 of Title 28. Under § 1334(a), the district courts possess both original and exclusive jurisdiction over all cases filed under the Bankruptcy Code and over all property of a bankruptcy estate created upon the commencement of a case filed under the Bankruptcy Code. [44] Under § 1334(b), the district courts possess "original but not exclusive jurisdiction of all civil proceedings arising" under the Bankruptcy Code, or "arising in or related to cases [45] under" the Bankruptcy Code. [46] "Arising under" jurisdiction gives the district courts subject matter jurisdiction over claims created by the Bankruptcy Code. [47] "Arising in" bankruptcy jurisdiction gives the district courts "general federal bankruptcy jurisdiction over all claims by and against the bankruptcy estate." [48] "Related to" bankruptcy jurisdiction gives the district courts subject matter jurisdiction over proceedings that "do not invoke a substantive right created by federal bankruptcy law and could exist outside of bankruptcy" [49] but somehow relate to a case filed under the Bankruptcy Code. At least one commentator has likened "related to" jurisdiction to a type of supplemental jurisdiction. [50]

As part of the 1984 Amendments, Congress also enacted § 157 of Title 28. Section 157(a) authorizes a district court to refer any or all bankruptcy cases and any or all proceedings arising under the Bankruptcy Code or arising in or related to a bankruptcy case to the bankruptcy judges for the district. [51] Thus, in tandem, §§ 1334 and 157 "operate to permit the referral of all matters over which a district court has bankruptcy jurisdiction under § 1334 to the bankruptcy judges." [52]

The mechanism by which the bankruptcy judge manages a case or proceeding referred to it under § 157(a) is governed by subsections (b) and (c) of § 157. [53] Section 157(b) permits the bankruptcy judge to hear and determine "core proceedings"

and enter "appropriate orders and judgments." [54] Although a bankruptcy judge may hear a "non-core proceeding" [55] that "is otherwise related to a [bankruptcy] case," [56] any final order or judgment must be entered by the district court after it considers the bankruptcy judge's proposed findings of fact and conclusions of law de novo. [57] De novo review can be waived by the parties, and bankruptcy judges can enter final orders on noncore matters, with the consent of the parties. [58] Core proceedings are defined in § 157(b)(2); noncore proceedings are essentially those that are not core proceedings but are otherwise "related to" a case filed under the Bankruptcy Code. [59] In summary, the bankruptcy court's subject matter jurisdiction is circumscribed by, wholly grounded in, and limited by §§ 1334 and 157 of Title 38. [60] Thus unless Congress has expressly vested with the bankruptcy court subject matter jurisdiction over actions that properly fall within the district courts' supplemental jurisdiction, the bankruptcy court is presumed to lack authority over the action. [61]

B. Getting to the Supplemental Jurisdiction Statute

The term "supplemental jurisdiction" and the Supplemental Jurisdiction Statute have their genesis from a synthesis of court-made doctrines of ancillary and pendent jurisdiction. [62] "These doctrines are relied upon by federal courts, for reasons of federalism, judicial economy and fairness, to adjudicate jurisdictionally insufficient state law claims related to claims over which federal jurisdiction exits." [63] The doctrines "developed separately as a historical matter...[but are] 'two species of the same generic problem'" [64] If an inferior federal court's subject matter jurisdiction precluded it from resolving an entire case in controversy in a single proceeding, so these doctrines hold, litigants would confront a proverbial "Morton's fork," [65] "splitting their claims between federal and state courts, or litigating their entire dispute in state court." [66] In tandem, pendent and ancillary jurisdictions are intended to permit an Article III court to exercise jurisdiction over a party or claim normally outside a federal judicial power. [67] This article will discuss pendent and ancillary jurisdiction in order.

1. Pendent Jurisdiction

Before the enactment of the Supplemental Jurisdiction Statute, the Supreme Court in *United Mine Workers of America v. Gibbs* [68] crafted the modern test for pendent jurisdiction. [69] "*Gibbs* confirmed that the District Court had the additional power (though not the obligation) to exercise supplemental jurisdiction over related state claims that arose from the same Article III case or controversy." [70] In order to ascertain whether the relationship between the federal and nonfederal claims was sufficient to confer pendent jurisdiction, the *Gibbs* court required that:

> (1) the federal claim be substantial;
> (2) the federal and non-federal claims must derive from a common nucleus of operative facts; and
> (3) the federal and non-federal claims must be such that without regard to their federal or non-federal character they would ordinarily be expected to be tried together in one judicial proceeding." [71]

Thus "[u]nder the doctrine of pendent-claim jurisdiction, a plaintiff asserting a 'federal law' or 'federal question' claim could join with it a related state law claim against the same defendant, even though the state law claim was jurisdictionally insufficient" [72] so long as the *Gibbs* relationship test was satisfied. [73]

2. Ancillary Jurisdiction

Ancillary jurisdiction was identified by two key traits: First, "the defendant or intervenor is bringing the nonfederal claims into the litigation. Second, either the nonfederal claim concerns property before the federal court by a proper

federal claim or the nonfederal claim is transactionally related to the federal claim." [74] Ancillary jurisdiction had its genesis in "the notion that [when] federal jurisdiction in [a] principal suit effectively controls the property or fund under dispute, other claimants thereto should be allowed to intervene in order to protect their interests, without regard to jurisdiction." [75] The doctrine of ancillary jurisdiction steadily expanded to include "jurisdiction over compulsory counterclaims, impleader claims, cross-claims among defendants, and claims of parties who intervened of right." [76] Ancillary jurisdiction over these [additional] claims was permitted so long as the claim "arose out of the same transaction as the plaintiff's primary claim." [77]

In turn, courts have employed four possible methods to analyze whether the new claims arose out of the same "transaction or occurrence" [78] as the underlying claim for purposes of exercising ancillary jurisdiction:

> (1) Are the issues of fact and law raised by the underlying claim and the joined claim largely the same; (2) would *res judicata* bar a subsequent suit on the joined claim? (3) would substantially the same evidence support or refute the underlying claim and the joined claim?; and (4) is there any logical relationship between the underlying claim and the joined claim. [79]

If any of these inquiries resulted in an affirmative response, the court had discretion to exercise ancillary jurisdiction over the new claim. [80]

3. The Enactment of the Supplemental Jurisdiction Statute

Congress adopted the Supplemental Jurisdiction Statute by way of the Judicial Improvements Act of 1990. At the time of its enactment, if the district courts had original jurisdiction over at least one claim, the jurisdictional statutes--e.g., § 1331 of Title 28 for federal question jurisdiction--and Supreme Court precedent authorized supplemental jurisdiction over all other claims between the same parties arising out of the same Article III case or controversy. [81]

The Supplemental Jurisdiction Statute codified the "existing state of the law of supplemental jurisdiction," [82] combining the doctrines of pendent and ancillary jurisdiction [83] and "was passed because of doubts that *Finley v. United States* [84] had cast on the propriety of the judge-made doctrines of pendent and ancillary jurisdiction." [85]

In pertinent part, the statute provides:

> In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. [86]

"Section 1367(a) was a broad grant of supplemental jurisdiction over other claims within the same case or controversy, as long as the action [was] one in which the district courts would have original jurisdiction." [87] According to one commentator, the Supplemental Jurisdiction Statute's reference to Article III equates "the outer limits of supplemental jurisdiction with the outer limits of what the Constitution allows." [88] That is, a district court is compelled to examine the constitutional grant of power to determine whether jurisdiction is proper. [89] Conversely, some believe that "[t]he legislative history indicates that Congress' reference in § 1367(a) to the constitutional limits of the doctrine was intended to codify 'the scope of supplemental jurisdiction first articulated by the Supreme Court in *Gibbs*" [90] and nothing more. In

any event, there seems to be an agreement that the Supplemental Jurisdiction Statute "should be interpreted as applying a single standard for the assertion of supplemental jurisdiction, for there would appear to be no constitutional basis for applying distinct standards to the various forms of jurisdiction." [91]

III. THE STANDARD EMPLOYED: THE SUPPLEMENTAL JURISDICTION STATUTE AS APPLIED TO § 1334 JURISDICTION

A. As Applied in the District Court

In her seminal article, *The Case Against Supplemental Bankruptcy Jurisdiction: A Constitutional, Statutory, and Policy Analysis*, [92] Professor Block-Lieb argues that a district court's jurisdictional exercise under the Supplemental Jurisdiction Statute may "exceed Article III of the Constitution" [93] when the primary jurisdictional basis was a proceeding that was merely "related to" or "arising in" a case under the Bankruptcy Code. [94] "With a primary claim involving bankruptcy jurisdiction...the substantiality of the federal ingredient is less clear because the sources of bankruptcy jurisdiction are less clear."

Since that article, neither appellate nor district courts have seriously challenged the ability of a district court to exercise supplemental jurisdiction when the district court's primary jurisdictional basis was born from § 1334, including "arising in" or "related to" jurisdiction born from § 1334(b). A clear rationale for these decisions is that under § 1334, and in particular subsection (b), the scope of the district court's federal bankruptcy jurisdiction is intended to "cover virtually all litigation in which a debtor or the estate could be expected to have an interest...and vests the court with complete or pervasive jurisdiction over all matters having a relationship with or a significant bearing on the bankruptcy case." [95] As succinctly articulated by the U.S. Court of Appeals for the Sixth Circuit in *In re Dow Corning*:

> The emphatic terms in which the jurisdictional grant is described in the legislative history, and the extraordinarily broad wording of the grant itself, leave us with no doubt that Congress intended to grant to the district courts broad jurisdiction in bankruptcy cases. Although situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement of Section 1334(b), Congressional intent was to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate. [96]

So long as there is a constitutional and statutory basis for a court to exercise primary jurisdiction, [97] jurisdiction under the Supplemental Jurisdiction Statute can be exercised. Thus if § 1334(b) properly confers upon the district court "jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11," [98] the Supplemental Jurisdiction Statute broadly grants § 1367 jurisdiction over other claims within the same case or controversy. [99]

In light of this backdrop, an analysis of several cases where the district court, after determining that it possessed original federal bankruptcy question jurisdiction under § 1334(b), concluded that it also possessed supplemental jurisdiction over other claims under the Supplemental Jurisdiction Statute is useful.

