Motions to Withdraw the Reference - An Empirical Study

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Motions to Withdraw the Reference - An Empirical Study

by

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One of the key provisions of the Judicial Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984 to address the constitutional infirmities of the jurisdictional provisions of the Bankruptcy Reform Act of 1978 was 28 U.S.C. § 157(d). That section empowers, or in certain circumstances requires, the Article III federal district court to “withdraw, in whole or in part, any case or proceeding referred” to the bankruptcy court under 28 U.S.C. § 157.

In this article I begin by reviewing the history of the relationship between the Article III district courts and the bankruptcy courts. I also look at the case law establishing when a district court must or may withdraw the reference. Finally, I describe my empirical study of all cases in which motions to withdraw the reference were made and decided during 2013. I found that many more such motions were made and granted than I anticipated, and that the likelihood of success on a motion to withdraw depends in large measure on whether it is opposed, whether it is based on a request for a jury trial, and where it is brought.

I. NORTHERN PIPELINE, THE 1984 AMENDMENTS, AND STERN V. MARSHALL

In Northern Pipeline Construction Co. v. Marathon Pipe Line Co., the Supreme Court found that the broad jurisdictional grant to bankruptcy courts set forth in 28 U.S.C. § 1471(b) violated Article III of the United States Constitution. The appellants had urged that the jurisdictional scheme could be upheld either because the bankruptcy courts were Article I courts free from the constraints of Article III, or because they were mere “adjuncts” to the Article III district courts and were thus not improperly usurping Arti-

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4 At the time, 28 U.S.C. § 1471(b) gave bankruptcy courts jurisdiction over all bankruptcy cases and all “civil proceedings arising under title 11 or arising in or related to cases under title 11.”
Article III authority. In an opinion by Justice Brennan, a four-judge plurality of the Court rejected both bases urged by the appellants for supporting the constitutionality of the jurisdictional provisions.

First, the plurality concluded that the bankruptcy courts were not Article I "legislative" courts, nor could the precedents for the creation of such courts (territorial courts, the courts of the District of Columbia, courts-martial, and administrative agencies adjudicating cases involving "public rights") support the broad grant of jurisdiction to the bankruptcy courts. "Public rights" was a concept the plurality declined to define, but the plurality did state that they must "at a minimum arise ‘between the government and others,’" and that the "adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case" obviously does not qualify as a public right. The plurality declined to adopt a new rationale for the creation of non-Article III bankruptcy courts based on the Bankruptcy Clause in the United States Constitution, noting that such a holding would permit Congress, acting pursuant to its Article I powers, to "create courts free of Art. III’s requirements whenever it finds that course expedient."

Second, the plurality rejected the contention that the bankruptcy courts were mere "adjuncts" of the district court whose authority could be analogized to that of administrative agencies and magistrates acting in that capacity. The key issue, according to the plurality, was whether the Article III district court retained "the essential attributes of the judicial power." While recognizing that "Congress possesses broad discretion to assign factfinding functions to an adjunct created to aid in the adjudication of congressionally created statutory rights," the plurality held that Congress does

5 Northern Pipeline, 458 U.S. at 63-68. The plurality noted that congressional control over territories and the District of Columbia rested on the absence of a state government in these geographical areas. Article IV, thus, empowers Congress to exercise the "complete power of government" in these locations. Id. at 64-65. Congress has the authority to provide for courts-martial under Article I, Section 8, Clause 14 of the Constitution which gives Congress the power to "make Rules for the Government and Regulation of the land and naval Forces." Id. at 66. Although the plurality noted that “[t]he distinction between public rights and private rights has not been definitively explained in our precedents,” id. at 69, it concluded that the causes of action for breach of contract, breach of warranty, misrepresentation, duress, and coercion, which were at issue in Northern Pipeline, involved "the adjudication of state-created private rights," rather than "the restructuring of debtor-creditor relations." Id. at 71. Thus, bankruptcy court jurisdiction could not be justified by cases involving adjudication of public rights by legislative courts or administrative agencies.

6 Id. at 69 (quoting Ex parte Bakelite Corp., 279 U.S. 438, 451 (1929)).
7 Id. at 71.
8 U.S. Const. Art. I, § 8, cl. 4 gives Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States."
9 Northern Pipeline, 458 U.S. at 73.
10 Id. at 78-82.
11 Id. at 77 (quoting Crowell v. Benson, 285 U.S. 22 (1932)).
not have the same degree of discretion with respect to rights not created by it.\textsuperscript{12} Comparing the bankruptcy court with the administrative agency challenged in \textit{Crowell v. Benson}\textsuperscript{13} and the U.S. magistrates considered in \textit{United States v. Raddatz},\textsuperscript{14} the plurality concluded that the bankruptcy courts were exercising far greater powers than those constitutional adjuncts and therefore the grant of such powers violated Article III.\textsuperscript{15}

Justice Rehnquist, joined by Justice O'Connor, concurred in the judgment and agreed with the plurality that the bankruptcy courts were not “adjuncts” of an Article III court.\textsuperscript{16} However, he declined to endorse the plurality’s analysis of Congress’s Article I powers, especially with respect to the “public rights” doctrine, concluding only that, whatever the scope of that doctrine, it could not support adjudication of the state law causes of action involved in the case at hand.\textsuperscript{17}

The Supreme Court stayed the effective date of its \textit{Northern Pipeline} judgment first to October 4, 1982,\textsuperscript{18} and then to December 24, 1982,\textsuperscript{19} in order to allow Congress time to amend the statutes without causing disruption to the ongoing operation of the bankruptcy system. When Congress failed to act, the Judicial Conference of the United States sent to all judicial councils of the circuits a draft “Emergency Rule” for adoption by the district courts to enable the bankruptcy court system to continue to operate in a way consistent with the limits imposed by \textit{Northern Pipeline}.\textsuperscript{20} The Emergency Rule permitted (but did not require) the district courts to refer to the bankruptcy courts “all cases under title 11 and all civil proceedings arising under title 11 or arising in or related to cases under title 11,” but permitted the district court to withdraw the reference at any time.\textsuperscript{21} The Emergency Rule gave the bankruptcy courts authority to perform “all acts and duties necessary” to handle referred cases and proceedings, but it barred them from, among other things, conducting jury trials.\textsuperscript{22} In “related proceedings,”\textsuperscript{23} the bankruptcy court could not, without the consent of the parties, enter a judgment or dispositive order, but could only submit findings and a proposed

\textsuperscript{12}Id. at 81.
\textsuperscript{13}285 U.S. 22 (1932).
\textsuperscript{14}447 U.S. 667 (1980).
\textsuperscript{15}Northern Pipeline, 458 U.S. at 86-87.
\textsuperscript{16}Id. at 91 (Rehnquist, J., concurring).
\textsuperscript{17}Id.
\textsuperscript{18}Id. at 88.
\textsuperscript{19}459 U.S. 813 (1982).
\textsuperscript{20}The Emergency Rule adopted by the district courts in the Sixth Circuit is set out in full as an appendix to \textit{White Motor Corp. v. Citibank, N.A.}, 704 F.2d 254 (6th Cir. 1983).
\textsuperscript{21}Id. at 265-66.
\textsuperscript{22}Id. at 266.
\textsuperscript{23}Id. (defining “related proceedings” as “those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court”).
In other proceedings, the bankruptcy court's orders and judgments were final, subject to de novo review by the district court.

In the 1984 Amendments, Congress adopted, with some modifications, the jurisdictional structure of the Emergency Rule. Congress amended Title 28 to vest "original and exclusive jurisdiction of all cases under title 11" and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11" in the district courts. This amendment effectively repealed the broad grant of jurisdiction to the bankruptcy courts previously contained in Title 28.

The amended provisions of the Judicial Code designated bankruptcy judges as a "unit of the district court to be known as the bankruptcy court for that district," to serve as "judicial officers of the United States district court established under Article III of the Constitution." They permitted the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges. The concept of "referral" was a familiar one to Congress: a similar approach had been used in the Federal Magistrates Act. Under that act, a district court could designate a magistrate judge to hear and determine nondispositive pretrial matters, and to conduct hearings (but not enter a final judgment unless the parties consented) in dispositive pretrial matters. A magistrate judge could make proposed findings and recommendations in dispositive pretrial matters to which any party could object, and the district court would make a de novo determination of those matters.

By analogy to the Federal Magistrates Act, the new statutory provisions for bankruptcy cases allowed bankruptcy judges to "hear and determine" all cases and "core proceedings" arising under title 11 or arising in a case under

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24Id.
25Id. at 266-67.
2628 U.S.C. § 1334(a) & (b). Amended § 1334 replaced 28 U.S.C. § 1471 which granted the same jurisdiction to the district courts but provided that the bankruptcy courts could exercise all jurisdiction conferred on the district courts.
28Id. § 152(a)(1).
29Id. § 157(a).
31Id. § 636(b)(1)(A).
32Id. § 636(c).
33Id. § 636(b)(1)(B).
34Id. § 636(b)(1).
35Core proceedings" were defined as follows:
"Core proceedings include, but are not limited to—
(A) matters concerning the administration of the estate;
For a proceeding that is not a "core proceeding" but that is "otherwise related to a case under title 11," the bankruptcy court could only "hear" the proceeding and submit proposed findings of fact and conclusions of law to the district court, unless the parties consented. The district court would then enter any final judgment "after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected." The treatment of related proceedings under the new provisions was clearly intended to confine the role of the bankruptcy judge to that of a permitted "adjunct" under the analysis of the *Northern Pipeline* plurality, by leaving the "essential attributes of judicial power" with the Article III district court judge.

The district court was required to withdraw the reference to the bankruptcy court of any proceeding "if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce." The district could was permitted to withdraw the reference to the

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interest for the purpose of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims."


*36Id.* § 157(b)(2).

*37Id.* § 157(c)(1).

*38Id.* § 157(c)(2).

*39Id.* § 157(c)(1).

*40Id.* § 157(d) (second sentence). This is familiarly known as "mandatory withdrawal of the reference."
bankruptcy court, in whole or in part, "for cause shown." The bankruptcy court was precluded from conducting a jury trial unless "specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties."

The jurisdictional scheme enacted by the 1984 Amendments survived without major challenge until the Supreme Court decision in Stern v. Marshall. The constitutional issue in Stern v. Marshall involved a "counterclaim[ ] by the estate against a person filing a proof of claim against the estate," which is a "core" proceeding under 28 U.S.C. § 157(b)(2)(C). The Supreme Court held that, although the counterclaim was indeed a "core" proceeding and therefore the bankruptcy court had statutory authority to "hear and determine" the matter, Congress had violated Article III of the U.S. Constitution by conferring such authority on a non-Article III judge.

First, the Court concluded that the counterclaim did not constitute a matter of "public rights" that can be adjudicated by a non-Article III judge. No matter what formulation one might employ to define the term "public rights," a fraudulent conveyance action was a state common law claim between two private parties, and could not be considered a matter of "public rights." The fact that the defendant filed a proof of claim did not matter; the bankruptcy court could not constitutionally resolve the counterclaim unless it "would necessarily be resolved in the claims allowance process."

The Court also rejected the contention that the bankruptcy judge was acting as an "adjunct" of the Article III district court when it decided the counterclaim. Noting that the bankruptcy judge had the power to enter a

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41 Id. § 157(d) (first sentence). This is known as "permissive withdrawal of the reference."
42 Id. § 157(e).
43 In Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989), the Supreme Court held that when defendants in a fraudulent conveyance action brought by the trustee under 11 U.S.C. § 548 had not filed a proof of claim in the bankruptcy case, they retained a right to a trial by jury under the Seventh Amendment to the U.S. Constitution. The Court strongly hinted, without holding, that a fraudulent conveyance action against someone who had not filed a proof of claim was a type of action which had to be determined by an Article III court, despite its label as "core" under 28 U.S.C. § 157(b)(2)(H). Id. at 53 (stating that the question of whether the Seventh Amendment requires a jury trial "requires the same answer as the question whether Article III allows Congress to assign adjudication of that cause of action to a non-Article III tribunal."). This could be seen as a suggestion that § 157(b)(1) was unconstitutional with respect to claims described in § 157(b)(2)(H) when the target of the action had not filed a proof of claim. However, in Langenkamp v. Culp, 498 U.S. 42 (1990), the Court held that a litigant who had filed a proof of claim had no right to a jury trial in a preference action because the claim and the preference action "become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction." Id. at 44 (emphasis in original). After Granfinanciera and Langenkamp, it seemed that, so long as a core proceeding was brought against someone who had filed a claim in the bankruptcy case, the bankruptcy court had the constitutional power to hear and determine the matter.
44 89 S. Ct. 2594 (2011).
45 Id. at 2611.
46 Id. at 2614.
47 Id. at 2618.
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final judgment, subject to review only if the aggrieved party appeals, the Court concluded that the bankruptcy courts exercise "the essential attributes of judicial power [that] are reserved to Article III courts."48

Dismissing the contention that restrictions on the ability of a bankruptcy judge to hear and determine compulsory counterclaims would be costly and create delays in the bankruptcy system, the Court emphasized that bankruptcy law already requires the district court to conduct a de novo review and enter final judgment on any noncore matters, and that the district court may withdraw the reference from the bankruptcy court under §157(d). Therefore, the Court stated, its decision does not "meaningfully change[ ] the division of labor in the current statute."49

II. THE AFTERMATH OF STERN AND EXECUTIVE BENEFITS

After Stern, three major issues remained unsettled. The first was whether the Court's decision with respect to core matters under 28 U.S.C. §157(b)(2)(C) (counterclaims by the estate against persons filing claims against the estate) was also applicable to other types of core matters. The second was whether, if a bankruptcy court could not constitutionally hear and determine a core matter, it had the statutory power to hear the core matter as if it were a noncore matter under 28 U.S.C. §157(c)(1) and submit proposed findings of fact and conclusions of law to the district court. The final issue was whether the bankruptcy court can enter a final judgment in a Stern-type core proceeding with the consent of the litigants (as the statute provides with respect to noncore proceedings in 28 U.S.C. §157(c)(2)).

With respect to most core proceedings listed in §157(b)(2), other than §157(b)(2)(C),50 bankruptcy courts have had little trouble dismissing objections to their authority based on Stern. For example, courts have held that they may render final decisions with respect to matters concerning administration of the bankruptcy estate, §157(b)(2)(A);51 allowance or disallowance of claims, §157(b)(2)(B);52 orders with respect to obtaining credit,
§ 157(b)(2)(D); 53 turnover orders, § 157(b)(2)(E); 54 preference actions under § 547, § 157(b)(2)(F), 55 motions regarding the automatic stay, § 157(b)(2)(G); 56 disputes over dischargeability of claims, § 157(b)(2)(I); 57 objections to discharge, § 157(b)(2)(J); 58 disputes over liens, § 157(b)(2)(K); 59
plan confirmation disputes, § 157(b)(2)(L); orders regarding the sale, lease, or use of property, § 157(b)(2)(M) and (N); and other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor relationship, § 157(b)(2)(O). (There are as of yet no published cases discussing the impact of Stern on chapter 15 matters, § 157(b)(2)(P)).

One type of core proceeding has been more problematic. Courts have been divided about whether fraudulent conveyance proceedings, which are statutorily labeled as “core” under § 157(b)(2)(H), can be heard and determined by a non-Article III bankruptcy court. Most courts have concluded that they cannot, whether the claims are brought under 11 U.S.C. § 548 or under state law by virtue of 11 U.S.C. § 544.63

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The Supreme Court rendered a decision in Bellingham, Executive Benefits Ins. Agency v. Arkison, 134 S.Ct. 2165 (2014), but did not explicitly discuss whether a bankruptcy court could render a final decision
As to the second open issue after Stern, despite early concern about the absence of explicit statutory language permitting a bankruptcy judge to hear a Stern-core proceeding and issue proposed findings of fact and conclusions of law, most courts quickly concluded that they had the authority to do so. Several districts amended their standing orders of reference to so state, and to allow the district court to treat a final decision of the bankruptcy judge as if it were proposed findings of fact and conclusions of law if the bankruptcy judge purported to enter a final judgment in a matter in which a final determination was beyond his or her constitutional authority.

in a fraudulent conveyance proceeding as neither party contested the conclusion of the lower court that the fraudulent conveyance claim could not be decided by the bankruptcy court. Id. at 2172. The Court did, however, mention in a footnote that "Granfinanciera held that a fraudulent conveyance claim under Title 11 is not a matter of 'public right' for purposes of Article III . . . ." Id. at 2169 n.3.


If a bankruptcy judge or district judge determines that entry of a final order or judgment by a bankruptcy judge would not be consistent with Article III of the United States Constitution in a particular proceeding referred under this order and determined to be a core matter, the bankruptcy judge shall, unless otherwise ordered by the district court, hear the proceeding and submit proposed findings of fact and conclusions of law to the district court. The district court may treat any order of the bankruptcy court as proposed findings of fact and conclusions of law in the event the district court concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III of the United States Constitution.

Standing Order of Reference, D. Del.
The Supreme Court validated the practice of the district courts in *Executive Benefits Ins. Agency v. Arkison*.\(^{67}\) In a case involving fraudulent conveyance claims brought against a noncreditor (which all parties conceded were the types of claims that, under *Stern*, could not be determined by a bankruptcy judge consistent with Article III of the U.S. Constitution), the Supreme Court held that *Stern* permitted a bankruptcy judge to treat core matters as to which the judge could not render a final judgment as if they were noncore matters under § 157(c).\(^{68}\) Although the bankruptcy judge did not submit proposed findings of fact and conclusions of law to the district court, the district court did review the bankruptcy court’s grant of summary judgment against the noncreditor on a *de novo* basis and entered its own judgment.\(^{59}\) Therefore the noncreditor received exactly what the noncreditor was entitled to—a final determination by an Article III judge.\(^{70}\)

The issue of whether a litigant against whom a *Stern*-type core proceeding has been initiated can consent to a final determination by a non-Article III bankruptcy judge was presented in *Executive Benefits*,\(^{71}\) but the Court did not decide the issue because it concluded that the litigant had received its constitutional due, even in the absence of consent. But in a subsequent case, *Wellness Int’l Network, Ltd. v. Sharif*,\(^{72}\) the court concluded that a bankruptcy judge can constitutionally adjudicate *Stern* claims when the litigants knowingly and voluntarily consent.\(^{73}\)

Uncertainty about the scope of the bankruptcy court’s power to enter final judgments with respect to core matters has encouraged many litigants to seek withdrawal of the reference by the district court, mostly unsuccessfully.\(^{74}\) Motions to withdraw are sometimes premised on other arguments.

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\(^{67}\) 134 S. Ct. 2165 (2014).  
\(^{68}\) Id. at 2173.  
\(^{69}\) Id. at 2175.  
\(^{70}\) Id.  

\(^{71}\) The Ninth Circuit had concluded that the noncreditor had impliedly consented to final adjudication by the bankruptcy court. *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.),* 702 F.3d 553, 566-70 (9th Cir. 2012). The Court did not need to reach the issue because it concluded that the bankruptcy court’s purported “final” judgment was not treated as a final judgment by the district court.  
\(^{73}\) Id. at 1939.  

III. STANDARDS FOR GRANTING MOTIONS TO WITHDRAW THE REFERENCE

As previously discussed,73 the power of a district court to withdraw the reference is governed by 28 U.S.C. § 157(d). The two sentences in that statutory provision describe circumstances under which the district court must withdraw the reference (so-called mandatory withdrawal) and those under which the district court may withdraw the reference (discretionary or permissive withdrawal).

The second sentence of § 157(d) deals with mandatory withdrawal of the reference. By its terms, it requires the district court to withdraw the reference with respect to any proceeding "if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce."74 The purpose of this provision is to ensure that "the assertion of a federally created right will be considered outside the narrow confines of a bankruptcy court proceeding by a district court, which considers laws regulating interstate commerce on a daily basis and is better equipped to determine them than are bankruptcy judges."

Although the literal language of the mandatory withdrawal provision would seem to require withdrawal of a great many bankruptcy proceedings,75 the case law has interpreted the language to require withdrawal only when "substantial and material consideration" of federal statutes other than the Bankruptcy Code affecting interstate commerce "is necessary for the resolution of a case or proceeding."76 The court must be required to interpret the federal law, not merely apply it, to resolve the proceeding before withdrawal is required.77 In addition, mandatory withdrawal is limited to cases in which

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73See supra notes 40-41 and accompanying text.
76See supra note 40.

The permissive withdrawal provision permits the district court to withdraw all or any part of a case or proceeding “for cause shown.”\footnote{28 U.S.C. § 157(d) (first sentence).} District courts have been directed to “consider the efficient use of judicial resources, delay and cost to the parties, uniformity of bankruptcy administration, the prevention of forum shopping, and other related factors.”\footnote{Security Farms v. Int’l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, 124 F.3d 999, 1008 (9th Cir. 1997). See also Tyler v. McLane Foodservice, Inc. (In re QSM, LLC), 473 B.R. 807, 809-810 (E.D. Va. 2011) (identifying six factors to be considered in connection with motion for permissive withdrawal: (i) whether the proceeding is core or non-core, (ii) the uniform administration of bankruptcy proceedings, (iii) expediting the bankruptcy process and promoting judicial economy, (iv) the efficient use of debtors’ and creditors’ resources, (v) the reduction of forum shopping, and (vi) the preservation of the right to a jury trial). Many courts apply these six factors. See, e.g., Chesapeake Trust v. Chesapeake Bay Enters., Inc., No. 3:13CV344, 2014 WL 202028, at *4-5 (E.D. Va. Jan. 17, 2014); Douglas Holding Co. v. City of Princeton, No. 1:11-MC-0078, 2013 BL 206154, at *1 (S.D. W. Va. Aug. 2, 2013); Official Committee of Unsecured Creditors of Appalachian Fuels, LLC, v. Energy Coal Res., Inc. (In re Appalachian Fuels, LLC), 472 B.R. 731, 744 (E.D. Ky. 2012); Adler v. Walker (In re Gulf States Long Term Acute Care of Covington, L.L.C.), 455 B.R. 869, 874 (E.D. La. 2011); In re OCA, Inc., 410 B.R. 443, 449 (E.D. La. 2007).} The Second Circuit in the Orion Pictures case\footnote{Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095 (2d Cir. 1993).} stated that, in addition to these factors, the primary consideration for the district court is "whether the claim is core or non-core, since it is upon this issue that questions of efficiency and uniformity will turn."\footnote{Id. at 1101.} Because it was assumed at the time Orion was decided that bankruptcy judges could hear and determine all core matters, the Second Cir-
cuit stated that it would likely be inefficient to hear a core matter in the district court "given that the bankruptcy court generally will be more familiar with the facts and issues." On the other hand, if the matter was noncore, and was therefore subject to de novo review in the Article III district court, a court might "conclude that in a given case unnecessary costs could be avoided by a single proceeding in the district court." After the Supreme Court's decision in Sterne, most courts have reinterpreted the Orion analysis to require a focus not merely on the core/noncore distinction, but on whether the non-Article III bankruptcy judges can constitutionally render a final decision on the matter.

If one of the parties files a jury demand, and all parties do not consent to a jury trial in the bankruptcy court, cause for withdrawal is established. However, the district court may delay the withdrawal until completion of all pretrial matters in the bankruptcy court because of the bankruptcy judge’s familiarity with the parties and the issues.

IV. MOTIONS TO WITHDRAW THE REFERENCE—AN EMPIRICAL ANALYSIS

Sterne holds that the district court's authority to withdraw the reference does not in itself resolve the constitutional questions about the bankruptcy

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88 Id.
89 Id.
92 Under 28 U.S.C. § 157(e), if a party has a right to a jury trial with respect to any proceeding in the bankruptcy case, the bankruptcy judge "may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties."
court's power. That authority does, however, permit the district court to exercise the "essential attributes of judicial power" with respect to both noncore proceedings and those core proceedings as to which the bankruptcy court lacked the constitutional power to render a final decision. This study is intended to examine the circumstances under which district courts exercise that authority or decline to do so.

I chose to look at cases for the last full calendar year for which motions to withdraw the reference had been filed with the district courts. In my search, I used Bloomberg Law's Bankruptcy Practice area, which allows a search of all bankruptcy cases on the district court dockets by keyword (among other things). I looked at all cases initiated in the district court for the period between January 1, 2013 and December 31, 2013 in which motions to withdraw the reference were filed. I then eliminated any cases in

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94 The selection of this period also allowed me to avoid any "bump" in motions that might be attributable to the initial concern about the impact of Stern on the exercise of jurisdiction by the bankruptcy court for the year following that decision, which was not a typical sample.

95 In most districts, the motion to withdraw the reference is initially filed with the clerk of the bankruptcy court. Compare Alaska L.B.R. 5011-1(a); Ariz. L.B.R. 5011-2(a); D. Conn. L.B.R. 5011-1; D. Del. L.B.R. 5011-1; N.D. Fla. L.B.R. 5011-1(b)(1); M.D. Fla. L.B.R. 5011-1(a)(1); S.D. Fla. L.B.R. 5011-1(a); N.D. Ga. L.B.R. 5011-1(a); D. Hawaii L.B.R. 5011-1(a); N.D. Ind. L.R. 200-1(b)(1)(B); S.D. Ind. L.B.R. B-5011-1(a); M.D. La. L.B.R. 5011-1(a) and L.R. 83.4.3.A.2; W.D. La. L.R. 83.4.3(A)(2); D. Md. L.R. 405.2(a); D. Mass. L.B.R. 5011-1; W.D. Mich. L.B.R. 5011(a), D. Minn. L.B.R. 5011-1; N.D. Miss. & S.D. Miss. L.B.R. 5011-1(a); E.D. Mo. L.B.R. 5011-C; D. Neb. Gen. R. 1.5(b)(1); D. Nev. L.R. 5011(a); D.N.H. L.B.R. 5011-1; D.N.J. L.B.R. 5011-1; D.N.M. L.B.R. 5011-1; E.D.N.Y. L.B.R. 5011-1; N.D.N.Y. L.B.R. 5011-1(a); S.D.N.Y. L.B.R. 5011-1; M.D.N.C. L.B.R. 5011-1(a); S.D. Ohio L.B.R. 5011-1(a); E.D. Okla. L.B.R. 5011-1(a) & L. Civ. R. 84.1(b)(1); N.D. Okla. L.B.R. 5011-1 & L. Civ. R. 84.1(b)(1); W.D. Okla. L.B.R. 5011-1 & L. Civ. R. 81.4(b)(2); E.D. Pa. L.B.R. 5011-1(c); D.P.R. L.B.R. 5011-1(a); D.R.I. L.B.R. 5011-1(a); D.S.C. L.B.R. 5011-1(a); D.S.C. L.R. 5011-1(a); D.Tenn. L.B.R. 5011-1(a); E.D. Tex. L.B.R. 5011-1(a); S.D. Tex. L.B.R. 5011-1; W.D. Tex. L.B.R. 5011(a); D. Utah Civ. R. 83-7.4(a); E.D. Va. L.B.R. 5011(a); E.D. Wash. L.B.R. 5011-1(b); W.D. Wash. L.B.R. 5011-1(b); S.D. W. Va. L.B.R. 5011-1; D. Wyo. L.B.R. 5011-1(a) & L. Civ. R. 85(c)(1) (motion is filed with the clerk of the bankruptcy court) with C.D. Cal. L.B.R. 5011-1; D. Mont. L.B.R. 5011-1(a) (motion is filed with the clerk of the district court and a copy is filed with the bankruptcy court). If the motion is filed in the bankruptcy court, in some districts it is immediately transmitted to the district court and all further pleadings are made with the district court. See, e.g., N.D. Cal. L.B.R. 5011-2(c); S.D. Cal. L.B.R. 5011-1(a), (b); D. Colo. L.B.R. 5011-1(a); D. Conn. L.B.R. 5011-1; D. Del. L.B.R. 5011-1; D.D.C. L.B.R. 5011-2(a); N.D. Fla. L.B.R. 5011-1(B)(3); D. Hawaii L.B.R. 5011-1(a); M.D. La. L.B.R. 5011-1(d) and L.R. 83.4.3(A)(4); W.D. La. L.R. 83.4.3(A)(4); D.N.J. L.B.R. 5011-1; E.D.N.Y. L.B.R. 5011-1; S.D.N.Y. L.B.R. 5011-1; E.D. Pa. L.B.R. 5011-1(f); M.D. Tenn. L.B.R. 5011-2(c); D. Utah Civ. R. 83-7.4(d)(2); cf. D.N.M. L.B.R. 5011-1 (responsive papers are to be filed with both bankruptcy and district court). In others, all responsive pleadings are filed in the bankruptcy court and then the complete file is transmitted to the district court. See, e.g., S.D. Cal. L.B.R. 5011-1(b); D. Colo. L.B.R. 5011-1(c)-(e); D.D.C. L.B.R. 5011-2(d)(f); M.D. Fla. L.B.R. 5011-1(a)(3); S.D. Fla. L.B.R. 5011-1(C); N.D. Ga. L.B.R. 5011-5; N.D. Ind. L.R. 200-1(b)(1)(C); S.D. Ind. L.B.R. B-5011-1(b); W.D. Mich. L.B.R. 5011(b); N.D. Miss. & S.D. Miss. L.B.R. 5011-1(a)(5); E.D. Mo. L.B.R. 5011(c); D. Nev. L.R. 5011(a); N.D.N.Y. L.B.R. 5011-1(c); M.D.N.C. L.B.R. 5011-1(e); S.D. Ohio L.B.R. 5011-1(d); D.P.R. L.B.R. 5011-1(b); D.R.I. L.B.R. 5011-1(b); D.S.C. L.B.R. 5011-1(d); E.D. Wash. L.B.R. 5011-1(c); W.D. Wash. L.B.R. 5011-1(c); D. Wyo. Civ. R. 85(c)(2).