The U.S. Court of Appeals for the Second Circuit affirmed a district court's exercise of supplemental jurisdiction based upon § 1334(b) federal bankruptcy jurisdiction in *Publicker Indus., Inc. v. United States (In re Cuyahoga Equipment Corp.)*. [100] In *Cuyahoga*, the district court was called upon, based on a reference withdrawal, [101] to approve a settlement agreement related to competing bankruptcy and environmental claims. [102] The bankruptcy claims arose out of a polluter's bankruptcy case filed under Chapter 11, and the environmental claims arose out of a cost recovery action

brought by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Relevantly, the settlement agreement resolved certain claims asserted by the EPA and the Chapter 11 trustee under Bankruptcy Code § 506(c) and a claim objection filed under § 502 involving the debtor's secured lender. [103]

The Second Circuit noted that the issues addressed in the settlement agreement involving Bankruptcy Code §§ 506(c) and 502 "constituted civil proceedings under § 1334(b) even without the formal commencement of a civil action by the parties." [104] It explained that "Congress aimed to give the term "civil proceedings" in § 1334(b) an expansive interpretationClaims asserting alleged rights under §§ 502 and 506(c) constitute contested matters; when the parties seek the court's sanction for their compromise through a motion for approval, that motion constitutes a civil proceeding." [105] In turn, the Second Circuit looked approvingly on the district court's ability to exercise authority under the Supplemental Jurisdiction Statute once the district court determined that it had an "independent jurisdictional source" [106] provided by § 1334(b). [107] The Second Circuit noted that the environmental causes were inextricably linked to the bankruptcy claims "because all of them, resolved in the settlement agreement, concern the government's attempts to remedy hazardous substance releases at the [debtor's] site and they remain intertwined in the competing parties' efforts to secure a share of the proceeds of the option sale." [108] Even without an independent basis for federal question jurisdiction over the environmental claims, the Supplemental Jurisdiction Statute provided the district court with ample jurisdictional authority over these claims based on federal bankruptcy jurisdiction conferred on the district court by § 1334(b). [109]

Rahl v. Bande [110] is another such case where the district court exercised jurisdiction over additional claims based upon the Supplemental Jurisdiction Statute. In *Rahl*, the trustee of a liquidating trust established pursuant to a court-approved plan of reorganization commenced an action in New York state court alleging (i) breaches of various fiduciary duties owed to the debtor, (ii) fraudulent conveyance, (iii) aiding and abetting breaches of fiduciary duties, and (iv) professional malpractice. [111] Thereafter, the defendants removed the action to the district court under § 1441 of Title 28, [112] and the trustee sought to remand. [113]

The defendants argued that removal was appropriate to the district court based on § 1334(b) jurisdiction because the trustee's fraudulent conveyance action had "arisen under" Bankruptcy Code § 544(b)(1). [114] The trustee countered that the fraudulent conveyance action was based on state law, [115] and any reference in the complaint to § 544(b)(1) was intended to "provide context and background to the state law claim." [116] The district court rejected the trustee's § 544(b)(1) argument: "Absent [§ 544(b)(1)], the trustee would lack standing to bring such a claim on behalf of the Litigation Trust. Thus, the [fraudulent conveyance claim] 'arises under' Title 11" and § 1334(b) jurisdiction existed. [117] Relying on the holding in *Cuyahoga*, [118] the district court then concluded that once it had federal question bankruptcy jurisdiction under § 1334(b), it also had jurisdiction under the Supplemental Jurisdiction Statute over the remaining causes of action in the Complaint. [119]

Another case supporting a district court's exercise of supplemental jurisdiction based on § 1334 jurisdiction is *Wolinsky v. Oak Tree Imaging, LP*. [120] In *Wolinsky*, a plaintiff brought a state court action against defendant alleging various state law causes of action arising from a limited partnership that both parties were involved in. [121] After the state court action was commenced, the limited partnership filed a Chapter 7 petition. [122] After filing a counterclaim against the plaintiff and against the partnership's general partner (as third-party defendant), the defendant removed the state court action to the bankruptcy court. [123] The defendant also sought relief from the stay to name the limited partnership debtor as an additional party defendant in the removed action. [124] Recognizing its own inability to exercise jurisdiction under the Supplemental Jurisdiction Statute, the bankruptcy court, sua sponte, sought withdrawal of the reference. [125] Thereafter,

the matter was referred to the district court to adjudicate the plaintiff's remand motion. [126] Before the referral, however, the bankruptcy court also transferred the debtor's bankruptcy case to a bankruptcy court in another division within the Southern District of Texas. [127]

Before addressing the remand motion, the district court analyzed its own subject matter jurisdiction, noting that the withdrawn action presented "an issue of first impression at the fringe of supplemental and bankruptcy jurisdiction. [128] Specifically, could the district court adjudicate claims under the Supplemental Jurisdiction Statute based on federal bankruptcy question jurisdiction? The district court determined that based on the facts alleged in the removed action, it "was intimately related to the chapter 7 bankruptcy case." [129] The district court, however, did not expressly conclude that it had "related to" jurisdiction under § 1334(b). [130] Instead, the district court decided that it possessed the requisite authority to hear the state-law claims within the removed action under the Supplemental Jurisdiction Statute because those claims "supplement[ed] the [debtor's Chapter 7] bankruptcy case arising under federal law." [131] Based on this analysis, the district court assumed that it had the "power to exercise supplemental jurisdiction over the claims in the" removed action. [132]

Although *Wolinsky*'s analysis regarding its § 1334 jurisdiction was not a model of clarity, it, like *Rahl* and *Cuyahoga,* rightly concluded that a district court, upon exercising § 1334 jurisdiction, could also exercise supplemental jurisdiction over other state law claims based upon the plain meaning of the Supplemental Jurisdiction State. [133]

B. As Applied in the Bankruptcy Court

1. The Majority View: Bankruptcy Courts Are Unable to Exercise Jurisdiction Under the Supplemental Jurisdiction Statute

Bankruptcy courts have routinely interpreted the bankruptcy jurisdictional scheme created by the 1984 Amendments so as to avoid exceeding the limits of Article IIII of the Constitution. [134] This is a consequence of *Marathon* and the clear jurisdictional grant created by §§ 1334 and 157. As a reminder, district courts are vested with bankruptcy jurisdiction under § 1334, [135] and 157(a) provides that "[e]ach district court may provide that...any and all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." [136] The "Section 157(a) reference is the vessel through which jurisdiction may be passed to the bankruptcy courts. Congress constructed that vessel with precise dimensions and limited capacity." [137] In other words, the bankruptcy court's power is wholly derivative. Its genesis is from the district court, and the only jurisdiction district courts are authorized to refer to bankruptcy judges is that authorized by § 1334. [138]

As more fully analyzed infra, if the sole basis for federal jurisdiction is premised upon something other than § 1334, then the proceeding cannot properly be referred to a bankruptcy judge. [139] Indeed, as supported by the analysis above, even if the district court can expand its adjudicative reach by the Supplemental Jurisdiction Statute under § 1334 jurisdiction, *Marathon* teaches that bankruptcy judges are not "authorized to exercise that expanded authority." [140] That is because "the exercise of supplemental jurisdiction may be among the[] 'essential attributes of judicial power' [and thus] any exercise of supplemental bankruptcy jurisdiction by non-Article III bankruptcy courts may be unconstitutional." [141]

The U.S. Court of Appeals for the Fifth Circuit succinctly addressed this issue head-on in *Walker v. Cadle Co.* (*Matter of Walker*). [142] In *Walker*, a Chapter 7 debtor initiated an adversary proceeding against an assignee of a chattel mortgage, alleging violations of the automatic stay provisions of the Bankruptcy Code. [143] In turn, the assignee, seeking contribution and indemnity for any damages assessed against it by the debtor, initiated indemnification and contribution

actions against certain third parties.[144] Additionally, the assignee counterclaimed against the debtor, seeking the revocation of her discharge.[145] After a trial on the merits, the bankruptcy court determined that both the assignee and one of the third-party defendants violated the automatic stay.[146] The assignee and third-party defendant appealed to the district court.[147] The district court affirmed the bankruptcy court's decision regarding the stay violation but concluded that the bankruptcy court lacked subject matter jurisdiction over the assignee's third-party claims.[148] The assignee then appealed that decision to the court of appeals.[149]

The assignee argued that the bankruptcy court had jurisdiction to hear the third-party claim against the third-party defendant under the Supplemental Jurisdiction Statute.[150] Under the assignee's view, "when the jurisdiction granted the district court under § 1334 is combined with the grant of § 1367, there can be no doubt about the capacity of the bankruptcy court to heard the third party demand."[151]

The appeals court disagreed. While it acknowledged that the Supplemental Jurisdiction Statute authorized district courts to exercise supplemental jurisdiction over other claims, "it did not discuss the power of the bankruptcy courts to reach pendent parties."[152] In turn, because Congress had not expressly authorized the district court to refer its supplemental jurisdiction authority to the bankruptcy court, the bankruptcy court lacked subject matter jurisdiction to adjudicate the assignee's third-party claims.[153] To be sure, after a thoughtful analysis of § 157, the Fifth Circuit made plain that noticeably absent from that statute was any indicia that district courts had authority to refer to the bankruptcy courts cases on the basis of the district court's supplemental jurisdiction.[154]
Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and "the exercise of ancillary and pendent jurisdiction by bankruptcy courts could subsume the more restrictive 'relate to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous. Thus, it would be somewhat incongruous to gut this careful system by allowing bankruptcy courts to exercise supplemental jurisdiction to pull into bankruptcy courts matters Congress excluded in its specific jurisdictional grants.[155]