96 Most of the cases listed in the cause of action field either "28:157 Motion to Withdraw Reference" or "28:0157 Motion for Withdrawal of Reference." However, this field is left to the discretion of the
which the court did not issue a decision on withdrawal (for reasons such as settlement or withdrawal of the motion). I also eliminated cases in which the docket indicated that a motion was filed and a decision was rendered, but the text of the motion and decision were not available in electronic format. I excluded a number of other cases because the court decided the motion for reasons other than an application of 28 U.S.C. § 157(d). After eliminating those cases, I had a set of 253 motions to withdraw the reference filed with the district courts during that period on which decisions on the merits were issued. Exhibit A is an alphabetical list of the cases.

The questions that I wished to examine were the following:

1. Where were the motions filed (what circuit, what district)?
2. In what cases were the motions filed (i.e., under which chapter was the original bankruptcy case filed)?
3. Who filed the motion (the trustee, the debtor in possession, a creditor, or another party)?
4. Was the motion opposed and did the bankruptcy judge take a position?
5. What was the basis of the motion (mandatory withdrawal or permissive, and what was the nature of the claim)?

Litigant, and other cases were labelled "withdrawal of bankruptcy matter," "transmission of bankruptcy reference," "removal of claim in civil action related to BK. Case," "28:1331 Fed. Question," "28:0157 Bankruptcy Non-Core Proceedings," "28:1334(b) Proceeding arising/related to case under title 11," or "28:157b Bankruptcy Claim to be tried in U.S District Court." Some withdrawal motions were labelled as a bankruptcy appeal, or as "Findings, Concl. & Proposed Judgment" or simply as "11:101 Bankruptcy" or "civil miscellaneous case." Some had no cause of action listed at all. I cross-referenced all motions by doing a keyword search, "motion NP/10 withdraw NP/3 reference" with word modifications enabled.

For example, I omitted all cases in which the motion was denied as moot or as untimely or in which the court concluded that the movant had consented to the exercise of authority by the bankruptcy court. Eleven cases that were partially withdrawn by Judge J. Randal Hall of the Southern District of Georgia on August 6 and 7 were also excluded as they were apparently withdrawn solely for the administrative purpose of dealing with the award of commissions to the chapter 7 trustee, see Nos. 1:13-cv-00131-141 (S.D. Ga.). One case was excluded because the reference was withdrawn pursuant to prior court order providing for procedural consolidation of all bankruptcy cases involving related debtors in the Southern District of New York, see In re Bundy Canyon Land Dev., LLC, No. 2:13-cv-01786 (D. Nev. Sept. 26, 2013). Another was not included because the withdrawal was solely for the purpose of changing venue, see Cameron Cnty. Reg'l Mobility Auth. v. Ballenger Constr., No. 1:13-cv-00027 (S.D. Tex. Feb. 21, 2013). In another case the motion was denied solely because the district court was enforcing a provision of the confirmed plan of reorganization that required the bankruptcy court to rule on the proceeding, see Federal Deposit Ins. Corp. v. Corus Bankshares Inc., No. 1:13-cv-00058 (N.D. Ill. Jan. 4, 2013). In Picard v. Kohn, No. 1:13-cv-08994 (S.D.N.Y. Dec. 19, 2013), the district judge denied the motion solely to permit the defendants to assert their defense that the bankruptcy court lacked personal jurisdiction over them, a "threshold matter"). Three other cases arising from the Madoff bankruptcy case, Picard v. Montbarry Inc., No. 1:13-cv-00502 (S.D.N.Y. Jan. 23, 2013); Picard v. LGT Bank in Liechtenstein Ltd., No. 1:13-cv-01394 (S.D.N.Y. Mar. 1, 2013); and Picard v. Union Sec. Inv. Trust Co., No. 1:13-cv-04429 (S.D.N.Y. June 26, 2013) were not included because the district court granted the motions to withdraw the reference solely to permit the cases to be included in consolidated briefing ordered with respect to dozens of other cases on discrete issues of law relevant to all of them.
(6) Was a jury trial requested?
(7) Was the motion granted or denied, and how did the other factors relate to the ultimate decision?

1. WHERE THE MOTIONS WERE FILED

The following chart shows the number of cases seeking withdrawal of the reference included in this study filed in the district courts within each circuit during 2013. The Ninth Circuit had 50% more motions filed than the Fifth Circuit and had more than three times as many motions filed than any other circuit. The Fifth Circuit had twice as many motions filed as the other circuits, other than the Ninth Circuit. However, the high number of motions in the Ninth Circuit was attributable in part to multiple motions filed in just three cases, the Howrey LLP bankruptcy (seven motions), the LLS America LLC bankruptcy (ten motions) and the Meridian Funds bankruptcy (three motions), totaling twenty motions of the sixty-five in that circuit, almost a third.

Even without regard to the multiple motions filed in the three cases in the Ninth Circuit, one might expect that the Ninth Circuit would have more motions to withdraw the reference, simply because the Ninth Circuit has more bankruptcy filings than any other circuit. For example, in 2013 there were 222,544 bankruptcy filings in the Ninth Circuit, as compared with 161,832 in the Eleventh Circuit (the next-highest total).98 (Of course, not all the motions to withdraw the reference were made in cases filed in 2013, but the statistics illustrate the relative pools from which such motions are made.) Even if one looks at the statistics on adversary proceedings commenced in the various circuits, the Ninth Circuit leads all others.99

What is surprising is the high number of motions filed in the Fifth Circuit, whose total case filings in 2013 were lower than the Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits,100 and whose adversary proceeding

99For each of the twelve-month periods ending December 31, 2012 and December 31, 2013, the Ninth Circuit had far more adversary proceedings filed than any other circuit, 11,313 in 2012, and 8,478 in 2013. The next highest totals for any circuit were in the Sixth Circuit, which had 7,990 adversary proceedings filed in 2012, and 6,117 in 2013. See Table F-8, U.S. Bankruptcy Courts—Adversary Proceedings Com menced, Terminated and Pending Under the Bankruptcy Code During the 12-Month Periods Ending December 31, 2012 and 2013, available at www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2013/december/F08Dec13.pdf.
100Total bankruptcy case filings were as follows: D.C. Circuit (833); First Circuit (33,138); Second Circuit (45,017); Third Circuit (59,944); Fourth Circuit (79,537); Fifth Circuit (69,100); Sixth Circuit (150,779); Seventh Circuit (123,550); Eighth Circuit (63,718); Ninth Circuit (222,544); Tenth Circuit (61,940); Eleventh Circuit (161,832). See Table F-2, note 97 supra.
filings in the twelve-month periods ending March 31, 2012 and March 31, 2013 were lower than the Second, Third, Fourth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits.\textsuperscript{101} Perhaps lawyers in the Fifth Circuit hold the district court judges in higher regard than they do the bankruptcy judges in their districts. Perhaps the bankruptcy judges in the Fifth Circuit (who, as discussed later, in two districts in the court must write reports and recommendations on motions to withdraw the reference) are more reluctant than in other circuits to take action in cases in which they do not have the constitutional power to issue final decisions. Perhaps the Fifth Circuit simply has more adversary proceedings that require jury trials, and the parties are less likely to settle there. The cases do not provide a basis for any conclusion about why the Fifth Circuit has a disproportionate number of such motions.

<table>
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<tr>
<th>Circuit</th>
<th>D.C.</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
<th>6th</th>
<th>7th</th>
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<td>105</td>
<td>46</td>
<td>106</td>
<td>16</td>
<td>107</td>
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</table>

Within those circuits where a motion was filed, the number filed in each district varied considerably. Only six districts had ten or more motions.

\textsuperscript{101}See Table F-8, note 99, supra.

\textsuperscript{102}Adams; Atlas; Cary; C.R. Stone; Cruickshank; Ng; Scarcelli; Schroder; Shaffer; Weiss; Testrantski.

\textsuperscript{103}Billet; Country Fare; Dreier; Federal Housing; Flaxer; Global Aviation; Kirchenbaum; Krakowski; Lehman I; Lehman II; LightSquared; Mccord; Polverari; Refo; Renco; Rich; Rich II; SageCrest I; SageCrest II; TPG; T; USA United.

\textsuperscript{104}Allen; Bonarrigo; HH; Msv; Kretz; Leary; Majestic; Matheny; Okechuku; Peterson; Pressman; Raval; Schwalb; Slobodian; Springel I; Springel II; Sun Capital; Th3; Transcontinental; Wl Homes. Ii and Sun Capital were both filed with respect to the same adversary proceeding.

\textsuperscript{105}Al Doseri; Applewood; Arzt; Bell Builders; BF Saul; Bullard; Canal Walk; Chesapeake; Gold; Jemsek; Lemons; McGurie, NMFC; Plum Creek; Spencer; Viera; Warren.

\textsuperscript{106}Able Machine Works; Adventure Harbor; Alabama/Main; Ansung; Barra; Biesiada; Brown; Cage; Caillouet; Compton; Diamond Offshore; Englehart; Ercolina; Fullbright; Global Gaming; Heathwood; Keba; Kite I; Kite II; Macquarie; Magnificent; Mcloba; Motamedi; Nakamura; Newhouse; Nguyen; Pal-Con; Parker, Romo; Santa Barbara; Seager; Sorum; TCB; Texas Sterling; UPH I; UPH II; UPH III; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.

\textsuperscript{107}Austin; Chambers; Cyber; Energy Conversion; Greektown; Grossman; Hau; Lai; Lain; Limor; Logan; Lucas; McKinstry; Posey, Timco; Villages.

\textsuperscript{108}Archdiocese I; Archdiocese II; Athos; Baldi; Desmond; Home Casual; H&P; Mogha; New Energy; PNC Bank; Pro-Pac; Pry; Pulifer I; Pulifer II; Steege; Triad Group; Triad Pharmaceuticals.

\textsuperscript{109}Calderon; Needle; Panther I; Panther II; Williams; Winkler.

\textsuperscript{110}ABC; Azam; Bagley; Bell; Berg; Benton; Clinica; Cobe; Cushman; Diamond Decisions; Dick; Edwards; Evergreen; Field; Ginzburg; Hoskins; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; IES; Impema; Kirkland; Klein; Lancaster; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Lox; Marini; McEwan; McEwan; Melech; Muncu-Flores; New Mecox; Oracle; Parrott; Paula; Peavest; Prior; Roll Tide I; Roll Tide II; Rosales; R2D2; Samson; Scaccianoce; Sharp; Shengdatecah; Sladky; StNTL; Taicom; Torc; Vaccaro; Vilenchik; Zassali.

\textsuperscript{111}Brown-Minneapolis; Chance; Gaul; Hess; Juber; Melot I; Melot II; SVS; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; Yee-Smith.

\textsuperscript{112}ABN; Advanced Telecommunication; Agile I; Agile II; Beck; Cowdy; Herendeen; Laddin; Lisenby; Manismann; McKean; Neumon; Ogier; Petro; Raimondo; Rosen; Saad; Stettin; Stevenson.
filed, and two of them were in California. The Western District of Washington crossed that threshold only because of the ten motions in the LLS America case filed there. Each of the other districts with ten or more motions would still have had ten or more even if they had not had multiple motions filed in a single case.

The Southern District of Texas had the most motions (twenty), but ten of those were filed in just two cases—the bankruptcy cases of ATP Oil & Gas Co. and Quality Infusion Care Inc. Similarly, all of the thirteen motions filed in the Western District of Washington were filed in just two cases, LLS America and Meridian Investors Trust. Of the fourteen motions filed in the Northern District of California, seven were filed in the bankruptcy case of Howrey LLP. Other districts that had multiple motions from single bankruptcy cases were the District of Massachusetts, the District of Connecticut, the Eastern District of New York, the District of the Virgin Islands, the District of Maryland, the Western District of Louisiana, the Northern District of Texas, the Western District of Texas, the Eastern District of Wisconsin, the Western District of Arkansas, the District of Arizona, the District of New Mexico, and the Southern District of Florida. A motion to withdraw the reference in a case tends to encourage additional such motions and, as discussed later, when one such motion is successful, the existence of a related case at the district court vastly increases the likelihood that a subsequent motion will be

113 S.D.N.Y., S.D. Tex., C.D. Cal., N.D. Cal., S.D. Fla., W.D. Wash.
114 Keba; Macquarie; Seacor.
115 Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.
116 LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X.
117 ABC; Berg; Prevost.
118 Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII.
119 Adams; Cary; Schroder; Shaffer.
120 SageCrest I; SageCrest II.
121 McCord; USA United.
122 Lehman I; Lehman II; and Ricoh I; Ricoh II.
123 IF; Sun Capital.
124 Springel I; Springel II.
125 BF Saul; Bullard and Bell Builders; Canal Walk; Spencer.
126 Kite I; Kite II.
127 Mcloba; Sojourner and Erchonia; Santa Barbara.
128 UPH I; UPH II; UPH III.
129 Archdiocese I; Archdiocese II and Pulsifer I; Pulsifer II and Triad Group; Triad Pharmaceuticals and H&P.
130 Panther I; Panther II.
131 Roll Tide I; Roll Tide II.
132 Wagner I; Wagner II; Wagner III.
133 ABN; Agile I; Agile II; Newman.
granted.\textsuperscript{134}

<table>
<thead>
<tr>
<th>NUMERO OF MOTIONS TO WITHDRAW BY DISTRICT</th>
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<tbody>
<tr>
<td>1st Circuit</td>
</tr>
<tr>
<td>D. Mass.</td>
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<tr>
<td>D. Me.</td>
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<tr>
<td>D.N.H.</td>
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<tr>
<td>D.R.I.</td>
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<tr>
<td>D.P.R.</td>
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<tr>
<td>2nd Circuit</td>
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<tr>
<td>D. Conn.</td>
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<tr>
<td>E.D.N.Y.</td>
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<tr>
<td>S.D.N.Y.</td>
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<td>W.D.N.Y.</td>
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<tr>
<td>D. Vt.</td>
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<tr>
<td>3rd Circuit</td>
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<tr>
<td>D. Del.</td>
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<tr>
<td>D.NJ.</td>
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<tr>
<td>E.D. Pa.</td>
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<tr>
<td>M.D. Pa.</td>
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<td>W.D. Pa.</td>
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<tr>
<td>D.VI.</td>
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<tr>
<td>4th Circuit</td>
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<tr>
<td>D. Md.</td>
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<tr>
<td>E.D.N.C.</td>
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<tr>
<td>W.D.N.C.</td>
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<tr>
<td>D.S.C.</td>
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</tbody>
</table>

\textsuperscript{134}See discussion at note 283, infra.