A similar result was reached in *Enron Corp. vs. Citigroup Inc.* (*In re Enron Corp.*),[156] a decision by the U.S. Bankruptcy Court for the Southern District of New York. In *Enron*, the Chapter 11 debtor sought the avoidance of preferential transfers under Bankruptcy Code § 547 and the equitable subordination of certain claims under Bankruptcy Code § 510.[157] Additionally, the adversary proceeding contained certain state law causes of action against the debtor's investment banker.[158] Those allegations were related to an alleged scheme among certain of the debtor's insiders and the investment banker to hide massive debt using complex structured finance deals.[159] The investment bank in turn filed a third-party action against the debtor's auditor, which allegedly contributed to the scheme by way of its publicly filed financial statements.[160] The auditor moved to dismiss the third-party complaint, arguing that the bankruptcy court did not have subject matter jurisdiction to adjudicate claims filed under the Supplemental Jurisdiction Statute.[161]

The *Enron* court went about providing a comprehensive analysis of the Supplemental Jurisdiction Statute and case law leading up to its enactment to determine if the contours of bankruptcy jurisdiction under § 1334 and referral under § 157 authorized it to exercise jurisdiction under the Supplemental Jurisdiction Statute.[162] Relying on the Fifth Circuit's holding in *Walker*, the bankruptcy court concluded the "jurisdictional grant in § 1334(b), and § 157 by implication, negates a bankruptcy court's exercise of jurisdiction of a supplemental non-federal claim...The carefully crafted conferral of jurisdiction would be undermined if bankruptcy courts were to exercise supplemental jurisdiction."[163]

As will be discussed later in this article, the *Enron* decision was notable because it left open the door for a bankruptcy court to adjudicate a third-party complaint or state law claim--which the district court could have lawfully adjudicated under the Supplemental Jurisdiction Statute--if the claim could legitimately fit within the boundaries of § 1334(b) jurisdiction. [164]

2. The Minority View: Bankruptcy Courts Can Exercise Jurisdiction Under the Supplemental Jurisdiction Statute

The conclusion reached in *Walker* and *Enron* that bankruptcy courts do not have authority to exercise jurisdiction under the Supplemental Jurisdiction Statutes is not universally accepted, however. This section surveys decisions by an appeals court, a district court, and a bankruptcy court that illustrate the minority view that bankruptcy courts can exercise jurisdiction under the Supplemental Jurisdiction Statute. The common component present in each of these cases is a conclusion that jurisdiction under the Supplemental Jurisdiction Statute has been properly referred by the district court to the bankruptcy court through § 157(a). As will be discussed later, this conclusion is wrong.

In *State of Montana vs. Goldin* (*In re Pegasus Gold Corp.*), [165] a postconfirmation liquidating trustee and a business entity, both enabled pursuant to a confirmed plan of reorganization, filed an adversary proceeding in the bankruptcy court alleging a number of contract claims stemming from the defendant's alleged breach of the plan and various agreements related thereto. [166] The adversary proceeding also included state law tort and equitable claims. [167] The defendant moved to dismiss the adversary proceeding arguing, among other things, that the bankruptcy court lacked subject matter jurisdiction. [168]

Because the adversary proceeding was commenced after the debtor confirmed its plan of reorganization, the court adopted the Third Circuit's "close nexus" test to determine if postconfirmation jurisdiction existed. [169] The "close nexus" test "recognizes the limited nature of post-confirmation jurisdiction but retains a certain [amount] of flexibility." [170] Under the "close nexus" test, the appeals court believed that it had subject matter jurisdiction over the contract claims inasmuch as they would likely require interpretation of the plan and agreements related thereto. [171] Additionally, the appeals court believed that the contract claims would likely affect the implementation and execution of the plan. [172]

Once the issue of postconfirmation jurisdiction over the contract claims was resolved, the appeals court next took up whether it had jurisdiction over the tort and equity claims, which it conceded were only tangentially related to the underlying bankruptcy proceeding. [173] The appeals court looked to the Supplemental Jurisdiction Statute for jurisdictional authorization and, citing earlier Ninth Circuit precedent, [174] found it:

> This circuit has applied § 1367 to bankruptcy claims, even when the subject matter jurisdiction is based on "related to" jurisdiction. Here, the remaining claims involve a "common nucleus of operative facts" and would ordinarily be expected to be resolved in one judicial proceeding, and therefore the bankruptcy court has supplemental jurisdiction over the remaining claims. [175]

The district court in *Hawaiian Airlines vs. Mesa Air Group, Inc.*, [176] bound by the holding in *Pegasus*, declined to withdraw the reference. In *Mesa Air*, a Chapter 11 debtor filed an adversary proceeding in the bankruptcy court alleging that defendant breached a confidentiality agreement that it signed as a condition precedent to the defendant being accorded access to debtor's confidential information. [177] The debtor also sought the turnover of the confidential information. [178] The defendant counterclaimed for the debtor's alleged antitrust violations, asked for a jury trial, and moved to withdraw the reference. [179]

In analyzing the reference withdrawal motion, the district court first determined that the debtor's breach of confidentiality and turnover counts were "core" proceedings under § 157(b)(2). Consequently, the bankruptcy court rightly had jurisdiction over the claims under § 1334(b). [180] Armed with § 1334(b) jurisdiction, the district court then analyzed the jurisdictional basis for the defendant's counterclaim. [181]

Relying on *Pegasus*, and without differentiating a district court from a bankruptcy court, the *Mesa Air* court noted that the Supplemental Jurisdiction Statute provided the statutory basis for the bankruptcy court to adjudicate the defendant's counterclaim. [182] Once the *Mesa Air* court acknowledged that the bankruptcy court could utilize the Supplemental Jurisdiction Statute, it easily concluded that the defendant's counterclaim was directly "related to, and inextricably intertwined with the [debtor's claims] which the bankruptcy court has core jurisdiction." [183]

> If the bankruptcy court concludes that [the defendant] did, in fact, breach the Confidentiality Agreement, then [the defendant's] lawsuit theory will be difficult to prove, eliminating much of the basis for [the defendant's] Counterclaim. As such, the bankruptcy court has discretion to exercise supplemental jurisdiction over [the] counterclaim, a non-core proceeding. [184]

Most recently, the U.S. Bankruptcy Court for the Southern District of Florida has adopted the minority view in *In re Prestige Realty Group of Ohio & Florida, LLC*. [185] In *Prestige*, the debtor sought protection under Chapter 11 of the Bankruptcy Code. At the time of the filing, it operated several real estate franchises. [186] Shortly after the debtor's case was commenced, the franchisor commenced an adversary proceeding seeking to enjoin the debtor from using the franchisor's trademark, claiming that the debtor's trademark rights had terminated prepetition. [187] The debtor's case was converted to Chapter 7, and the debtor ceased utilizing the franchisor's trademark. Nevertheless, the franchisor amended its adversary proceeding to seek damages for the unauthorized use of its trademark from the debtor and the debtor's principals. [188] The amended adversary proceeding also included a claim for unjust enrichment against several of the debtor's principals. [189]

One of the nondebtors moved to dismiss the adversary proceeding, claiming that the bankruptcy court lacked subject matter jurisdiction over him. The franchisor claimed the bankruptcy court had "related to" jurisdiction over the claims against the nondebtor because (i) the nondebtor had a right to seek contribution and indemnification from the debtor, which in turn could have an impact on the debtor's estate; and (ii) the franchisor's claims against the nondebtor arose "from the same common nucleus of facts as [the franchisor's] claims against the debtor." [190] Because the bankruptcy court had jurisdiction over claims against the debtor, the franchisor argued, the bankruptcy court also had jurisdiction over the franchisor's claims against the nondebtor. [191]

The bankruptcy court agreed, concluding that when the district court referred its § 1334 jurisdiction to the bankruptcy court, the "bankruptcy court assume [d] the district court's supplemental jurisdictional authority of 28 U.S.C. § 1367." [192] So long as it had "related to" jurisdiction over certain of the claims, it had authority under the Supplemental Jurisdiction Statute to adjudicate the franchisor's claims against the nondebtor. [193]

> [T]here is no question that [the franchisor's] claims against the debtor and [non-debtor] arise from the same core of facts...While the Court does not agree that [the franchisor's] claims against the debtor are core claims, at the least, the court has related to jurisdiction over the claims. Since the Court has jurisdiction of [the franchisor's] claims against the debtor, and since those claims arise from the same core facts as the claims [the franchisor] has filed against [the non-debtor], accordingly, "related to" jurisdiction exists by virtue of this court's supplemental jurisdiction. [194]

The conclusion reached in *Pegasus*, *Mesa Air*, and *Prestige*--that bankruptcy courts are authorized to exercise jurisdiction under the Supplemental Jurisdiction Statute--runs contrary to the holding in *Marathon* because it "threatens to supplant...[the] system of adjudication in independent Article III tribunals." [195] Indeed, the 1984 Amendments were enacted because *Marathon* held that non-Article III courts were prohibited from adjudicating state-created created rights. [196] A bankruptcy court's subject matter jurisdiction is wholly restricted by the plain language of § 1334 and the limited referral of § 157. [197] Accordingly, unless Congress expressly vests with the bankruptcy court Article III authority, or the bankruptcy court exercises adjudicative authority over what are traditionally deemed supplemental claims based on the boundaries of contained §§ 1334 and 157, subject matter jurisdiction over those claims simply does not exist.

IV. THE NEXUS BETWEEN THE PRINCIPLES OF SUPPLEMENTAL JURISDICTION AND "RELATED TO" JURISDICTION

While this article's thesis that a bankruptcy court is prohibited from exercising jurisdiction under the Supplemental Jurisdiction Statute remains steadfast, this part discusses the bankruptcy court's opportunity to use its "related to" jurisdiction, where it exists, to adjudicate claims that a district court might otherwise reach based on the Supplemental Jurisdiction Statute.