\textsuperscript{135}Adams; Cary; C.R. Stone; Cruickshank; Ng; Schroder; Shaffer; Weiss; Teetramski.

\textsuperscript{136}Scarcelli.

\textsuperscript{137}Atlas.

\textsuperscript{138}Country Fare; Polverari; SageCrest I; SageCrest II.

\textsuperscript{139}Billet; Global Aviation; Kirschenbaum; McCord; USA United.

\textsuperscript{140}Dreier; Federal Housing; Flaxer; Krakowski; Lehman I; Lehman II; LightSquared; Refco; Renco; Ricoh I; Ricoh II; TPG; T3.

\textsuperscript{141}IH; Majestic; Matheny; Sun Capital; TH2; WL Homes.

\textsuperscript{142}Allen; Innova; Kretz; Okechuku; Peterson; Raval.

\textsuperscript{143}Pressman.

\textsuperscript{144}Bonarigo; Lengel; Schwab; Slobodian; Transcontinental.

\textsuperscript{145}Springel I; Springel II.

\textsuperscript{146}Al Dosari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.

\textsuperscript{147}Warren.

\textsuperscript{148}Applewood; Jemsek.

\textsuperscript{149}NMFC; Viera.
<table>
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<th>District</th>
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<td>N.D. Ill.</td>
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<td>C.D. Ill.</td>
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150 Arzt; Chesapeake; Gold.
151 Plum Creek.
152 Lemons; McGuire.
153 Able Machine Works; Adventure Harbor; Caillouet; Magnificent.
154 Global Gaming; Kite I, Kite II.
155 Parker; TCB.
156 Ansung; Broun; Erchonia; Hearthwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.
157 Alabama/Main; Biesiada; Cage; Compton; Diamond Offshore; Englehart; Keba; Macquarie; Motamedi; Nguyen; Seacor; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.
158 Barra; Fulbright; Nakamura; Romo; Texas Sterling; UPH I; UPH II; UPH III.
159 McKinstry.
160 Austin; Chambers; Energy Conversion; Greektown; Hauk; Timco; Villages.
161 Cyber.
162 Grossman; Laikin.
163 Logan; Lucas.
164 Lain; Limor; Posey.
165 Athos; Baldi; Desmond; Moglia; PNC Bank; Steege.
| S.D. Ill. | 0 |
| N.D. Ind. | 1,166 |
| S.D. Ind. | 1,167 |
| E.D. Wis. | 8,168 |
| W.D. Wis. | 1,169 |
| 8th Circuit | 6 |
| E.D. Ark. | 3,170 |
| W.D. Ark. | 0 |
| N.D. Iowa | 0 |
| S.D. Iowa | 0 |
| D. Minn. | 0 |
| E.D. Mo. | 1,171 |
| W.D. Mo. | 1,172 |
| D. Neb. | 1,173 |
| D.N.D. | 0 |
| D.S.D. | 0 |
| 9th Circuit | 65 |
| D. Alaska | 0 |
| D. Ariz. | 5,174 |
| E.D. Cal. | 4,175 |
| C.D. Cal. | 1,176 |
| N.D. Cal. | 1,177 |
| S.D. Cal. | 0 |
| D. Hawaii | 1,178 |
| D. Idaho | 1,179 |
| D. Mont. | 1,180 |

166 New Energy.
167 Pry.
169 Home Casual.
170 Calderon, Panther I, Panther II.
171 Willson.
172 Needle.
173 Winkler.
174 Clinica, Lancaster, Roll Tide I, Roll Tide II, Wilenchik.
175 Bell, Dick, Prior, Sharp.
176 Asam, Cobe, Diamond Decisions, Edwards, Evergreen, Ginzburg, IES, Kirkland, Klein, McZeal, Munoz-Flores, New Meatco, Oracle, Paulo, R2D2, Scaccianoce, SNTL.
178 Field.
179 Zazzali.
180 Samson.
2015) MOTIONS TO WITHDRAW THE REFERENCE 419

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<td>D. Nev.</td>
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<td>D. Ore.</td>
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<td>3192</td>
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<tr>
<td>S.D. Fla.</td>
<td>10193</td>
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</table>

2. IN WHAT CASES WERE THE MOTIONS FILED?

Motions to withdraw the reference are almost exclusively filed in chapter 7 and chapter 11 cases. The relative parity between chapter 7 and chapter 11 cases is rather surprising, given that the number of chapter 7 cases filed annually far exceed the number of chapter 11 cases. For example, in 2013 there were 728,833 chapter 7 cases filed, and only 8,980 chapter 11 cases.194

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181 Bagley; Borton; Cushman; Locke; Marini; Melech; Parriott; Shengdatech.
182 ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Prevost.
183 SVS; Vanderpol.
184 Chance; Hess.
185 Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.
186 Swinson.
187 Gould.
188 Jubber; Yee-Smith.
189 Beck; Manismann.
190 Laddin; Lisenby; Ogier.
191 Petrano.
192 Advanced Telecommunication; Herendeen; Stevenson.
193 ABN; Agile I; Agile II; Gowdy; McKean; Newman; Raimondo; Rosen; Saad; Stettin.
194 See Table F-2, note 97 supra.
Although there are vastly more chapter 13 cases filed than chapter 11 cases (333,626 in 2013), motions to withdraw the reference are rarely filed in chapter 13 cases. This suggests that, in large part, motions to withdraw the reference are filed in business cases rather than personal bankruptcy cases. The costs of pursuing such a motion are not justified in the usual consumer bankruptcy case. The distribution of the cases in the study follows. (Note that the number of cases is significantly lower than the number of motions, because of multiple motions in several of the cases.)

<table>
<thead>
<tr>
<th>Chapter of Case in Which Motions to Withdraw Were Filed</th>
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<tbody>
<tr>
<td>Chapter</td>
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<td>---------</td>
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<tr>
<td>Number of Cases</td>
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195 Plum Creek is not included in the chart, because the bankruptcy case with which the motion was related was closed in 2012, long before the Bankruptcy Code was enacted.

196 Able Machine Works, Al Dosani, Alabama/Main, Arst (converted from chapter 11); Athos; Atlas; Austin; Baldi; Bell; Bell Builders; BF Saul; Biesiada; Billet; Bonarrigo; Bottom; Brown-Minneapolis; Bullard; Cage; Cailouet; Canal Walk; Chambers; Chance; Chesapeake (converted from chapter 11); Cole (converted from chapter 11); C.R. Stone; Cruickshank; Desmond (converted from chapter 11); Diamond Decisions; Dick; Englehart; Field; Ginsburg (converted from chapter 11); Gold; Gowdy; Creektown; Herenden; Hess; Home Casual (converted from chapter 11); Hoshina; IH (converted from chapter 11); Juber; Kirkland; Kirschenbaum; Laikin; Limor; Lisenby; Logan (converted from chapter 11); Lucas; McCord; McGuire; Melcher (converted from chapter 11); Meloch; Melot I; Moglia; Munoz-Flores; Newhouse; Ng; Nguyen; NMFC; Ogier; Oketchu; Oracle; Pal-Con; Parker (converted from chapter 13); Peterson; PNC Bank; Polonari; Presman; Pry; Roll Tide I (converted from chapter 11); Roll Tide II (converted from chapter 11); Romo; Saad; Samson (converted from chapter 11); Schwab; Slady; Slobodian; Spencer; Steeg; Stennesen; Sun Capital (converted from chapter 11); SVS; Swinson; Timco; Torcina (converted from chapter 11); TPG; T3; USA United; Vanderpol; Viera; Villegas; Warren; Weiss; West; Wielencki; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Williams VIII; Williams IX; Williams X; Homes; Ye-Smith; Yestramski.

IH and Sun Capital were filed with respect to the same chapter 7 case (IH 1 Inc.), as were Roll Tide I and Roll Tide II (Weston Ranch Development L.L.C.); Bell Builders; Camel Walk; and Spencer (Bell Builders, Inc.); BF Saul and Bullard (DTM Corp.); the seven Williams motions (Quality Infusion Care Inc., in a case converted from chapter 11); and McCord and USA United (USA United Fleet, Inc.). Melot I and Melot II were brought against a husband and wife in separate cases.

197 ABC; ABN; Adams, Advanced Telecommunication; Adventure Harbor; Agile I; Agile II; Allen; Ansung; Applewood; Archdiocese I; Archdiocese II; Bagley; Barra; Berg; Brown (later converted to chapter 7); Cary; Clima; Compton; Country Fare; Cushman; Cyber; Diamond Offshore; Dreier; Energy Conversion; Erchonia; Evergreen; Federal Housing; Flaxer; Fullbright; Global Aviation; Global Gaming; Gould; Grossman; Heartwood; Houwey I; Houwey II; Houwey III; Houwey IV; Houwey V; Houwey VI; Houwey VII; H&P; IES; Impeva; Innova; Jenek; Kiba; Kite I; Kite II; Klein; Krakowski; Laddin; Lain; Lehman I; Lehman II; LightSquared; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Lock; Macquarie; Magnificent; Majestic; Marin; Matheny; McKinstry; Meloba; Motamedi (converted from chapter 13); Needle; New Energy; New Mexico; Newman; Panther I; Panther II; the seven Houwey cases; Parnott; Posey; Preost; prior; Pro-Pac; Raimondo; Raval; Refco; Renco; Ricoh I; Ricoh II; Rosen; R2D2; SageCrest I; SageCrest II; Santa Barbara; Staccionace (converted from chapter 13); Scardelli; Schroder; Seacor; Shaffer; Sharp; Shenglatchek; SNTL; Sojourner; Spring I; Spring II; Stettin; TCB; Texas Sterling; TH2; Triad Group; Triad Pharmaceuticals; Transcontinental; UPH I; UPH II; UPH III; Villages; Wagner I; Wagner II; Wagner III; Winkler; Zazzali. Adams, Cary, Schroder and Shaffer were related cases involving the bankruptcy of New England Compounding Pharmacy. Kite I and Kite II were
3. Who Filed the Motion?

In 48 of the cases included in this study, the motion to withdraw the reference was filed solely by a trustee (or the trustee's equivalent),202 or the debtor in possession or reorganized debtor.204 In 153 cases, the motion was filed solely by the defendant in a proceeding brought by a trustee or debtor or debtor in possession or official committee of unsecured creditors.205 In seven cases, the motion was filed jointly by plaintiff and defendant.206 In thirty-one cases, the motion was filed by a claimant or third

filed with respect to the same individual chapter 11 case. Other motions filed in the same chapter 11 case were the ten LLS motions (LLS America LLC; the two Lehman motions (Lehman Brothers Holdings Inc.); Archdiocese I and Archdiocese II (Archdiocese of Milwaukee); Kebs, Macquarie and Seaco (ATP Oil & Gas Corp.); Panther I and Panther II (Panther Mountain Land Development LLC); SageCrest I and SageCrest II (SageCrest II LLC); Erchonia and Santa Barbara (PrimCogen Solutions LLC); ABN, Agile I, Agile II and Newman (Palm Beach Finance Partners); Ricoh I and Ricoh II (Eastman Kodak Co.); Springel I and Springel II (Innovation Communication Corp.); Wagner I, Wagner II, and Wagner III (Vaughan Company, Realtors); and Mclober and Sojourner (R.L. Adkins Corp.). The three UPH motions were all filed in the same consolidated bankruptcy cases, as were Triad Group, Triad Pharmaceuticals and H&P.
party in a proceeding against the debtor.\textsuperscript{207} In nine cases, the motion was filed by a party to an adversary proceeding between two parties, neither of which was the trustee or the debtor in possession.\textsuperscript{208} In four cases, the bankruptcy judge recommended withdrawal \textit{sua sponte}.\textsuperscript{209} In another case, withdrawal was sought by the United States Trustee with respect to proposed sanctions for civil contempt.\textsuperscript{210}

It is predictable that the vast majority of motions would be filed by a defendant in an adversary proceeding commenced by the debtor or someone representing the debtor. These proceedings include exercise of the avoiding powers as well as state law claims brought on behalf of the debtor in possession with respect to counterclaim against plaintiff; Keba; Kite I; Kite II; Krakowski; Macquarie; Matheny; Melot I; Melot II; New Energy; Oracle; Pal-Con; Plum Creek; PNC Bank; Polverari; Posey; Raval; Ricoh I; Rome; Rosen; Scarcelli; TCB; Tee-Smith.

\textsuperscript{207}Adventure Harbor; Al Dosari; Allen; Cyber; Diamond Offshore; Federal Housing; Fulbright; Home Casual; Jensen (motion brought by original defendant in action by the debtor in possession with respect to counterclaim against plaintiff); Kea; Kite I; Kite II; Krakowski; Macquarie; Matheny; Melot I; Melot II; New Energy; Oracle; Pal-Con; Plum Creek; PNC Bank; Polverari; Posey; Raval; Ricoh I; Rome; Rosen; Scarcelli; TCB; Tee-Smith.

\textsuperscript{208}Adams, Cary; Chesapeake; Cushman; Greektown; R2D2; Schroder; Seaco; Shaffer.

\textsuperscript{209}Applewood; Herenden; Petrano; West. Many local rules explicitly invite a bankruptcy judge to move to withdraw the motion \textit{sua sponte}. See, e.g., Ariz. L.B.R. 5011-2(b); N.D. Cal. L.B.R. 5011-2(b); N.D. Ga. L.B.R. 5011-1(b); N.D. Miss. & S.D. Miss. L.B.R. 5011-1(a)(2); D. Mont. L.B.R. 5011-1(b).

\textsuperscript{210}Lucas.