As discussed supra, bankruptcy courts are courts of limited jurisdiction. [198] A type of bankruptcy jurisdiction that is Constitutionally permitted, [199] statutorily authorized by § 1334(b), and properly referred to the bankruptcy judges by § 157(a) is "related to" jurisdiction. Although Congress did not define "related to" jurisdiction, [200] it did intend that bankruptcy courts obtain adequate jurisdictional authority to "deal efficiently and expeditiously with all matters connected with the bankruptcy estate." [201] "Congress realized that the bankruptcy court's jurisdictional reach was essential to the efficient administration of bankruptcy proceedings." [202]

The test generally accepted to determine the outer boundaries of "related to" jurisdiction under § 1334(b) was articulated by the U.S. Court of Appeals for the Third Circuit in *Pacor*:

> Whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy...Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate. [203]

Importantly, there must remain a legitimate nexus between the "related to" proceeding and the bankruptcy case in order for jurisdiction to be proper and maintained. [204] Nevertheless, "[u]nder the 'conceivable effect' test, the jurisdictional grant [to the bankruptcy court is extremely broad." [205]

For purposes of this analysis, it is important to highlight the somewhat overlapping characteristics of "related to" jurisdiction under § 1334(b) and jurisdiction under the Supplemental Jurisdiction Statute. Notably, both rely upon variations of "related to" concept. The Supplemental Jurisdiction Statute provides that district courts have "supplemental jurisdiction over all other claims that are so related to claims in the action" that they form part of the same case or controversy. On the other hand, § 1334 jurisdiction exists over a civil proceeding related to a bankruptcy case. The difference, of course, is in what the proceedings relate to.

Supplemental jurisdiction requires a factual relationship between the claims such that there is a common nucleus of operative fact. It focuses on the facts of the case and whether those facts give rise to multiple claims. As noted in *Pacor*,

"related to" jurisdiction requires that adjudication of the dispute will have an impact on the bankruptcy case. In many ways, § 1334(b)'s "related to" jurisdiction focuses in on the economic impact that the adjudication of the matter will have on the case. The analysis under "related to" jurisdiction under the Supplemental Jurisdiction Statute is very different from the analysis under the "related to" jurisdiction under § 1334. However, both can be used to greatly expand the breadth of matters that a court may consider.

Emphasizing the distinguishing characteristics between "related to" jurisdiction and the Supplemental Jurisdiction Statute provides further guidance regarding their purpose. First, a bankruptcy court does not possess "related to" jurisdiction simply because common issues of fact are shared between a civil proceeding and a controversy involving the bankruptcy estate. [206] Conversely, under the Supplemental Jurisdiction Statute, supplemental jurisdiction exists over related claims within the same case or controversy where shared facts are often likely, "as long as the action [was] one in which the district courts would have original jurisdiction." [207] Further, judicial economy does not justify "related to" jurisdiction. [208] Under the Supplemental Jurisdiction Statute, however, a district court may exercise supplemental jurisdiction based on considerations of judicial economy. [209] Another distinguishing characteristic is that "related to" jurisdiction generally may not "exist over non-bankruptcy controversies over third parties who are otherwise strangers to the civil proceeding." [210] Under the Supplemental Jurisdiction Statute, though, a district court can preside over and decide third-party claims by defendants against a third party so long as the claims "fall within the court's supplemental jurisdiction if the impleaded defendant's actions share a 'common nucleus of operative fact' with the case already before the court." [211]

These distinctions provide a reminder that decisional law equating a bankruptcy court's "related to" jurisdiction with "the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367" [212] or otherwise advocating the subsumption of "all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution" [213] within "related to" jurisdiction is simply wrong. "Related to" jurisdiction is not supplemental jurisdiction.

Nonetheless, there is no prohibition in the bankruptcy statutory scheme, the Bankruptcy Code, or the Federal Rules of Bankruptcy Procedure precluding the bankruptcy court from exercising its "related to" jurisdiction over claims that have historically fit within the contours of today's Supplemental Jurisdiction Statute, so long as "related to" jurisdiction actually exists. Indeed, in *GAF Holdings, LLC v. Philip Rinaldi* (*In re Farmland Industries, Inc.*) [214] the U.S. Court of Appeals for the Eighth Circuit found "related to" jurisdiction over a case in controversy that would, arguably, stretch the Supplemental Jurisdiction Statute to its statutory and constitutional limits if the case were pending in the district court.

In *Farmland*, an entity that had submitted a losing bid for a Chapter 11 debtor's assets filed an adversary proceeding in bankruptcy court against the successful bidder and other parties claiming that they conspired to prevent the plaintiff from participating in the auction. [215] The plaintiff's state law claims were for civil conspiracy and tortious interference with business expectancies. [216] If the action were pending in district court, the Supplemental Jurisdiction Statute would vest upon the district court jurisdiction over the claims so long as it had federal question or diversity jurisdiction over other claims pending in the action. [217] The plaintiff did not allege any claims "arising in" or "arising under" the Bankruptcy Code. [218] Without addressing its own subject matter jurisdiction, the bankruptcy court dismissed the claims, and the plaintiff appealed pursuant to § 158 of Title 28. [219] The Bankruptcy Appellate Panel (BAP) for the Eighth Circuit sua sponte determined that the bankruptcy court lacked subject matter jurisdiction and instructed the bankruptcy court to dismiss. [220] The defendants then appealed the BAP's order, claiming that the bankruptcy court did have subject matter jurisdiction over the claims. [221]

After recounting the constitutional and statutory boundaries of "related to" jurisdiction based upon the Eighth Circuit's adoption of the *Pacor* test, the appeals court concluded that subject matter jurisdiction existed because the plaintiff's allegations "could have a 'conceivabl[e] effect' on the estate being administered in bankruptcy." [222] Specifically, the appeals court believed that "related to" jurisdiction existed because a postconfirmation liquidating trust was advancing money from the bankruptcy estate to fund the litigation costs of two of the debtor's former officers and directors who were defendants in the adversary proceeding. [223]

Two decisions by the U.S. Bankruptcy Court for the District of Delaware further illustrate a bankruptcy court's ability to exercise "related to" jurisdiction over the third-party claims without jurisdictional rights conferred by the Supplemental Jurisdiction Statute. The more recent of the two cases is *Giuliano vs. Legates* (*In re Legates*). [224] In *Legates*, the Chapter 7 trustee brought an adversary proceeding to avoid certain prepetition transactions between the debtor and his partner. [225] In turn, the partner filed a third-party complaint against a joint creditor of the debtor and the partner. [226] Critical to the third-party complaint was that, to the extent that the partner received a preferential payment, the payment was ultimately transferred to the third-party defendant. [227] The third-party defendant moved to dismiss the action for lack of subject matter jurisdiction. [228]

The third-party defendant argued that the court lacked "related to" jurisdiction because the partner (defendant/third-party plaintiff) only sought to assign and apportion liability between the partner and the third-party defendant, and thus there would be no "conceivable effect" on the debtor's bankruptcy estate. [229] This argument was based on two theories: First, if the partner defeated the plaintiff's claims, the third-party complaint would be moot. [230] Second, if the plaintiff succeeded in his claims against the partner, the partner would be forced to turnover property other than the property that was paid to the third-party defendant. [231]

The court rejected both theories. In finding "related to" jurisdiction, the bankruptcy court noted that a substantial amount of time had elapsed between the date that the property was transferred to the partner and the date that the trustee commenced the adversary proceeding. Because such a large amount of time that had elapsed between the transaction and the lawsuit, there was a strong likelihood that the trustee "could not avoid" [232] a subsequent transfer by the partner to a bona fide purchaser for value. [233] In that instance, "[a] good faith encumbrance transaction between [the partner] and third-party...could not be defeated by the trustee." [234] It followed, then, that if the defendant had insufficient equity in the property to satisfy a trustee's judgment and the third-party defendant was liable, then recovery against the third-party defendant "would inure to the benefit of the estate." [235] "[B]ecause the third-party complaint could conceivably benefit the estate there is 'related to' jurisdiction." [236]

A similar result was reached in *Joseph v. Cutting/Sewing Room Equipment Co., Inc.* (*In re Willcox & Gibbs, Inc.*), [237] another decision involving a third-party complaint. In *Willcox*, a Chapter 7 trustee brought an adversary proceeding to avoid a preferential transfer. The defendant filed a third-party complaint, and the third-party defendant moved to dismiss asserting that the bankruptcy court lacked "related-to" jurisdiction over the third-party complaint. [238] The third-party defendant was made a party to the action. The defendant alleged an agreement between the defendant and the third-party defendant wherein the third-party agreed to compensate the defendant if the debtor was unable to pay the defendant for the goods delivered to the debtor. [239] Because the trustee was looking to the defendant to disgorge payments made by the debtor, the defendant believed that its agreement with the third-party defendant authorized the contribution from the third-party defendant up to the amount of any forced disgorgement. [240] The court agreed.

The court found "related to" jurisdiction based upon a belief that the third-party represented a collateral source of payment in the event that the trustee was unable to satisfy a judgment against the defendant.

[T]here is a real concern about whether [the trustee] will be paid in full if the third-party proceeding is dismissed. [The defendant] has provided evidence that it would be unable to satisfy the full amount of a judgment if the trustee succeeds in its preference claim. If [the third-party defendant] were dismissed from the case and the trustee prevailed against [the defendant], the trustee could be left with a deficiency in satisfying the judgment again [the defendant]....Therefore, I find that the court has subject matter jurisdiction under "related to" jurisdiction. [241]

As these cases exhibit, a court's recognition that the outcome of a case or controversy could have a conceivable effect on the administration of a bankruptcy estate constitutionally and statutorily enables it to exercise jurisdiction over the claim via its "related to" jurisdiction. "Related to" jurisdiction is separate and distinct from, and exists independent of, the Supplemental Jurisdiction Statute. Indeed, as the above cases exhibit, in certain circumstances "related to" jurisdiction provides a jurisdictional basis where one would not otherwise exist in the district court based upon the Supplemental Jurisdiction Statute.

V. CONCLUSION

As the adjunct of the district court, a bankruptcy court's power to hear and adjudicate a case is limited to the jurisdiction conferred to it pursuant to §§ 1334 and 157 of Title 28. Thus unless Congress expressly vests with the Bankruptcy Court subject matter jurisdiction that does not run afoul of *Marathon*, the bankruptcy court is presumed to lack authority over a case in controversy that does not "arise in" or "arise under" the Bankruptcy Code or "relate to a case" brought under the Bankruptcy Code. Bankruptcy decisional law recognizing the expansion of the bankruptcy court's jurisdictional boundaries through the Supplemental Jurisdiction Statute are wrongly decided and misunderstand *Marathon* and the goals and intent of the 1984 Amendments. District courts, in contrast, are not constrained by *Marathon* and therefore may exercise supplemental jurisdiction in bankruptcy matters.

In short, district courts cannot properly refer jurisdictional authority derived from the Supplemental Jurisdiction Statute to bankruptcy courts, and bankruptcy courts otherwise lack statutory or constitutional authority to exercise jurisdiction pursuant to the Supplemental Jurisdiction Statute. That is, while district courts have clear authority to exercise supplemental jurisdiction based on § 1334 jurisdiction, a bankruptcy court clearly does not. Instead, a bankruptcy court must rely on its "related to" jurisdiction to determine whether bankruptcy jurisdiction exists over a claim that would otherwise only survive in district courts under the Supplemental Jurisdiction Statute.

Footnotes

1 Exxon Mobil Corp. v. Allapattah Services, Inc., 545 U.S. 546, 558, 125 S. Ct. 2611, 162 L. Ed. 2d 502 (2005).

2 Exxon Mobil, 545 U.S. at 552 ("The district courts of the United States, as we have said many times, are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute"); Finley v. U.S., 490 U.S. 545, 548, 109 S. Ct. 2003, 104 L. Ed. 2d 593, 1989 A.M.C. 2112, 13 Fed. R. Serv. 3d 1105 (1989) ("It remains rudimentary law that "[a]s regards all courts of the United States inferior to this tribunal, two things are necessary to create jurisdiction.... The Constitution must have given to the court the capacity to take it, and an act of Congress must have supplied it.... To the extent that such action is not taken, the power lies dormant"); In re Bissonnet Investments LLC, 320 F.3d 520, 525, 40 Bankr. Ct. Dec. (CRR) 230, Bankr. L. Rep. (CCH) P 78795 (5th Cir. 2003); Wynn v. AC Rochester, 273 F.3d 153, 157, 168 L.R.R.M. (BNA) 2853 (2d Cir. 2001); In re Canion, 196 F.3d 579, 584, 35 Bankr. Ct. Dec. (CRR) 82, Bankr. L. Rep. (CCH) P 78047 (5th Cir. 1999).

3 Bender v. Williamsport Area School Dist., 475 U.S. 534, 541, 106 S. Ct. 1326, 89 L. Ed. 2d 501, 30 Ed. Law Rep. 1024 (1986); Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 374, 98 S. Ct. 2396, 57 L. Ed. 2d 274, 25 Fed. R. Serv. 2d 554

(1978); Randall v. U.S., 95 F.3d 339, 344 (4th Cir. 1996); In re Bulldog Trucking, Inc., 147 F.3d 347, 352, Bankr. L. Rep. (CCH) P 77730 (4th Cir. 1998).

4 See U.S. Const. Art. III § 1.

5 General Atomic Co. v. United Nuclear Corp., 655 F.2d 968, 969 (9th Cir. 1981).

6 Schwarzer & Wheeler, On The Federalization of the Administration of Civil and Criminal Justice, 23 Stetson L. Rev. 651, 659 (Summer 1994); see Richard A. Matasaar, A Pendent and Ancillary Jurisdiction Primer: The Scope and Limits of Supplemental Jurisdiction, 104 U. C. Davis L.Rev. 103, 104 (1984-1984) ("Congress may, however, further restrict the jurisdiction by narrowly defining the authority of the lower federal courts it creates and making exceptions and regulations to the jurisdiction of the United States Supreme Court. Hence, the jurisdiction of federal courts is limited not only by the Constitution, but by statutes as well").

7 See Schwarzer & Wheeler, 23 Stetson L. Rev. at 659.

8 Schwarzer & Wheeler, 23 Stetson L. Rev. at 659.

9 Federal question jurisdiction is a genus of a federal court's subject matter jurisdiction that is derived from Article III § 2 of the Constitution, which, among other things, "extends the federal judicial power to 'Cases in Law or Equity, arising under the Constitution , the Laws of the United States, and Treaties made, or which shall be made, under their Authority.'" See Matasaar, 104 U. C. Davis L.Rev. at 108 n.23.

10 See Act of March 3, 1875, Sec. 1, 18 Stat. 470, now 28 U.S.C.A. § 1331(a).

11 See Schwarzer & Wheeler, 23 Stetson L. Rev. at 672-73.

12 See Schwarzer & Wheeler, 23 Stetson L. Rev. at 672.

13 U.S. Const. Art. I § 8 ¶ 4.

14 Ralph Brubaker, On the Nature of Federal Bankruptcy Jurisdiction: A General Constitutional Theory, 41 Wm. & Mary L. Rev. 743, 758 (2000). The Bankruptcy Act of 1800 was the Congress's first attempt at implementing a national bankruptcy statutory regime.

15 See Brubaker, 41 Wm. & Mary L. Rev. at 759-60.

16 See Brubaker, 41 Wm. & Mary L. Rev. at 765.

17 See Patrick M. Birney, Reawakening Section 1334: Resolving the Conflict Between Bankruptcy and Arbitration Through An Abstention Analysis, 16 Am. Bankr. Inst. L. Rev. 619, 640 (Winter 2008).

18 See Birney, 16 Am. Bankr. Inst. L. Rev. at 642. Title 11 is commonly referred to as the Bankruptcy Code.

19 See Susan Block-Lieb, The Case Against Supplemental Bankruptcy Jurisdiction: A Constitutional, Statutory, and Policy Analysis, 62 Fordham L. Rev. 722, 724 (1993-1994).

20 See Birney, 16 Am. Bankr. Inst. L. Rev. at 645.

21 Northern Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598, 6 Collier Bankr. Cas. 2d (MB) 785, Bankr. L. Rep. (CCH) P 68698 (1982).

22 See Birney, 16 Am. Bankr. Inst. L. Rev. at 645.

23 Birney, 16 Am. Bankr. Inst. L. Rev. at 645.

24 See Brubaker, 41 Wm. & Mary L. Rev. at 854.

25 See 28 U.S.C.A. §§ 1334(b) and 157; see also Birney, 16 Am. Bankr. Inst. L. Rev. at 646.

26 See 28 U.S.C.A. §§ 1334(b) and 157; see also Birney, 16 Am. Bankr. Inst. L. Rev. at 646.

27 See 28 U.S.C.A. §§ 1334(b) and 157; see also Birney, 16 Am. Bankr. Inst. L. Rev. at 647.

28 See Birney, 16 Am. Bankr. Inst. L. Rev. at 647.

29 Bissonnet Investments, 320 F.3d at 525; Wynn v. AC Rochester, 273 F.3d at 157; Canion, 196 F.3d at 584.

30 General Atomic Co. v. United Nuclear Corp., 655 F.2d 968, 969 (9th Cir. 1981).

31 See, e.g., In re Pegasus Gold Corp., 394 F.3d 1189, 1195, 44 Bankr. Ct. Dec. (CRR) 36, 53 Collier Bankr. Cas. 2d (MB) 705, Bankr. L. Rep. (CCH) P 80229 (9th Cir. 2005).

32 Pegasus, 394 F.3d at 1195.

33 Pacor, Inc. v. Higgins, 743 F.2d 984, 994, 12 Bankr. Ct. Dec. (CRR) 285, Bankr. L. Rep. (CCH) P 70002 (3d Cir. 1984). Under the *Pacor* test, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate." Pacor, 743 F.3d at 994.

34 See Marathon, 458 U.S. 50 ("The Bankruptcy Act of 1978 (Act) established a United States bankruptcy court in each judicial district as an adjunct to the district court for such district").

35 In re Coastal Plains, Inc., 338 B.R. 703, 711 (N.D. Tex. 2006).

36 Celotex Corp. v. Edwards, 514 U.S. 300, 307, 115 S. Ct. 1493, 131 L. Ed. 2d 403, 27 Bankr. Ct. Dec. (CRR) 93, 32 Collier Bankr. Cas. 2d (MB) 685, Bankr. L. Rep. (CCH) P 76456, 31 Fed. R. Serv. 3d 355 (1995); Canion, 196 F.3d at 584 (holding that bankruptcy courts are courts of no exception).

37 Celotex, 514 U.S. at 320 (citing Marathon, 458 U.S. at 54).

38 Celotex, 514 U.S. at 320.

39 Birney, 16 Am. Bankr. Inst. L. Rev. at 644.

40 Brubaker, 41 Wm. & Mary L. Rev. at 799-800, 810.

41 Celotex, 514 U.S. at 320.

42 Celotex, 514 U.S. at 320.

43 Celotex, 514 U.S. at 320-21.

44 28 U.S.C.A. § 1334(a), (e); see also 11 U.S.C.A. § 541.

45 Section 1334(b)'s reference to case under the Bankruptcy Code means the "umbrella under which all of the proceedings that follow the filing of a bankruptcy petition takes place." 1 Collier on Bankruptcy, ¶ 3.01[3], at 3-11 (Alan N. Resnick et al. eds., 15th ed. rev. 2008) (citing In re Blevins Elec., Inc., 185 B.R. 250, 27 Bankr. Ct. Dec. (CRR) 815, 34 Collier Bankr. Cas. 2d (MB) 377 (Bankr. E.D. Tenn. 1995)).

46 28 U.S.C.A. § 1334(b).