\textsuperscript{211}Advanced Telecommunication; Al Dosari; Alabama/Main; Allen; Applewood; Archdiocese II; Arzt; Atlas; Bald; Bell Builders; Berg; BF Saul; Biesada; Billet; Bonarrigo; Bottom; Brown; Brown-Minneapolis; Ballard; Cage; Cailouet; Canal Walk; Chance; Compton; C.R. Stone; Cruckshank; Cyber; Diamond Decisions; Diamond Offshore; Dreier; Engelhart; Energy Conversion; Eschonia; Flaxer; Gould; Goudy; Greektown; Hearthwood; Herenden; Hess; Home Casual; Houry I; Houry II; Houry III; Houry IV; Houry V; Houry VI; Houry VII; H&P; HH; jubber; Krets; Laikin; Lancaster; Lengyel; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; Logan; Lucas; Magnificent; Majestic; Mansmann; McGuire; McKeon; McLiba; McNeal; Mota; Nakamura; Neuhouse; NMFC; Ogier; Oketchuka; Pal-Con; Panther I; Panther II; Parsons; Peterson; PNC Bank; Polverari; Posey; Pressman; Prevost; Pry; Pulsifer I; Pulsifer II; Raimondo; Raval; Refco; Renco; Ricoh I; Roll Tide I; Roll Tide II; Romans; Rosales; R2D2; SageCrest I; SageCrest II; Santa Barbara; Schwab; Slobodan; Spencer; Spingler I; Spingler II; Steege; Stevenson; Swinnom; Tacon; TCB; TCB; Timco; Triad Group; Triad Pharmaceuticals; Vaccaro; Vanderpol; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III; Warren; West; Wilencich; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Williams VIII; Winkler; Tee-Smith; Zazzali. \textit{Cf.} Able Machine Works (trustee originally filed an objection, but then filed a consent motion to withdraw the reference with movant); Global Gaming (debtor originally opposed motion, then filed a consent motion); Gold (motion was originally opposed, but parties then filed consent motion); SVS (objection withdrawn).
not subsequently withdrawn). Because most motions are filed by defendants in actions brought on behalf of the debtor (generally by a trustee), it can be assumed that generally the trustee is perfectly comfortable litigating in a federal district court rather than a bankruptcy court and would rather not fight the defendant over the appropriate forum. Still, it is somewhat surprising that more than half of all such motions are not opposed, because the trustee has “home court advantage” in the bankruptcy court in his or her district and might expect to have a better chance of success in that forum.

In some cases (fifty-four of those in the study) the bankruptcy judge issued a report and recommendation with respect to the motion to the district court. Some local bankruptcy rules require such a report and recommendation in connection with every motion to withdraw the reference. Some bankruptcy courts employ forms for such reports and recommendations. In one case, having received a motion to withdraw the reference, the district court referred the motion to a magistrate for a report and recommendation.

Those districts that do not currently require a report and recommendation on such motions might consider amending their rules to impose such a requirement. Such a report has two benefits. First, it would force the bankruptcy judge to determine whether the causes of action are core or noncore matters, and whether they can be heard and determined by the bankruptcy court. Many of the motions to withdraw the reference are made without the benefit of a bankruptcy court determination on that issue. Second, it would provide both the parties and, if necessary, the district court an objective assessment as to whether there is “cause” for a permissive withdrawal, or

212 ABC; ABN; Adams; Agile I; Agile II; Ansung; Athos; Austin; Azam; Bagley; Barra; Beck; Bell; Calde ron; Cary; Chambers; Chesapeake; Clinica; Cobe; Country Fare; Cushman; Desmond; Dick; Edwards; Evergreen; Federal Housing; Field; Fulbright; Ginzburg; Global Aviation; Grossman; Hauk; Hoshins; IES; Impeva; Innova; Jensek; Keba; Kirkland; Kirschenbaum; Kite I; Kite II; Klein; Kruskowski; Laddin; Lam; Lehman I; Lehman II; Lemons; LightSquared; Limor; Locke; Macquarie; Manni; Matheny; McCord; McKinstry; Melcher; Melich; Melot I; Melot II; Moglia; Munoz-Flores; Needler; New Energy; New Mexico; Newman; Ng; Nguyen; Oracle; Parker; Paulo; Petranov; Plum Creek; Prior; Pro-Pac; Ricoh I; Rosen; Saad; Samson; Scaccianoce; Scarcelli; Schroder; Seaco; Shaffer; Sharp; Shengdatech; Sladky; SNTL; Sojourner; Stettin; Sun Capital; Texas Sterling; Tonchia; Transcontinental; TPG; T3; UPH I; UPH II; UPH III; USA United; Weiss; WL Homes; Yestramski. Cf. Adventure Harbor (although no opposition was filed, movant represented that the defendant objected); Archdiocese I (the debtor in possession did not oppose the motion, but additional plaintiffs in the underlying proceeding did).

213 Alabama/Main; Ansung; Applewood; Beck; Biestada; Brown; Cage; Chance; Compton; C.R. Stone; Cushman; Diamond Offshore; Energy Conversion; Englehart; Erchonius; Gould; Heartwood; Herendzen; Hess; Hourey I; Hourey II; Hourey III; Hourey IV; Hourey V; Hourey VI; Hourey VII; Keba; Macquarie; Mansmann; Marin; Mcleba; Motamed; New Energy; Newhouse; Nguyen; Pal-Con; Parker; Petranov; Pressman; Santa Barbara; Seaco; Sojourner; TCB; Tonchia; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Winkler.

214 Ansung; Brown; Pal-Con; Santa Barbara.

215 Swinson.
whether (if mandatory withdrawal is sought) the proceeding requires substantial and material consideration of nonbankruptcy law affecting interstate commerce. If the parties have the benefit of such a report and recommendation, the party seeking withdrawal of the reference may decide not to pursue its motion. The report would also facilitate analysis of the motion by the district court.

5. WHAT WAS THE BASIS OF THE MOTION?

In most cases, 209 of those in the study, the movant invoked only permissive withdrawal under the first sentence of § 157(d).217 Six movants sought withdrawal of the reference solely on the basis of mandatory withdrawal under the second sentence of 28 U.S.C. § 157(d).218 In the rest, when the movant had a basis for arguing for mandatory withdrawal (or even when there was no such basis), the movant argued for withdrawal under both theories.219

In eighty-two cases, the proceeding in which the motion was filed was related to a proceeding already pending at the district court, or for which withdrawal was being sought at the same time.220

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217 ABC; ABN; Adams; Advanced Telecommunication; Adventure Harbor; Agile I; Agile II; Alabama/Main; Allen; Ansar; Applewood; Archdiocese I; Archdiocese II; Arst; Atlas; Bagley; Bald; Bell; Bell Builders; Berg; BF Saul; Bessiada; Billet; Barton; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Calderon; Canal Walk; Cary; Chambers; Chance; Chesapeake; Clinics; Core, Compton; C.R. Stone; Cushman; Cyber; Demond; Diamond Decisions; Dick; Dreier; Engelhart; Erchonia; Evergreen; Field; Flesher; Fulbright; Ginsburg; Global Gaming; Gold; Gould; Goudy; Greektown; Grossman; Hank; Heartwood; Herendeen; Hess; Home Casual; Hoek; Home; Howey; Howey II; Howey III; Howey IV; Howey V; Howey VI; Howey VII; IES; IH; Impex; Jemsek; Jubber; Kirchenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Lain; Lancaster; Lehman I; Lehman II; Lemons; Lengen; Limor; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Locke; Logan; Lucas; Magnificent; Majestic; Marin; McCard; McGuire; McKee; McKean; McKinstry; McZeal; Melcher; Melech; Melot I; Melot II; Motamedi; Munoz-Flores; Nakamura; New Energy; New Market; Newhouse; Neuman; Ng; Nguyen; NMFC; Ogier; Ofekiku; Oracle; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petran; Plum Creek; PNC Bank; Polverari; Pressman; Prevost; Pro-Pac; Pry; Pulsifer I; Pulsifer II; Raimondo; Reffo; Renco; Roll Tide I; Roll Tide II; Romo; Rosen; Saad; SageCrest I; SageCrest II; Samson; Santa Barbara; Scaccione; Scarlett; Schroder; Shaffer; Sharp; Shengdatech; Sladky; Slobodian; Sojourner; Spencer; Springel I; Springel II; Steege; Stettin; Stevenson; Sun Capital; Swinson; Taicom; Texas Sterling; THS; Timco; Tochka; TPG; T3; Transcontinental; USA United; Vaccaro; Vanderpol; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III; Warren; West; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; W. Homes; Yestramska; Zazzali.

218 ABC; Abdi; Advanced Telecommunication; Archdiocese I; Archdiocese II; Arst; Atlas; Bagley; Bald; Bell; Bell Builders; Berg; BF Saul; Bessiada; Billet; Barton; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Calderon; Canal Walk; Cary; Chambers; Chance; Chesapeake; Clinics; Core, Compton; C.R. Stone; Cushman; Cyber; Demond; Diamond Decisions; Dick; Dreier; Engelhart; Erchonia; Evergreen; Field; Flesher; Fulbright; Ginsburg; Global Gaming; Gold; Gould; Goudy; Greektown; Grossman; Hank; Heartwood; Herendeen; Hess; Home Casual; Hoek; Home; Howey; Howey II; Howey III; Howey IV; Howey V; Howey VI; Howey VII; IES; IH; Impex; Jemsek; Jubber; Kirchenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Lain; Lancaster; Lehman I; Lehman II; Lemons; Lengen; Limor; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Locke; Logan; Lucas; Magnificent; Majestic; Marin; McCard; McGuire; McKee; McKean; McKinstry; McZeal; Melcher; Melech; Melot I; Melot II; Motamedi; Munoz-Flores; Nakamura; New Energy; New Market; Newhouse; Neuman; Ng; Nguyen; NMFC; Ogier; Ofekiku; Oracle; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petran; Plum Creek; PNC Bank; Polverari; Pressman; Prevost; Pro-Pac; Pry; Pulsifer I; Pulsifer II; Raimondo; Reffo; Renco; Roll Tide I; Roll Tide II; Romo; Rosen; Saad; SageCrest I; SageCrest II; Samson; Santa Barbara; Scaccione; Scarlett; Schroder; Shaffer; Sharp; Shengdatech; Sladky; Slobodian; Sojourner; Spencer; Springel I; Springel II; Steege; Stettin; Stevenson; Sun Capital; Swinson; Taicom; Texas Sterling; THS; Timco; Tochka; TPG; T3; Transcontinental; USA United; Vaccaro; Vanderpol; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III; Warren; West; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; W. Homes; Yestramska; Zazzali.

220 ABC; Abdi; Advanced Telecommunication; Archdiocese I; Archdiocese II; Arst; Atlas; Bagley; Bald; Bell; Bell Builders; Berg; BF Saul; Bessiada; Billet; Barton; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Calderon; Canal Walk; Cary; Chambers; Chance; Chesapeake; Clinics; Core, Compton; C.R. Stone; Cushman; Cyber; Demond; Diamond Decisions; Dick; Dreier; Engelhart; Erchonia; Evergreen; Field; Flesher; Fulbright; Ginsburg; Global Gaming; Gold; Gould; Goudy; Greektown; Grossman; Hank; Heartwood; Herendeen; Hess; Home Casual; Hoek; Home; Howey; Howey II; Howey III; Howey IV; Howey V; Howey VI; Howey VII; IES; IH; Impex; Jemsek; Jubber; Kirchenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Lain; Lancaster; Lehman I; Lehman II; Lemons; Lengen; Limor; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Locke; Logan; Lucas; Magnificent; Majestic; Marin; McCard; McGuire; McKee; McKean; McKinstry; McZeal; Melcher; Melech; Melot I; Melot II; Motamedi; Munoz-Flores; Nakamura; New Energy; New Market; Newhouse; Neuman; Ng; Nguyen; NMFC; Ogier; Ofekiku; Oracle; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petran; Plum Creek; PNC Bank; Polverari; Pressman; Prevost; Pro-Pac; Pry; Pulsifer I; Pulsifer II; Raimondo; Reffo; Renco; Roll Tide I; Roll Tide II; Romo; Rosen; Saad; SageCrest I; SageCrest II; Samson; Santa Barbara; Scaccione; Scarlett; Schroder; Shaffer; Sharp; Shengdatech; Sladky; Slobodian; Sojourner; Spencer; Springel I; Springel II; Steege; Stettin; Stevenson; Sun Capital; Swinson; Taicom; Texas Sterling; THS; Timco; Tochka; TPG; T3; Transcontinental; USA United; Vaccaro; Vanderpol; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III; Warren; West; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; W. Homes; Yestramska; Zazzali.

Cf. Austin (pro se debtor did not specify legal basis for motion, but no federal statute was cited).
With respect to mandatory withdrawal, the non-bankruptcy federal laws cited by the movant as the basis for the motion included the following:

- Securities Act of 1933, 15 U.S.C. §§ 77a-77aa
- Fair Housing Act, 42 U.S.C. §§ 3601-3619
- Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x
- Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331-1356a
- Federal Arbitration Act, 9 U.S.C. §§ 1-16
- Internal Revenue Code, 26 U.S.C. §§ 1-9834
- Copyright Act, 17 U.S.C. § 106
- Railway Labor Act, 45 U.S.C. §§ 151-165
- Noerr-Pennington doctrine
- False Claims Act, 31 U.S.C. §§ 3729-3733
- Civil forfeiture, 18 U.S.C. § 981
- Financial Institutions Reform Recovery and Enforcement Act (FIRREA), 12 U.S.C. § 1821(d)
- Foreign Investment and National Security Act of 2007 (FINSA), 50 U.S.C. App. § 2170
- Communications Act of 1934, 47 U.S.C. §§ 151-621

When the movant sought permissive withdrawal, in 130 cases one or more of the causes of action were clearly noncore and could not be decided by a non-Article III bankruptcy judge absent consent. In thirty-five cases, the court did not state whether the claims were core or noncore; the assessments that follow are either those of the court or my own conclusions.

221 Often the court did not state whether the claims were core or noncore; the assessments that follow are either those of the court or my own conclusions.
one or more of the causes of action were core matters that were unaffected by Stern. Another two cases involved a state law claim that constituted a core proceeding and was allegedly governed by Stern. Ninety-four cases involved a fraudulent transfer or fraudulent conveyance, core matters that most courts have concluded are governed by Stern.225

6. WAS A JURY TRIAL REQUESTED?

In most of the cases in which withdrawal of the reference was requested (175 cases out of 253 in the study, or 69%), the movant stated that the movant had a right to a jury trial of the cause of action at issue.226 Indeed,

Gaming; Gould; Goudy; Greektown; Hawk; Hearthwood; Herendeen; Home Casual; Hoskins; H&P; IES; IH; Impeva; Innova; Jubber; Kirschbaum; Kite I; Kite II; Klein; Kretz; Laddum; Laikin; Lehman II; Lengyl; LightSquared; Limor; Locke; Logan; Magnificent; Majestic; Marinii; McGuire; Meloba; McZeal; Melech; Melot I; Melot II; Moglia; Nakamura; Ng; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parker; Peterson; Petranu; Polverari; Pressman; Prior; Pro-Pac; Pulsifer I; Raval; Roko; Roko I; Roll Tide I; Roll Tide II; Romo; Rosales; R2D2; Saad; SageCrest I; SageCrest II; Schroe; Sladky; Sojourner; Stettin; Sun Capital; TCB; Timco; Torchia; TPG; T3; Trial Group; Trial Pharmaceuticals; UPH I; UPH II; UPH III; Vaccaro; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Weiss; Williams; Winkler; WL Homes; Yee-Smith. Whether the causes of action were core or noncore was unclear in Plum Creek; Taiicom; and SNTL, and the issue was not decided by the district court when it ruled on the motion.