47 Brubaker, 41 Wm. & Mary L. Rev. at 853.

48 Brubaker, 41 Wm. & Mary L. Rev. at 853.

49 Specialty Mills, Inc. v. Citizens State Bank, 51 F.3d 770, 773-74, 27 Bankr. Ct. Dec. (CRR) 36, Bankr. L. Rep. (CCH) P 76443 (8th Cir. 1995).

50 Brubaker, 41 Wm. & Mary L. Rev. at 853 ("'Related to' bankruptcy jurisdiction, then, is supplemental jurisdiction over any third-party dispute sharing a conventional supplemental relationship with a claim 'arising under' the Bankruptcy Code or a claim to which the bankruptcy estate is party").

51 28 U.S.C.A. § 157(a).

52 In re Hospitality Ventures/LaVista, 358 B.R. 462, 469 (Bankr. N.D. Ga. 2007).

53 28 U.S.C.A. § 157(b).

54 28 U.S.C.A. § 157(b).

55 See 28 U.S.C.A. § 157(b).

56 See 28 U.S.C.A. § 157(b).

57 See 28 U.S.C.A. § 157(b)(1).

58 See 28 U.S.C.A. § 157(c).

59 Hospitality Ventures, 358 B.R. at 469; Abbey v. Modern Africa One, LLC, 305 B.R. 594, 601-602, 42 Bankr. Ct. Dec. (CRR) 157 (D.D.C. 2004).

60 Celotex, 514 U.S. at 307; Canion, 196 F.3d at 584 (bankruptcy courts are courts of no exception).

61 General Atomic, 655 F.2d at 969.

62 See Block-Lieb, 62 Fordham L. Rev. at 739; see also Richard D. Freer, A Principled Statutory Approach to Supplemental Jurisdiction, 1987 Duke L.J. 34, 34 (1987) ("'Supplemental jurisdiction' is a generic term encompassing the concepts of ancillary and pendent jurisdiction").

63 Block-Lieb, 62 Fordham L. Rev. at 739; see also Neel K. Chopra, Valuing the Federal Right: Reevaluating the Outer Limits of Supplemental Jurisdiction, 83 N.Y.U. L. Rev. 1915, 1922-1923 (2008).

64 Allapattah Services, 545 at 559.

65 See Admiral Ins. Co. v. Grace Industries, Inc., 409 B.R. 275, 280 (E.D. N.Y. 2009) (noting that a "Morton's fork" is a choice between two equally unpleasant alternatives or two lines of reasoning that lead to the same unpleasant conclusion).

66 Matasaar, 104 U. C. Davis L.Rev. at 111.

67 Matasaar, 104 U. C. Davis L.Rev. at 104.

68 United Mine Workers of America v. Gibbs, 383 U.S. 715, 725, 86 S. Ct. 1130, 16 L. Ed. 2d 218, 61 L.R.R.M. (BNA) 2561, 53 Lab. Cas. (CCH) P 11135, 10 Fed. R. Serv. 2d 361 (1966).

69 See Allapattah Services, 545 U.S. at 552.

70 Allapattah Services, 545 at 552; see also Gibbs, 383 U.S. at 725 ("The federal claim must have substance sufficient to confer subject matter jurisdiction on the court... [A]ssuming substantiality of the federal issues, there is power in federal courts to hear the whole").

71 Matasaar, 104 U. C. Davis L.Rev. at 123.

72 Block-Lieb, 62 Fordham L. Rev. at 740, citing Denis F. McLaughin, The Federal Supplemental Jurisdiction--A Constitutional and Statutory Analysis, 24 Ariz. St. L.J. 849, 852 (1992)

73 Matasaar, 104 U. C. Davis L.Rev. at 117.

74 Matasaar, 104 U. C. Davis L.Rev. at 117.

75 Allapattah Services, 545 U.S. at 581; see also Owen Equipment & Erection Co. v. Kroger, 437 U.S. 365, 376, n. 18, 98 S. Ct. 2396, 57 L. Ed. 2d 274, 25 Fed. R. Serv. 2d 554 (1978) ("The ancillary jurisdiction of the federal courts derives originally from cases such as *Freeman v. Howe*, 24 How. 450, which held that when federal jurisdiction 'effectively controls the property or fund under dispute, other claimants thereto should be allowed to intervene in order to protect their interests, without regard to jurisdiction"').

76 Allapattah Services, 545 U.S. at 581.

77 Block-Lieb, 62 Fordham L. Rev. at 740; Matasaar, 104 U. C. Davis L.Rev. at 117.

78 Baker v. Gold Seal Liquors, Inc., 417 U.S. 467, 469 n.1, 94 S. Ct. 2504, 41 L. Ed. 2d 243 (1974) (finding ancillary jurisdiction when counterclaim arises out of the "same transaction or occurrence" as the underlying claim).

79 Matasaar, 104 U. C. Davis L.Rev. at 145.

80 Matasaar, 104 U. C. Davis L.Rev. at 145.

81 See Allapattah Services, 545 U.S. at 557 (citing Gibbs, 383 U.S. at 725).

82 See Allapattah Services, 545 U.S. at 557.

83 See City of Chicago v. International College of Surgeons, 522 U.S. 156, 165, 118 S. Ct. 523, 139 L. Ed. 2d 525, 28 Envtl. L. Rep. 20612 (1997); see also Neel K. Chopra, Valuing the Federal Right: Reevaluating the Outer Limits of Supplemental Jurisdiction, 83 N.Y.U. L. Rev. 1915, 1923 (Dec. 2008) ("Section 1367(a) gives the federal courts jurisdiction over state law claims that lack an independent basis of federal jurisdiction but are related to a claim over which the federal courts have federal question jurisdiction under § 1331").

84 Finley v. U.S., 490 U.S. 545, 109 S. Ct. 2003, 104 L. Ed. 2d 593, 1989 A.M.C. 2112, 13 Fed. R. Serv. 3d 1105 (1989). The Supreme Court in Finley distinguished between pendent claims and pendent parties. "[A] grant of jurisdiction over claims involving particular parties does not itself confer jurisdiction over additional claims by or against different parties." Finley, 490 U.S. at 556, 109 S.Ct. at 2011. The Court ultimately concluded that a grant of pendent-party jurisdiction must have a statutory genesis and that "with respect to the addition of parties, as opposed to the addition of only claims, we will not assume that the full constitutional power has been congressionally authorized, and will not read jurisdictional statutes broadly." Finley, 490 U.S. at 549, 109 S.Ct. at 2007. In turn, "[t]he Supreme Court's language in Finley about having allowed 'ancillary jurisdiction' only in 'a narrow class of cases' called into question that line of cases too. Some lower courts were reading Finley as putting an end to ancillary jurisdiction, as well as to pendent party jurisdiction." F.D.I.C. v. Deloitte & Touche, 834 F. Supp. 1155, 1158 (E.D. Ark. 1993) (citing Charles A. Wright, Arthur R. Miller, Edward H. Cooper, 13A, 13B Federal Practice and Procedure 2d §§ 3523, 3567.2 (1993 Pocket Part)).

85 Chapman v. Currie Motors, Inc., 65 F.3d 78, 82 (7th 1995) (citing H.R. Rep. No. 734, 101st Cong., 2d Sess. 28 (1990)).

86 28 U.S.C.A. § 1367(a).

87 Allapattah Services, 545 U.S. at 559.

88 Chopra, 83 N.Y.U. L. Rev. at 1923. Chopra noted that upon the enactment of the Supplemental Jurisdiction Statute, the district court could no longer "simply assume (as many circuits [did]) that the Gibbs test still define [d] the outer limits of Article III after the enactment of § 1367(a).'

89 Chopra, 83 N.Y.U. L. Rev. at 1923.

90 Block-Lieb, 62 Fordham L. Rev. at 744.

91 Block-Lieb, 62 Fordham L. Rev. at 760.

92 Block-Lieb, 62 Fordham L. Rev. at 721.

93 Block-Lieb, 62 Fordham L. Rev. at 757.

94 Block-Lieb, 62 Fordham L. Rev. at 757.

95 Gem Commercial Associates, LP v. TJX Companies, Inc., 2003 WL 21488304, *2 (D. Conn. 2003).

96 In re Dow Corning Corp., 86 F.3d 482, 489, 36 Collier Bankr. Cas. 2d (MB) 218, Bankr. L. Rep. (CCH) P 76921, 1996 FED App. 0154A (6th Cir. 1996), as amended on denial of reh'g and reh'g en banc, (June 3, 1996) (internal citations and quotation omitted).

97 Allapattah Services, 545 U.S. at 552.

98 28 U.S.C.A. § 1334(b).

99 Allen v. Kuhlman Corp., 322 B.R. 280 (S.D. Miss. 2005).

100 In re Cuyahoga Equipment Corp., 980 F.2d 110, 35 Env't. Rep. Cas. (BNA) 1793, Bankr. L. Rep. (CCH) P 75020, 23 Envtl. L. Rep. 20308 (2d Cir. 1992).

101 28 U.S.C.A. § 157(d).

102 Cuyahoga, 980 F.2d at 111.

103 Cuyahoga, 980 F.2d at 113.

104 Cuyahoga, 980 F.2d at 114.

105 Cuyahoga, 980 F.2d at 114 (internal citations and quotations omitted).

106 Cuyahoga, 980 F.2d at 115.

107 Cuyahoga, 980 F.2d at 115.

108 Cuyahoga, 980 F.2d at 115.

109 Cuyahoga, 980 F.2d at 115; see also Security Farms v. International Broth. of Teamsters, Chauffers, Warehousemen & Helpers, 124 F.3d 999, 1009, 156 L.R.R.M. (BNA) 2148, 134 Lab. Cas. (CCH) P 10046, 47 Fed. R. Evid. Serv. 597, 38 Fed. R. Serv. 3d 856 (9th Cir. 1997) (noting that district court had subject matter jurisdiction over this dispute because plaintiff's claims against debtor in bankruptcy satisfied "related to" jurisdiction under § 1334(b) and plaintiff's claims against nondebtor came within the broad grant of supplemental jurisdiction under § 1367); but cf Matter of Walker, 51 F.3d 562, 572-73, 33 Collier Bankr. Cas. 2d (MB) 1136, Bankr. L. Rep. (CCH) P 76499 (5th Cir. 1995) (noting that the Cuyahoga court did not imply that the bankruptcy court had the same authority to exercise authority under the Supplemental Jurisdiction Statute).