Adams, Cary, Schroder; Shaffer; H&P; Majestic; Romo; Santa Barbara; Scaccianoce; Shengdatech; Steege; Stevenson; SNTL; Texas Sterling; Trial Group; Trial Pharmaceuticals and Clinics involved personal injury tort actions beyond the authority of the bankruptcy court pursuant to 28 U.S.C. § 157(b)(2)(O) and which were required to be tried in the district court pursuant to § 157(b)(5). Applewood involved a charge of criminal contempt which the bankruptcy judge was not certain he had the authority to try.227 Allen; Calderon; Compton; Gold; Impetus; Krakowski; Lain; Lancaster; Lehman I; Lemons; Limor; Lisoby; Lucas; Matheny; McCord; McKenzie; Motaichi; Needle; New Energy; Nguyen; Ogier; Oracle; Paula; PNC Bank; Pulsifer II; Roko II; Rosales; Sladky; Sojourner; Stettin; Sun Capital; TCB; Timco; Torchia; TPG; T3; Trial Group; Trial Pharmaceuticals; UPH I; UPH II; UPH III; Vaccaro; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Weiss; Williams; Winkler; WL Homes; Yee-Smith. Whether the causes of action were core or noncore was unclear in Plum Creek; Taiicom; and SNTL, and the issue was not decided by the district court when it ruled on the motion.228

225 Desmond; Jensek; cf. Global Gaming (although movant claimed to be defendant in counterclaim under 28 U.S.C. § 157(b)(2)(C) in order to cite Stern, movant had not filed a claim in the bankruptcy case).

226 ABC, ABN; Advanced Telecommunication; Agile I; Agile II; Alabama/Main; Athlos; Austin; Baldi; Bell; Bell Builders; Berg; Brown; Brown-Minneapolis; Cage; Canal Walk; Chambers; Coke; C.R. Stone; Diamond Decisions; Dreier; Engelhart; Field; Flaxer; Ginzburg; Gould; Hauk; Heartwood; Herendeen; Home Casual; Hoskins; H&P; IES; IH; Impeva; Innova; Jubber; Kirschbaum; Kite I; Kite II; Klein; Kretz; Laddum; Laikin; Lehman II; Lengyl; LightSquared; Limor; Locke; Logan; Magnificent; Majestic; Marinii; McGuire; Meloba; McZeal; Melech; Melot I; Melot II; Moglia; Nakamura; Ng; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parker; Peterson; Petranu; Polverari; Pressman; Prior; Pro-Pac; Pulsifer I; Raval; Roko; Roko I; Roll Tide I; Roll Tide II; Romo; Rosales; R2D2; Saad; SageCrest I; SageCrest II; Schroe; Sladky; Sojourner; Stettin; Sun Capital; TCB; Timco; Torchia; TPG; T3; Trial Group; Trial Pharmaceuticals; UPH I; UPH II; UPH III; Vaccaro; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Weiss; Williams; Winkler; WL Homes; Yee-Smith. Whether the causes of action were core or noncore was unclear in Plum Creek; Taiicom; and SNTL, and the issue was not decided by the district court when it ruled on the motion.228

227 Allen; Calderon; Compton; Gold; Impetus; Krakowski; Lain; Lancaster; Lehman I; Lemons; Limor; Lisoby; Lucas; Matheny; McCord; McKenzie; Motaichi; Needle; New Energy; Nguyen; Ogier; Oracle; Paula; PNC Bank; Pulsifer II; Roko II; Rosales; Sladky; Sojourner; Stettin; Sun Capital; TCB; Timco; Torchia; TPG; T3; Trial Group; Trial Pharmaceuticals; UPH I; UPH II; UPH III; Vaccaro; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Weiss; Williams; Winkler; WL Homes; Yee-Smith. Whether the causes of action were core or noncore was unclear in Plum Creek; Taiicom; and SNTL, and the issue was not decided by the district court when it ruled on the motion.228

228 Desm end; Jensek; cf. Global Gaming (although movant claimed to be defendant in counterclaim under 28 U.S.C. § 157(b)(2)(C) in order to cite Stern, movant had not filed a claim in the bankruptcy case).
some of those movants simply cited 28 U.S.C. § 157(e) as the basis of their motion, rather than arguing that there existed "cause" for withdrawal under § 157(d).

7. Was the Motion Granted or Denied?

Of the 253 cases in the study, the court granted the motion to withdraw the reference in whole or in part in 177 of them (an astonishing 70%).

This part considers the extent to which the factors described above were present in the cases in which the motion was granted or denied.

As the following chart demonstrates, motions to withdraw the reference were far more likely to be granted in the Fifth, Seventh and Tenth Circuits than in any other. Although the Fifth Circuit had four cases in which it granted multiple (a total of fifteen) motions to withdraw the reference, it also had one case in which it denied multiple (three) motions, so the existence of multiple motions in a single case did not affect the relative percentages. The Seventh Circuit granted two motions in each of three cases. If one computed the percentages based on the number of cases in which such motions were made, the motions would have been granted in ten out of thirteen cases, or 77% of the cases, which would still be the third most in the country.

There is no single explanation why district courts in some circuits are more willing to grant motions to withdraw the reference. The Fifth Circuit has a slightly higher percentage of motions that are unopposed (twenty-eight out of forty-six, or 61%) than the sample as a whole (58%), but that is unlikely to explain the higher rate at which the motions are granted. The most likely explanation is that the Fifth Circuit has a disproportionate num-

Flaxer; Fulbright; Gold; Gould; Gowdy; Hauk; Heathwood; Herendeen; Hess; Hoskins; H&P; IES; IH; Innovation; Jemsek; Jubber; Keba; Kite I; Kite II; Klein; Kräkowski; Kretz; Laitin; LightSquared; Limor; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Locke; Logan; Macquarie; Magnificent; Marini; Matheny; McCord; McGuire; McKeen; McKenzie; McLoed; Melech; Moglia; Munoz-Flores; New Energy; New Mexico; Newhouse; Newman; Ng; NMFC; Ogier; Okechuku; Pal-Con; Panther I; Panther II; Parker; Parriott; Paul; Peterson; Petruso; Plum Creek; Pressman; Prevost; Pry; Raimondo; Raval; Recho; Renco; Ricoh I; Roll Tide I; Roll Tide II; Saad; SageCrest I; SageCrest II; Samson; Scacciacono; Schroder; Schuab; Seacor; Shaffer; Sharp; Shengdiatech; Sojourner; Spencer; Springel I; Springel II; Steege; Steffin; Stevenson; Sun Capital; SVS; Swinson; Taicom; Torchia; Transcontinental; Triad Group; Triad Pharmaceuticals; UPH I; UPH II; UPH III; USA United; Vanderpol; Viera; Villesgas; Wagner II; Wagner III; Warren; Weis; West; Willenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Williams VIII; Wilson; Winkler; W.L. Homes; Yestramski.

227 U.S.C. § 157(e) states that "[i]f the right to a jury trial applies in a proceeding that may be heard under his section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties."

228 The cases are listed by circuit below.

229 See table at notes 274-277 infra. The Fifth Circuit withdrawal motions that were opposed were Adventure Harbor; Ansung; Barra; Diamond Offshore; Fulbright; Heathwood; Keba; Kite I; Kite II; Macquarie; Nguyen; Parker; Seacor; Sojourner; Texas Sterling; UPH I; UPH II; and UPH III.
ber of motions granted on the basis of mandatory withdrawal (six of twelve).230 Perhaps the district courts in the Fifth Circuit have a more generous interpretation of when withdrawal is required under § 157(d). If those six motions had been denied rather than granted, the Fifth Circuit would have had a rate of granting motions to withdraw of only 72% rather than 85%, more in line with the other circuits.

The percentages of motions granted in both the First Circuit and the Seventh Circuit were higher than they might otherwise have been because both circuits had multiple cases involving personal injury tort claims that must be tried in the district court under § 157(b)(5).231 If those motions were excluded from the statistics, the district courts in the First Circuit would have granted only three of seven motions presented to them, only 43%. The district courts in the Seventh Circuit would have granted eleven of fourteen motions for withdrawal, or 79%.

The district courts in the Fifth and Tenth Circuits also are presented with more motions to withdraw the reference based on a fraudulent transfer or fraudulent conveyance claims than district courts in all other circuits other than the Ninth Circuit, and are far more likely to grant such motions than district court in all other circuits including the Ninth Circuit.232 Nine of the fourteen motions granted by the district courts in the Tenth Circuit involved fraudulent transfers or fraudulent conveyances,233 and they denied no motions to withdraw that involved such claims. Fifteen of the thirty-nine motions granted in the Fifth Circuit were fraudulent transfer claims,234 and the district courts in the Fifth Circuit did not deny any motion that involved a fraudulent transfer or fraudulent conveyance. Although the Ninth Circuit had more motions that raised the issue of a fraudulent transfer or fraudulent conveyance (twenty-eight of sixty-five motions),235 it granted the motion in only eleven of those.236

230 See note 281 infra. Barra; Diamond Offshore; Keba; Macquarie; Seacor; and TCB are all motions for mandatory withdrawal granted by a district court in the Fifth Circuit.

231 See note 283 infra. First Circuit: Adams; Cary; Schroder; Shaffer. Seventh Circuit: H&P; Triad Group; Triad Pharmaceuticals.

232 See note 223 supra and note 290 infra.

233 Brown-Minneapolis; Gould; Jubber; SVS; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III.

234 Alabama/Maine; Brown; Cage; Engelhart; Meloob; Newhouse; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams II.

235 ABC; Belk; Berg; Cobe; Diamond Decisions; Field; Ginsburg; Hourey I; Hourey II; Hourey III; Hourey IV; Hourey V; Hourey VI; Hourey VII; Kirkland; Melech; Munoz-Flores; Parriott; Prevoast; Roll Tide I; Roll Tide II; Samson; Scaccianoce; Sharp; Shengdatech; Torchia; Wilenchik; Zazzali.

236 ABC; Berg; Diamond Decisions; Parriott; Prevoast; Samson; Scaccianoce; Sharp; Shengdatech; Wilenchik; Zazzali.
The chart shows, however, that in every circuit motions to withdraw the reference are granted more than half the time. The same pattern holds true in the following circuits:

<table>
<thead>
<tr>
<th>Circuit</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
<th>5th</th>
<th>6th</th>
<th>7th</th>
<th>8th</th>
<th>9th</th>
<th>10th</th>
<th>11th</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granted</td>
<td>72.37%</td>
<td>12.53%</td>
<td>14.23%</td>
<td>12.24%</td>
<td>39.21%</td>
<td>10.24%</td>
<td>12.42%</td>
<td>4.24%</td>
<td>36.24%</td>
<td>14.24%</td>
<td>14.24%</td>
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<tr>
<td>Denied</td>
<td>4.24%</td>
<td>10.24%</td>
<td>6.25%</td>
<td>4.25%</td>
<td>7.25%</td>
<td>6.25%</td>
<td>3.25%</td>
<td>2.25%</td>
<td>30.25%</td>
<td>0%</td>
<td>5.25%</td>
</tr>
</tbody>
</table>

The chart shows, however, that in every circuit motions to withdraw the reference are granted more than half the time. The same pattern holds true in the following circuits:

237Adams, Atlas; Cary, C.R. Stone; Cruckshank; Schroder; Shaffer.
238Billet; Country Fare; Dreier; Federal Housing; Flaxer; Kirschenbaum; LightSquared; Polverari; Refco; Renco; SageCrest I; SageCrest II.
239H; Innova; Kretz; Lengyel; Majestic; Okechuku; Peterson; Pressman; Raval; Schwab; Slobodian; THQ; Transcontinental; WL Homes (docket does not show an order granting motion, but includes subsequent order referring adversary proceeding back to bankruptcy court for pretrial matters).
240Al Dosari; Applewood; Arzt; Bell Builders; BF Saul; Bullard; Canal Walk; McGuire; NMFC; Plum Creek; Spencer; Viera; Warren. The court in Viera never entered an order granting the motion, but it was not opposed and the district court proceeded to adjudicate the adversary proceeding.
241Adventures Harbor; Alabama/Main; Anung; Barra; Biesada; Brown; Cage; Caillouet; Compton; Diamond Offshore; Engelhart; Erchonia; Global Gaming; Heathwood; Keba; Kite I; Kite II; Macquarie; Magnificent; Mcloba; Motamedi; Nakamura; Newhouse; Pal-Con; Parker; Romo; Santa Barbara; Searco; Sojourner; TCB; Villages; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII. In Keba and Macquarie, the district court stayed the case and administratively closed it until it was ready for trial, maintaining the reference with the bankruptcy court for pretrial proceedings. The order in Mcloba stated that the motion "will be granted upon certification by the bankruptcy judge that the parties are read for trial."
242Chambers; Cyber; Energy Conversion; Greektown; Laskin; Lucas; McKinstry; Posey; Timco; Villages.
243Archdiocese I; Archdiocese II; Baldi; Desmond; Home Casual; H&P; Moglia; PNC Bank; Pry; Pulsifer I; Pulsifer II; Steege; Triad Group; Triad Pharmaceuticals.
244Panther I; Panther II; Willson; Winkler.
245ABC; Bagley; Berg; Benton; Clinica; Cushman; Diamond Decisions; Dick; Evergreen; Hoskins; IES; Klein; Lancaster; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Marini; Melcher; Oracle; Parratt; Prevost; Rosales (granted as to noncore issues only); Samson; Scaccianoce; Sharp; Shengdatech; Tatcom; Wilemich; Zazzali. After granting the motion with respect to two claims in IES, the district court granted relief under F.R.C.P. 60(b) and referred the claims back to the bankruptcy court, concluding that the movant had consented to have the claims adjudicated by the bankruptcy court."
246Brown-Minneapolis; Chance; Gould; Hess; Jubber; Melot I; Melot II; SSV; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; Yee-Smith.
247ABX; Agile I; Agile II; Beck; Bowdy; Herendeen; Laddin; Lisenby; Mansmann; McKeen; Newman; Petran; Raimondo; Steettin.
248Ng; Scarcelli; Weiss; Yestramski.
249Global Aviation; Kratkowski; Lehman I; Lehman II; McCord; Ricoh I; Ricoh II; TPG; T3; USA United.
250Allen; Bonarrigo; Matheny; Springel I; Springel II; Sun Capital.
251Chesapeake; Gold; Jemsek; Lemons.
252Able Machine Works; Fulbright; Nguyen; Texas Sterling; UPH I; UPH II; UPH III.
253Austin; Grossman; Hauk; Lain; Limor; Logan.
254Athos; New Energy; Pro-Pac.
255Caldron; Needler.
256Azam; Bell; Cobe; Edwards; Field; Ginzburg; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impexa; Kirkland; Locke; McZead; Melch; Munoz-Flores; New Meaco; Paulo; Prior; Roll Tide I; Roll Tide II; Rosales (denied as to core issue); R2D2; Sladky; SNTL; Torchio; Vaccaro.
257Advanced Telecommunication; Ogier; Rosen; Saad; Stevenson.
at the district level, for those districts in which four or more motions were made. As the following chart demonstrates, in only five such districts was a motion to withdraw denied more often than granted.

<table>
<thead>
<tr>
<th>Circuit and District</th>
<th>Number of Motions</th>
<th>Number Granted</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Circuit</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D. Mass.</td>
<td>11</td>
<td>7</td>
<td>64%</td>
</tr>
<tr>
<td>2nd Circuit</td>
<td>22</td>
<td>12</td>
<td>55%</td>
</tr>
<tr>
<td>D. Conn.</td>
<td>41</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>E.D.N.Y.</td>
<td>51</td>
<td>2</td>
<td>40%</td>
</tr>
<tr>
<td>S.D.N.Y.</td>
<td>13</td>
<td>6</td>
<td>46%</td>
</tr>
<tr>
<td>3rd Circuit</td>
<td>20</td>
<td>14</td>
<td>70%</td>
</tr>
<tr>
<td>D. Del.</td>
<td>61</td>
<td>4</td>
<td>67%</td>
</tr>
<tr>
<td>D.N.J.</td>
<td>5</td>
<td>5</td>
<td>83%</td>
</tr>
<tr>
<td>M.D. Pa.</td>
<td>51</td>
<td>2</td>
<td>40%</td>
</tr>
<tr>
<td>4th Circuit</td>
<td>17</td>
<td>13</td>
<td>76%</td>
</tr>
<tr>
<td>D. Md.</td>
<td>6</td>
<td>6</td>
<td>100%</td>
</tr>
<tr>
<td>5th Circuit</td>
<td>42</td>
<td>39</td>
<td>88%</td>
</tr>
<tr>
<td>E.D. La.</td>
<td>41</td>
<td>3</td>
<td>75%</td>
</tr>
<tr>
<td>N. D. Tex.</td>
<td>51</td>
<td>5</td>
<td>100%</td>
</tr>
</tbody>
</table>

258 Adams; Cary; C.R. Stone; Cruickshank; Ng; Schroder; Shaffer; Weiss; Testramski.
259 Adams; Cary; C.R. Stone; Cruickshank; Schroder; Shaffer.
260 Country Fare; Polverari; SageCrest I; SageCrest II.
261 Country Fare; Polverari; SageCrest I; SageCrest II.
262 Billet; Global Aviation; Kirschbaum; McCord; USA United.
263 Billet; Kirschbaum.
264 Dreier; Federal Housing; Flaxer; Krakowski; Lehman I; Lehman II; LightSquared; Refco; Renco; Ricoh I; Ricoh II; TFG; T3.
265 Dreier; Federal Housing; Flaxer; LightSquared; Refco; Renco.
266 Lengyel; Schwab; Slobodian; Transcontinental.
267 Lengyel; Schwab; Slobodian; Transcontinental.
268 Al Dossari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.
269 Al Dossari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.
270 Able Machine Works; Adventure Harbor; Cailouet; Magnificent.
271 Adventure Harbor; Cailouet; Magnificent.
272 Ansung; Brown; Erchonia; Heathwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.
273 Ansung; Brown; Erchonia; Heathwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.
274 Alabama/Main; Biesiada; Cage; Compton; Diamond Offshore; Englehart; Keba; Macquarie; Motamedi; Nguyen; Seaco; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.
275 Alabama/Main; Biesiada; Cage; Compton; Diamond Offshore; Englehart; Keba; Macquarie;
2015) MOTIONS TO WITHDRAW THE REFERENCE 431

<table>
<thead>
<tr>
<th>Circuit</th>
<th>280</th>
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<tr>
<td>W.D. Tex.</td>
<td>8</td>
<td>3281</td>
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<td>6th Circuit</td>
<td>16</td>
<td>10</td>
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<td>4283</td>
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<tr>
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<td>14</td>
<td>82%</td>
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<tr>
<td>N.D. Ill.</td>
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<td>5285</td>
<td>83%</td>
</tr>
<tr>
<td>E.D. Wis.</td>
<td>8286</td>
<td>7287</td>
<td>87.5%</td>
</tr>
<tr>
<td>8th Circuit</td>
<td>6</td>
<td>4</td>
<td>67%</td>
</tr>
<tr>
<td>9th Circuit</td>
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<td>36</td>
<td>54%</td>
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<tr>
<td>D. Ariz.</td>
<td>5288</td>
<td>3289</td>
<td>60%</td>
</tr>
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<td>E.D. Cal.</td>
<td>4290</td>
<td>2291</td>
<td>50%</td>
</tr>
<tr>
<td>C.D. Cal.</td>
<td>17292</td>
<td>6293</td>
<td>35%</td>
</tr>
<tr>
<td>N.D. Cal.</td>
<td>15294</td>
<td>4295</td>
<td>27%</td>
</tr>
<tr>
<td>D. Nev.</td>
<td>8296</td>
<td>7297</td>
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<tr>
<td>W.D. Wash.</td>
<td>13298</td>
<td>13299</td>
<td>100%</td>
</tr>
<tr>
<td>10th Circuit</td>
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<td>14</td>
<td>100%</td>
</tr>
<tr>
<td>D.N.M.</td>
<td>6300</td>
<td>6301</td>
<td>100%</td>
</tr>
<tr>
<td>11th Circuit</td>
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<td>14</td>
<td>74%</td>
</tr>
<tr>
<td>S.D. Fla.</td>
<td>10302</td>
<td>8303</td>
<td>80%</td>
</tr>
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</table>

Motamedi; Seacor; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.

Barra; Fulbright; Nakamura; Romo; Texas Sterling; UPH I; UPH II; UPH III.

Barra; Nakamura; Romo.

Austin; Chambers; Energy Conversion; Greektown; Hauk; Timco; Villages.

Chambers; Energy Conversion; Timco; Villages.

Athos; Baldi; Desmond; Moglia; PNC Bank; Steege.

Baldi; Desmond; Moglia; PNC Bank; Steege.

Archdiocese I; Archdiocese II; H&P; Pro-Pac; Pulsifer I; Pulsifer II; Triad Group; Triad Pharmaceuticals.

Archdiocese I; Archdiocese II; H&P; Pulsifer I; Pulsifer II; Triad Group; Triad Pharmaceuticals.

Clinica; Lancaster; Roll Tide I; Roll Tide II; Wilenchik.

Clinica; Lancaster; Wilenchik.

Bell; Dick; Prior; Sharp.

Dick; Sharp.

Azam; Cobe; Diamond Decisions; Edwards; Evergreen; Ginzburg; IES; Kirkland; Klein; McZeal; Munoz-Flors; New Meaco; Oracle; Paula; R2D2; Scaccianoce; SNTL.

Diamond Decisions; Evergreen; IES; Klein; Oracle; Scaccianoce.

Hoskins; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impева; Melcher; Rosales; Sladyk; Taicom; Torchia; Vaccaro.

Hoskins; Melcher; Rosales; Taicom.

Bagley; Borton; Cushman; Locke; Marin; Melch; Parriott; Shengdatech.

Bagley; Borton; Cushman; Marin; Meleck; Parriott; Shengdatech.

ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Prevost.

ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Prevost.

Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.

Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.

ABN; Agile I; Agile II; Goudy; McKean; Newman; Raimondo; Rosen; Saad; Stettin.

ABN; Agile I; Agile II; Goudy; McKean; Newman; Raimondo; Stettin.
District courts are slightly more likely to grant motions filed in chapter 7 cases than those in chapter 11 cases, but the percentages are quite close.\textsuperscript{304} Perhaps more surprising is how often motions are granted in chapter 13 cases (although the total number of chapter 13 cases in which motions are made is low). With the exception of chapter 12 cases (of which there are so few as to make the figures statistically unreliable), motions are far more likely to be granted than denied in cases brought under all chapters.

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
\textbf{Chapter} & \textbf{7} & \textbf{11} & \textbf{12} & \textbf{13} & \textbf{15} \\
\hline
\textbf{Motion Granted} & 78\textsuperscript{305} & 90\textsuperscript{306} & 1\textsuperscript{307} & 9\textsuperscript{308} & 1\textsuperscript{309} \\
(\%) & (73\%) & (71\%) & (33\%) & (69\%) & (100\%) \\
\hline
\textbf{Motion Denied} & 29\textsuperscript{310} & 36\textsuperscript{311} & 2\textsuperscript{312} & 7\textsuperscript{313} & 0 \\
(\%) & (27\%) & (29\%) & (67\%) & (31\%) & (0\%) \\
\hline
\end{tabular}
\caption{Motions Granted and Denied by Chapter of Case}
\end{table}

The district courts withdrew all proceedings when withdrawal was sought by the bankruptcy judge or United States Trustee. Courts are considerably more likely to grant a motion filed by a bankruptcy trustee (or

\textsuperscript{304}Plum Creek was not connected to a pending bankruptcy case.

\textsuperscript{305}Al Desari; Alabama/Main; Arzt; Atlas; Bald; Bell Builders; BF Saul; Bienes; Billet; Borton; Brown-Minneapolis; Bullard; Cage; Caillouet; Canal Walk; Chambers; Chance; C.R. Stone; Cruickshank; Desmond; Diamond Decisions; Engelhart; Gould; Gowdy; Greektown; Herenden; Hess; Home Casual; Hoskins; IH; Jubber; Kirkland; Kirschenbaum; Lakym; Lisenby; Lucas; McGuir; Melcher; Melot I; Melot II; Moglia; Munoz-Flores; Newhouse; NMF; Okechuku; Oracle; Pal-Con; Parker; Peterson; PNC Bank; Polverari; Pressman; Pry; Renco; Romo; Samburg; Slobodian; Spencer; Steege; SVS; Swinson; Vanderpool; Viera; Villegas; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Williams; WL Homes; Yee-Smith.

\textsuperscript{306}ABC; ABN; Adams; Adventure Harbor; Agile I; Agile II; Ansung; Applewood; Archdiocese I; Archdiocese II; Bagley; Barra; Berg; Brown; Cary; Clinica; Compton; Country Fare; Cushman; Cyber; Diamond Offshore; Dick; Dreier; Energy Conversion; Erchomia; Evergreen; Federal Housing; Flaxer; Global Gaming; Heartwood; HGP; IES; Innov; Kebe; Kit I; Kit II; Klein; Laddum; LightSquared; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; Macquarie; Magnificent; Majestic; Marin; McKern; McKinstry; Meloba; Motamedi; Neuman; Panther I; Panther II; Parriott; Posey; Prevost; Raimondo; Raval; Refa; SageCrest I; SageCrest II; Santa Barbara; Scaccianocce; Schroder; Seacor; Shaffer; Sharp; Shengdatech; Sojourner; Stettin; TCB; THQ; Transcontinental; Triad Group; Triad Pharmaceuticals; Villages; Wagner I; Wagner II; Wagner III; Warren; Winkler; Zazzali.

\textsuperscript{307}Petrano.

\textsuperscript{308}Beck; Kretz; Lancaster; Lengst; Mansmann; Nakamura; Pulsifer I; Pulsifer II; Rosales (granted as to noncore issues).

\textsuperscript{309}Takam.

\textsuperscript{310}Able Machine Works; Athos; Austin; Bonarrigo; Chesapeake; Cobe; Field; Ginzburg; Gold; Grossman; Limor; Logan; McCord; Meltch; Ng; Nguyen; Ogier; Saad; Sladky; Stevenson; Sun Capital; Torchia; TPG; T3; USA United; Weiss; Yestramski.

\textsuperscript{311}Advanced Telecommunication; Allen; Fulbright; Global Aviation; Hourye I; Hourye II; Hourye III; Hourye IV; Hourye V; Hourye VI; Hourye VII; Impexia; Jemsek; Krakowsk; Lain; Lehman I; Lehman II; Locke; Matheny; Needlel; New Energy; New Mexico; Prior; Pro-Pac; Ricoh I; Ricoh II; Roll Tide I; Roll Tide II; Rosen; R2D2; Scarecell; SNTL; Springel I; Springel II; Texas Sterling; UPH I; UPH II; UPH III.

\textsuperscript{312}Hauk; Lemons.

\textsuperscript{313}Aram; Calderon; Edwards; McZeal; Paulo; Rosales (denied as to core issue); Vaccaro.
liquidating trustee or foreign representative) than another party, including the debtor or debtor in possession. There may be a degree of familiarity and trust that is built up between the bankruptcy trustees and the district judges within a district that encourages the district courts to grant motions brought by the trustees. Although the district courts grant a majority of motions brought by debtors, the court is much less likely to grant a motion filed by a pro se litigant than one represented by counsel.\footnote{Compare Austin; Edwards; Paulo; Rotten (motion denied) with Dick (motion granted). Cf. Melcher; Melot I; Melot II; Parker (motion granted when opposed by pro se defendants).}

Although most motions to withdraw the reference are filed by defendants in adversary proceedings commenced by the trustee or debtor in possession or debtor, surprisingly the district courts were more likely to grant motions brought by a nondebtor party who was the plaintiff in an action against the debtor than one brought by a nondebtor party who was a defendant. As one might have expected, if the litigation did not involve the debtor at all, but was merely related to the bankruptcy case, the district court was very likely to grant a motion to withdraw the reference.