110 Rahl v. Bande, 316 B.R. 127 (S.D. N.Y. 2004).

111 Rahl, 316 B.R. at 131. Section 544(b)(1) provides that "[t]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is avoidable under applicable law by a creditor holding an unsecured claim."

112 Rahl, 316 B.R. at 131. The defendants utilized § 1441(a) of Title 28 to remove. Section 1441(a) provides that "[e]xcept as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." The defendants could have also utilized 28 U.S.C.A. § 1452(a) to remove the action. Section 1452 permits the removal to federal court of any claim over which the federal district court has jurisdiction pursuant to § 1334 jurisdiction. It was enacted to promote federal court jurisdiction over specified bankruptcy-related claims. See In re WorldCom, Inc. Securities Litigation, 293 B.R. 308, 328, 30 Employee Benefits Cas. (BNA) 2076, Fed. Sec. L. Rep. (CCH) P 92285 (S.D. N.Y. 2003), for additional opinion, see, 2003 WL 685099(Mar. 3, 2003).

113 Rahl, 316 B.R. at 131.

114 Rahl, 316 B.R. at 131. Section 544(b)(1) provides that "[t]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is avoidable under applicable law by a creditor holding an unsecured claim.... This provision allows a bankruptcy trustee or a debtor in possession to assert for the benefit of all creditors the rights that any individual creditor has under applicable state law to avoid fraudulent transfers made prior to the filing of the bankruptcy petition." Rahl, 316 B.R. at 131.

115 Rahl, 316 B.R. at 132.

116 Rahl, 316 B.R. at 132. The trustee also claimed that the complaint was not "related to" the debtor's bankruptcy case because "bankruptcy jurisdiction cease[d] to exist upon confirmation and substantial consummation of a plan of reorganization." Rahl, 316 B.R. at 132. While the district court rejected the trustee's arguments on the "related to" issue and found "related to" jurisdiction, the district court did not expressly find supplemental jurisdiction based upon that finding. Rahl, 316 B.R. at 132.

117 Rahl, 316 B.R. at 132.

118 Rahl, 316 B.R. at 132. (citing Cuyahoga, 980 F.2d at 110 ("Given an independent jurisdictional source like that provided by § 1334(b), federal courts possess supplemental jurisdiction over related claims")).

119 Rahl, 316 B.R. at 132.

120 Wolinsky v. Oak Tree Imaging, LP, 362 B.R. 770 (S.D. Tex. 2007).

121 Wolinsky, 362 B.R. at 770.

122 Wolinsky, 362 B.R. at 770, 775.

123 Wolinsky, 362 B.R. at 770.

124 Wolinsky, 362 B.R. at 775. Before referring the action to the district court, the bankruptcy court authorized the lifting of the stay for purposes of allowing the debtor to be made a party to the action. Wolinsky, 362 B.R. at 775.

125 Wolinsky, 362 B.R. at 775. The bankruptcy court noted that the removed action was not "within the bankruptcy jurisdiction of the federal courts."

126 Wolinsky, 362 B.R. at 770.

127 Wolinsky, 362 B.R. at 770.

128 Wolinsky, 362 B.R. at 772-73.

129 Wolinsky, 362 B.R. at 778.

130 Wolinsky, 362 B.R. at 778.

131 Wolinsky, 362 B.R. at 778-79 ("The only federal claim here that can support supplemental jurisdiction is Oak Tree Imaging, L.P.'s Chapter 7 case itself").

132 Ultimately the district court determined that it would not exercise jurisdiction under the Supplemental Jurisidiction Statute and remanded the removed action to state court. Wolinsky, 362 B.R. at 779-82.

133 See also NVF Co. v. New Castle County, 276 B.R. 340, 348 (D. Del. 2002), aff'd, 61 Fed. Appx. 778 (3d Cir. 2003) (stating that while some courts have held that § 1367 does not extend supplemental jurisdiction to bankruptcy courts, district courts do have jurisdiction under that provision).

134 See Block-Lieb, 62 Fordham L. Rev. at 797.

135 See 28 U.S.C.A. § 1334(a).

136 28 U.S.C.A. § 157(a). The reference is usually by way of a standing order. See, e.g., In re Seven Fields Development Corp., 505 F.3d 237, 247, 48 Bankr. Ct. Dec. (CRR) 276, Bankr. L. Rep. (CCH) P 81040 (3d Cir. 2007) ("We also point out that the Western District of Pennsylvania has a general order referring all bankruptcy cases and proceedings filed in the district to the bankruptcy judges. See Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc (Oct. 16, 1984)"); In re Stewart, 62 Fed. Appx. 610, 613 (6th Cir. 2003) ("By general order of reference filed on July 18, 1984, the United States District Court for the Eastern District of Kentucky referred all of those matters to the bankruptcy judge for that district").

137 In re Remington Development Group, Inc., 180 B.R. 365, 373, Bankr. L. Rep. (CCH) P 76507 (Bankr. D. R.I. 1995); see also Matter of Walker, 51 F.3d 562, 33 Collier Bankr. Cas. 2d (MB) 1136, Bankr. L. Rep. (CCH) P 76499 (5th Cir. 1995) ("Section 157 does not give bankruptcy gourds the power beyond that granted in 28 U.S.C. § 1334; rather § 157 allows the district court to assign cases to the bankruptcy courts").

138 28 U.S.C.A. § 157(a).

139 See, e.g., In re JMP-Newcor Intern., Inc., 225 B.R. 457, 32 Bankr. Ct. Dec. (CRR) 962 (Bankr. N.D. Ill. 1998).

140 In re Seybold, 2008 WL 1321878 (Bankr. N.D. Ind. 2008).

141 Block-Lieb, 62 Fordham L. Rev. at 791.

142 Matter of Walker, 51 F.3d 562, 33 Collier Bankr. Cas. 2d (MB) 1136, Bankr. L. Rep. (CCH) P 76499 (5th Cir. 1995).

143 Walker, 51 F.3d at 563.

144 Walker, 51 F.3d at 563.

145 Walker, 51 F.3d at 564. The allegations supporting the assignee's discharge revocation were based upon purported discrepancies between the debtor's schedules and the actual value of the property secured by the assignee's chattel mortgage. Walker, 51 F.3d at 564.

146 Walker, 51 F.3d at 563, 565

147 Walker, 51 F.3d at 565.

148 Walker, 51 F.3d at 565.

149 Walker, 51 F.3d at 565.

150 Walker, 51 F.3d at 570.

151 Walker, 51 F.3d at 570.

152 Walker, 51 F.3d at 572.

153 Walker, 51 F.3d at 5672.

154 Walker, 51 F.3d at 573. The Walker court, citing Professor Block-Lieb, reiterated that "Section 157(c)(1) speaks only of a 'proceeding that is not a core proceeding but that is otherwise related to a case under [the Bankruptcy Code]. It is silent with regard to the power of a bankruptcy court to 'hear' or 'determine' a supplemental claim--a proceeding that is neither core nor related to the title 11 case." Walker, 51 F.3d at 573.

155 Walker, 51 F.3d at 573; see also Chapman v. Currie Motors, Inc., 65 F.3d 78, 81, Bankr. L. Rep. (CCH) P 76618 (7th Cir. 1995) ("We say this in full awareness that there is a serious question whether 28 U.S.C. § 1367 is applicable to bankruptcy cases. Indeed, we may assume it is not" (internal citations and quotations omitted)).

156 In re Enron Corp., 353 B.R. 51, 47 Bankr. Ct. Dec. (CRR) 61 (Bankr. S.D. N.Y. 2006).

157 See Enron Corp., 353 B.R. 51.

158 See Enron Corp., 353 B.R. 51.

159 See Enron Corp., 353 B.R. 51.

160 Enron Corp., 353 B.R. 51.

161 Enron Corp., 353 B.R. 51.

162 Enron Corp., 353 B.R. at 54-60.

163 Enron Corp., 353 B.R. at 54-60; see also TXNB Internal Case, 483 F.3d at 300 ("Bankruptcy courts may not exercise supplemental jurisdiction"); Liberty Mut. Ins. Co. v. Lone Star Industries, Inc., 313 B.R. 9, 21 (D. Conn. 2004) (concluding that it was not clear to what extent a bankruptcy court can exercise supplemental jurisdiction over state law claims); Admiral Ins. Co. v. Heath Holdings USA, Inc., 2005 WL 3500286, *5 (N.D. Tex. 2005) ("the bankruptcy court concluded that it did not have supplemental jurisdiction over this case under 28 U.S.C. § 1367"); Wellman Thermal Systems, 2005 WL 4880619 at *4 ("The district court may exercise supplemental jurisdiction over the cross claims pursuant to 28 U.S.C. § 1367; the bankruptcy court cannot"); In re Moffitt, 406 B.R. 825, 829 (Bankr. E.D. Ark. 2009) ("Supplemental jurisdiction under 28 U.S.C. § 1367 does not extend to bankruptcy courts."); In re Adamson, 334 B.R. 1, 12 (Bankr. D. Mass. 2005) (noting that an argument that bankruptcy courts have supplemental jurisdiction is a "dubious proposition"); In re Foundation for New Era Philanthropy, 201 B.R. 382, 398, 29 Bankr. Ct. Dec. (CRR) 1125 (Bankr. E.D. Pa. 1996) ("By its express terms... section 1367 is applicable only to the district court; it makes no reference to the bankruptcy court (nor does the legislative history surrounding its enactment)"); Halvajian v. Bank of New York, N.A., 191 B.R. 56, 58 (D.N.J. 1995) ("the Court is persuaded by the Fifth Circuit's decision in [Walker], which rejected this reasoning and held that a bankruptcy court may not exercise supplemental jurisdiction"); Remington, 180 B.R. at 373 (" Section 1367's supplemental jurisdiction grant extends district court jurisdiction virtually to the limits of Article III.... It would be anomalous to conclude that the bankruptcy court, which obtains jurisdiction by circumscribed statutory reference from the district court, may exercise § 1367 supplemental jurisdiction at the outer limits of Article III.... To conclude otherwise is asking to run another Marathon").

164 See Enron, 353 B.R. at 54-60.

165 In re Pegasus Gold Corp., 394 F.3d 1189, 44 Bankr. Ct. Dec. (CRR) 36, 53 Collier Bankr. Cas. 2d (MB) 705, Bankr. L. Rep. (CCH) P 80229 (9th Cir. 2005).

166 Pegasus, 394 F.3d at 1192.

167 Pegasus, 394 F.3d at 1192.

168 Pegasus, 394 F.3d at 1199.

169 Pegasus, 394 F.3d at 1194. The "close nexus" test analyzes whether the proceeding has a "close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter." Pegasus, 394 F.3d at 1194 (citing In re Resorts Intern., Inc., 372 F.3d 154, 43 Bankr. Ct. Dec. (CRR) 46 (3d Cir. 2004)).

170 Pegasus, 394 F.3d at 1194.

171 Pegasus, 394 F.3d at 1194.

172 Pegasus, 394 F.3d at 1194.

173 Pegasus, 394 F.3d at 1194.

174 The Pegasus court cited to Security Farms v. International Broth. of Teamsters, Chauffers, Warehousemen & Helpers, 124 F.3d 999, 1009, n. 4, 156 L.R.R.M. (BNA) 2148, 134 Lab. Cas. (CCH) P 10046, 47 Fed. R. Evid. Serv. 597, 38 Fed. R. Serv. 3d 856 (9th Cir. 1997), in support of its finding that the bankruptcy court had authority under the Supplemental Jurisdiction Statute. See Pegasus, 393 F.3d at 1194. Security Farms, however, did not recognize the ability of the bankruptcy court to exercise jurisdiction under the Supplemental Jurisdiction Statute. Rather, it found that a district court that withdrew the

reference had jurisdiction under the Supplemental Jurisdiction Statute to adjudicate certain state law claims. See Security Farms, 124 F.3d at 1008-09.

175 Pegasus, 394 F.3d at 1194.

176 Hawaiian Airlines, Inc. v. Mesa Air Group, Inc., 355 B.R. 214, 2006-2 Trade Cas. (CCH) ¶ 75432 (D. Haw. 2006).

177 Mesa Air, 355 B.R. at 214.

178 Mesa Air, 355 B.R. at 214.

179 Mesa Air, 355 B.R. at 214, 217.

180 Mesa Air, 355 B.R. at 221.

181 Mesa Air, 355 B.R. at 221.

182 Mesa Air, 355 B.R. at 221.

183 Mesa Air, 355 B.R. at 221.

184 Mesa Air, 355 B.R. at 221-22

185 In re Prestige Realty Group of Ohio & Florida, LLC, 2009 WL 2764250 (Bankr. S.D. Fla. 2009), opinion corrected and superseded, 2009 WL 3817297 (Bankr. S.D. Fla. 2009).

186 Prestige, 2009 WL 2764250 at *1.

187 Prestige, 2009 WL 2764250 at *1.

188 Prestige, 2009 WL 2764250 at *1.

189 Prestige, 2009 WL 2764250 at *1.

190 Prestige, 2009 WL 2764250 at *1.

191 Prestige, 2009 WL 2764250 at *1.

192 Prestige, 2009 WL 2764250 at *2 (quoting and agreeing with the conclusion reached in In re Hospitality Ventures/LaVista, 358 B.R. 462 (Bankr. N.D. Ga. 2007)).

193 Prestige, 2009 WL 2764250 at *2.

194 Prestige, 2009 WL 2764250 at *4.

195 Marathon, 458 U.S. at 74.

196 See Birney, 16 Am. Bankr. Inst. L. Rev. at 645.

197 See Celotex, 514 U.S. at 307; Canion, 196 F.3d at 584 (bankruptcy courts are courts of no exception).

198 See Celotex, 514 U.S. at 307; Enron, 353 B.R. at 60.

199 See Celotex, 514 U.S. at 307 ("We agree with the views expressed by the Court of Appeals for the Third Circuit in Pacor... that 'Congress intended to grant comprehensive jurisdiction to the bankruptcy courts that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate,'... and that the 'related to' language of § 1334(b) must be read to give district courts (and bankruptcy courts under § 157(a)) jurisdiction over more than simply proceedings involving property of the debtor or the estate").

200 See Celotex, 514 U.S. at 307-08.

201 Pacor, 743 F.2d at 994.

202 Worldcomm, 293 B.R. at 328-29 (quoting Things Remembered, Inc. v. Petrarca, 516 U.S. 124, 131-32, 116 S. Ct. 494, 133 L. Ed. 2d 461, 28 Bankr. Ct. Dec. (CRR) 243, 33 Collier Bankr. Cas. 2d (MB) 1338, Bankr. L. Rep. (CCH) P 76717 (1995) (Ginsberg, J. concurring)).

203 Pacor, 743 F. 2d. at 994.

204 Pacor, 743 F. 2d. at 994; see also Celotex, 514 U.S. at 308 ("The First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Eleventh Circuits have adopted the Pacor test with little or no variation...The Second and Seventh Circuits, on the other hand, seem to have adopted a slightly different test... But whatever test is used, these cases make clear that bankruptcy courts have no jurisdictions over proceedings that have no effect on the debtor." (internal citations and quotations omitted)).

205 In re Toledo, 170 F.3d 1340, 1345, 34 Bankr. Ct. Dec. (CRR) 205, Bankr. L. Rep. (CCH) P 77914 (11th Cir. 1999).

206 Pacor, 743 F.2d at 994; see also Enron, 353 B.R. at 60-61 ("Jurisdiction is not present where 'related' controversy is too tangential to the bankruptcy case").

207 Allapattah Services, 545 U.S. at 559; but cf. Pegasus, 394 F.3d at 1195 (applying Supplemental Jurisdiction Statute to claims that are only tangentially related to bankruptcy proceeding).

208 Pacor, 743 F.2d at 994.

209 Int'l College of Surgeons, 522 U.S. at 173; see also Nielander v. Board of County Com'rs of County of Republic, Kan., 582 F.3d 1155 (10th Cir. 2009) (In "deciding whether to exercise jurisdiction, the district court is to consider "judicial economy"). It should be noted that judicial economy does not create supplemental jurisdiction; rather, it is a factor that the court should consider when deciding whether to exercise supplemental jurisdiction.

210 Pacor, 743 F.2d at 994.

211 Grimes v. Mazda North American Operations, 355 F.3d 566, 572, Prod. Liab. Rep. (CCH) P 16873, 63 Fed. R. Evid. Serv. 309, 2004 FED App. 0013P (6th Cir. 2004).

212 In re Sasson, 424 F.3d 864, 869 (9th Cir. 2005).

213 Sasson, 424 F.3d at 869.

214 In re Farmland Industries, Inc., 567 F.3d 1010, 51 Bankr. Ct. Dec. (CRR) 200, 61 Collier Bankr. Cas. 2d (MB) 1529 (8th Cir. 2009).

215 Farmland, 567 F.3d at 1010.

216 Farmland, 567 F.3d at 1010.

217 See 11 U.S.C.A. § 1367.

218 See Farmland, 567 F.3d at 1017-18. Although not necessarily germane to this discussion, the plaintiff initially attempted to set aside the bankruptcy court's order approving the sale. Farmland, 567 F.3d at 1013-14. Those attempts, however, were unsuccessful, and the plaintiff commenced the adversary proceeding. Additionally, after the adversary proceeding was dismissed by the bankruptcy court, the plaintiff commenced an identical lawsuit in the district court, presumably facing a statute of limitations with regard to its tort claims if the bankruptcy court's dismissal was ultimately sustained. Farmland, 567 F.3d at 1017-18.

219 Farmland, 567 F.3d at 1010.

220 Farmland, 567 F.3d at 1015.

221 Farmland, 567 F.3d at 1015. The plaintiff sought to dismiss the appeal, arguing that the appeals court lacked subject matter jurisdiction over the appeal. Farmland, 567 F.3d at 1015.

222 Farmland, 567 F.3d at 1019 (citing Specialty Mills, Inc. v. Citizens State Bank, 51 F.3d 770, 774, 27 Bankr. Ct. Dec. (CRR) 36, Bankr. L. Rep. (CCH) P 76443 (8th Cir. 1995)).

223 Farmland, 567 F.3d at 1020.

224 In re Legates, 381 B.R. 111, 49 Bankr. Ct. Dec. (CRR) 115 (Bankr. D. Del. 2008).

225 Legates, 381 B.R. 111.

226 Legates, 381 B.R. 111.

227 Legates, 381 B.R. 111.

228 Legates, 381 B.R. 111.

229 Legates, 381 B.R. at 115.

230 Legates, 381 B.R. at 115.

231 Legates, 381 B.R. at 115.

232 Legates, 381 B.R. at 115.

233 Legates, 381 B.R. at 115.

234 Legates, 381 B.R. at 115-17.

235 Legates, 381 B.R. at 117.

236 Legates, 381 B.R. at 117.

237 In re Willcox & Gibbs, Inc., 314 B.R. 541, 43 Bankr. Ct. Dec. (CRR) 191 (Bankr. D. Del. 2004).

238 Willcox & Gibbs, 314 B.R. at 542-43.

239 Willcox & Gibbs, 314 B.R. at 543.

240 Willcox & Gibbs, 314 B.R. at 543.

241 Willcox & Gibbs, 314 B.R. at 545-46.

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19 JBKRLP 1 ART. 1