### MOTIONS GRANTED AND DENIED BY PARTY SEEKING WITHDRAWAL

<table>
<thead>
<tr>
<th>Party Seeking Withdrawal</th>
<th>Granted</th>
<th>Denied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trustee or Foreign Representative</td>
<td>28\footnote{Brown-Minneapolis; Caillouet; Chambers; Desmond; IH; Ladd; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Magnificient; McKinstry; Melcher; Renco; Slobodian; Taicom; Timco; Transcontinental (liquidating agent); Warren; Willson; Winkler; Zazzali.}</td>
<td>4\footnote{Limor; Ogier; Stevenson; Sun Capital.}</td>
</tr>
<tr>
<td>(87%)</td>
<td>(13%)</td>
<td></td>
</tr>
<tr>
<td>Debtor in possession or Reorganized debtor</td>
<td>7\footnote{Country Fare; H&amp;P; Majestic; Matamedi; THQ; Triad Group; Triad Pharmaceuticals.}</td>
<td>3\footnote{Advanced Telecommunication; Needler; Texas Sterling.}</td>
</tr>
<tr>
<td>(70%)</td>
<td>(30%)</td>
<td></td>
</tr>
<tr>
<td>Debtor</td>
<td>7\footnote{Borton; Dick; Kreitz; Lengsel; Mansmann; Nakamura; Pulsifer II.}</td>
<td>6\footnote{Austine; Azam; Bonarrigo; Edwards; Hau; Paulo.}</td>
</tr>
<tr>
<td>(54%)</td>
<td>(46%)</td>
<td></td>
</tr>
<tr>
<td>Defendant in action by trustee, DIP or debtor</td>
<td>10\footnote{ABC; ABN; Ansung; Agile I; Agile II; Alabama/Main; Archdiocese I; Archdiocese II; Arzt; Atlas; Bagley; Baldo; Barra; Beck; Bell Builders; Berg; BF; Saul; Biesiada; Biller; Brown; Bullard; Cage; Canal Walk; Chance; Clinica; Compton; C.R.; Stone; Crickshank; Diamond Decisions; Dreier; Energy Conversion; Engelhart; Evergreen; Flacer; Global Gaming; Gould; Gowdy; Heartwood; Hess; Hoskins; IES; Innova; Jubber; Kirschbaum; Klein; Lakin; Lancaster; LightSquared; Lisenby; Marin; McGuire; McKeen; Meloda; Moglia; Nakamura; Newhouse; Neuman; NMFC; Okechuku; Panther II; Panther II; Parker; Parriot; Peterson; Pressman; Prevost; Pry; Pulsifer I; Raimondo; Refco; Rosales (granted as to noncore issues); SageCrest I; SageCrest II; Samson; Sccianone; Schwab; Sharp; Shengdatech; Sojearner; Spencer; Steege; Stettin; SVS; Swimon; Taicom; THQ; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III;}</td>
<td>5\footnote{Borton; Dick; Kretz; Lengsel; Mansmann; Nakamura; Pulsifer II.}</td>
</tr>
<tr>
<td>(67%)</td>
<td>(33%)</td>
<td></td>
</tr>
<tr>
<td>Plaintiff in action against debtor</td>
<td>26\footnote{ABC; ABN; Ansung; Agile I; Agile II; Alabama/Main; Archdiocese I; Archdiocese II; Arzt; Atlas; Bagley; Baldo; Barra; Beck; Bell Builders; Berg; BF; Saul; Biesiada; Biller; Brown; Bullard; Cage; Canal Walk; Chance; Clinica; Compton; C.R.; Stone; Crickshank; Diamond Decisions; Dreier; Energy Conversion; Engelhart; Evergreen; Flacer; Global Gaming; Gould; Gowdy; Heartwood; Hess; Hoskins; IES; Innova; Jubber; Kirschbaum; Klein; Lakin; Lancaster; LightSquared; Lisenby; Marin; McGuire; McKeen; Meloda; Moglia; Nakamura; Newhouse; Neuman; NMFC; Okechuku; Panther II; Panther II; Parker; Parriot; Peterson; Pressman; Prevost; Pry; Pulsifer I; Raimondo; Refco; Rosales (granted as to noncore issues); SageCrest I; SageCrest II; Samson; Scaccianoce; Schwab; Sharp; Shengdatech; Sojearner; Spencer; Steege; Stettin; SVS; Swimon; Taicom; THQ; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III;}</td>
<td>9\footnote{Borton; Dick; Kretz; Lengsel; Mansmann; Nakamura; Pulsifer II.}</td>
</tr>
<tr>
<td>(74%)</td>
<td>(26%)</td>
<td></td>
</tr>
</tbody>
</table>
It is not at all surprising that motions are far more likely to be granted if they are unopposed than if they are opposed. Indeed, often the district courts grant the unopposed motion without discussing whether “cause” exists for withdrawal as required by § 157(d) if the parties have agreed to litigate at the district court rather than the bankruptcy court. Although most motions that are opposed are denied, almost as many are granted.

### MOTIONS GRANTED AND DENIED BY WHETHER THEY WERE OPPOSED

<table>
<thead>
<tr>
<th></th>
<th>Opposed</th>
<th>Unopposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion Granted</td>
<td>57328</td>
<td>121329</td>
</tr>
<tr>
<td>Motion Denied</td>
<td>62330</td>
<td>14331</td>
</tr>
</tbody>
</table>

Warren; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Winkler; WL; Homes; Zazzali.

322 Able Machine Works; Athon; Bell; Calderon; Coble; Field; Ginzburg; Global Aviation; Gold; Grossman; Housey I; Housey II; Housey III; Housey IV; Housey V; Housey VI; Housey VII; Impena; Kirkland; Lain; Lehman I; Lehman II; Lemons; Locke; Logan; McCond; McNeal; Mello; Munoz-Flores; New Mexico; Ng; Nguyen; Plum Creek; Pro-Pac; Rioch II; Roll Tide I; Roll Tide II; Rosales (denied as to core issue); Saad; Sladky; SNXL; Springel I; Springel II; Torchia; TPG; T3; UPH I; UPH II; UPH III; USA United; Vacarro; Vanderpol; Weiss; Yestramski.

323 Adventure Harbor; Al Dosari; Allen; Cyber; Diamond Offshore; Erchonia; Federal Housing; Home Casual; Keba; Kite I; Kite II; Macquarie; Melot I; Melot II; Oracle; Pal-Con; PNC Bank; Polverari; Posey; Raval; Romo; Santa Barbara; Yee-Smith.

324 Fullbright; Jensek (counterclaim in action originally brought by trustee); Krakowski; Matheny; New Energy; Prior; Rioch I; Rosen; Scarcelli; Seaco; TCB.

325 Adams; Cary; Cushman; Greektown; Schroeder; Shaffer.

326 Chesapeake; R2D2.

327 Applewood; Herenden; Lucas; Petronio; West.

328 ABNB; Adams; Adventure Harbor; Aggie I; Aggie II; Annsung; Archdiocese I (opposed only by plaintiffs other than debtor); Bagley; Barra; Bech; Cary; Chambers; Chambers; Country Fare; Cushman; Desmond; Diamond Offshore; Dick; Evergreen; Federal Housing; Hoekins; H & P; Kirschbaum; Klein; Ladd; LightSquared; Schroder; Shaffer; H & P; Heathwood; IES; Innovia; Keba; Kite I; Kite II; Macquarie; Marin; McKinnis; Melcher; Melot II; Moglia; Newman; Oracle; Parker; Petronio; Plum Creek; Rosales (granted as to noncore issues); Samson; Scaccianoce; Seaco; Sharp; Shengdatech; Sojourner; Stettin; Transcontinental; Triad Group; Triad Pharmaceuticals; WL Homes.

329 ABC; Al Dosari; Alabama/Main; Applewood; Archdiocese II; Arzt; Atlas; Baldi; Bell Builders; Berg; BF Saul; Bisnada; Billet; Bonomo; Brown; Brown-Minneapolis; Bullard; Cage; Culliton; Canal Walk; Chance; Compton; C.R. Stone; Crucickstancik; Cyber; Diamond Decisions; Dreier; Energy Conversion; Engelhart; Erchonia; Flexar; Global Gaming; Gould; Goudy; Greektown; Herenden; Hess; Home Casual; IH; Hubber; Kretz; Laikin; Lancaster; Lengel; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Lucas; Magnificent; Majestic; Mansmann; McGuire; McKean; Mcloba; Melot I (motion for reconsideration filed and denied); Motamed; Nakamura; Neuhouse; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parrish; Peterson; PNC Bank; Polverari; Posey; Pressman; Prevost; Pry; Pulsifer I; Pulsifer II; Raimondo; Raval; Refco; Renco; Romo; Sage Crest I; Sage Crest II; Santa Barbara; Schwab; Slobodian; Spencer; Stege; SVS; Swinson; TCB; Taicom; TH2; Timco; Vanderpol; Viera; Villages;
If the bankruptcy judge or magistrate made a recommendation to the district court with respect to the motion, the district court always resolved the motion consistent with that recommendation. In forty-three cases that recommendation was to withdraw the reference; in ten cases that recommendation was to deny the motion to withdraw. The deference shown to the judgment of the bankruptcy judge suggests that such reports and recommendations are of great value to the district court judges in dealing with motions to withdraw the reference. Those districts that do not require such reports from the bankruptcy judge in connection with every motion to withdraw the reference should consider amending their local rules to impose such a requirement. Bankruptcy judges who sit in districts where no such report is required should be encouraged to generate such a report for every motion filed in their cases.

Although the district court is required to withdraw the reference of a proceeding under the second sentence of § 157(d) if “the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce,” in only two-thirds of the cases in which the movant claimed withdrawal was required under this provision did the court actually grant the motion for mandatory withdrawal. This is undoubtedly due to the non-statutory gloss uniformly placed on the provision, requiring not merely “consideration” of non-bankruptcy federal laws, but “substantial and material consideration” (as opposed to simple application) of such laws.
If the movant sought permissive withdrawal of what appeared to be a noncore matter, the district court was naturally more likely to grant the motion than if the motion related to a core matter or a Stern-type claim (although many cases presented both noncore matters and core matters, both non-Stern and Stern-type core matters). Perhaps the most unexpected fact the data presents is that even in core matters that are not affected by Stern, which by definition go to the essence of a bankruptcy court’s jurisdiction, the district court granted motions to withdraw the reference in fourteen of thirty-nine motions, or 36% of those requests.

The numbers support the assumption that fraudulent transfer or fraudulent conveyance claims have become a major source of motions to withdraw the reference and that district courts, unwilling to assume that the Supreme Court will distinguish between the § 157(b)(2)(C) counterclaim at issue in Stern and “proceedings to determine, avoid, or recover fraudulent conveyances” under § 157(b)(2)(H), are granting more than 70% of those motions. But even if the district courts interpret Stern to limit the ability of bankruptcy judges to enter final judgments in fraudulent conveyance actions, one might assume that district court judges would recognize that bankruptcy judges have far more experience dealing with fraudulent conveyance actions, and would therefore allow the proceedings to remain with the bankruptcy court until the bankruptcy judge issued proposed findings of fact and conclusions of law, or until the case was ready for a jury trial (when the defendant was entitled to, and had requested, a jury trial). That seems not to be the case.

<table>
<thead>
<tr>
<th>MOTIONS GRANTED AND DENIED BASED ON NATURE OF CLAIM</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td>Motion Granted</td>
</tr>
<tr>
<td>Motion Denied</td>
</tr>
</tbody>
</table>

The bankruptcy court did not always specify whether the proceeding was core or noncore. If neither the bankruptcy court nor the district court so specified, I made my own judgment based on the nature of the claims.

Barra (RICO); Beck (Truth in Lending Act); Country Fare and Raval (Lanham Act); Diamond Offshore (Outer Continental Shelf Lands Act); Federal Housing (Housing and Economic Recovery Act of 2008); Kebs, Macquarie and Seacor (Outer Continental Shelf Lands Act); TCB (Equal Credit Opportunity Act); SVS (FINSA); Yee-Smith (Securities Act of 1933, Securities Exchange Act of 1934); cf. Moglia (suggesting that mandatory withdrawal would probably be appropriate based on claims under the Internal Revenue Code, but withdrawing the reference under the permissive clause).
In forty-six out of sixty-two cases (74%) in which a related case was already pending at the district court (or movants sought withdrawal in multiple related cases), the court granted the motion for withdrawal.344 This

337 Adams, Adventure Harbor, Al Dosari (noncore claims predominated, although one core claim—seeking a determination of nondischargeability of the damages awarded on the noncore claims—was included); Ansung, Applewood, Archdiocese I; Archdiocese II; Arzt, Atlas, Baer, Bagley, Barra, Bell Builders; Berg, BF Saul, Bieiaida, Billet, Borton; Brown-Minneapolis; Bullard, Caillouet; Cary, Chance; Clinica; C.R. Stone; Cushman; Cyber; Dick; Dreier; Energy Conversion; Erchonia; Evergreen; Global Gaming; Gould, Goudy, Greektown, Hearthwood; Herendeen, Hess, Home Casual; Hoskins; H&P; IES; IH; Innovis; Jubber, Kirchenbaum, Kite I; Kite II; Klein, Kretz, Laddin, Laikin, Lengyl, LightSquared; Magnificent, Majestic; Mansmann; Marini; McGuire, McIoba, Melot I; Melot II; Moglia; Nakamura; NMFC; Okechuku, Pel-Con; Panther I; Panther II; Parker, Peterson, Petranos, Polverari, Pressman, Pulsifer I; Rapai; Reifer, Reno; Romo; Rosales, SageCrest I; SageCrest II; Santa Barbara; Scaccianoce, Schroder, Schuab, Shaffer, Shengdatech; Sojourner, Stege, TCB, Timco, Triad Group; Triad Pharmaceuticals, Viera, Villages, Wagner I; Wagner II; Wagner III; Warren; Willison, Winkler, WL, Homes, Yee-Smith. It was unclear whether the claims in Plum Creek and Taicom were core or noncore, although the motion to withdraw was granted.

Although the personal injury tort claims at issue in Adams, Cary, Schroder, Shaffer, Clinica, H&P, Triad Group, and Triad Pharmaceuticals were noncore, under 28 U.S.C. § 137(b)(3) the district court was required to order them tried in a district court. Romo involved the dischargeability of a personal injury tort claim; the issue of dischargeability is clearly core, but the personal injury tort claim was noncore.

338 Compton, C.R. Stone, Lancaster, Lisenby, Lucas, McKinstry, Melcher, Motamedi; Oracle, PNC Bank, Posey, Pulsifer II; THQ. It was unclear whether the claims in Plum Creek and Taicom were core or noncore, although the motion to withdraw was granted.

339 ABC; ABN; Agile I; Agile II; Alabama/Main; Baldi; Bell Builders; Berg, Brown, Brown-Minneapolis; Cage, Canal Walk; Chambers, C.R. Stone; Cruckshank; Desmond, Diamond Decisions; Dreier, Engelhart; Ficcanza; Global Gaming (movant asserted that ordinary counterclaim was a Stern counterclaim); Gould; HH; Jubber, LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII, LLS VIII; LLS IX; LLS X; Marini, McKean; McIoba, Moglia, Neuhouse, Newmon, Parriott, Stevenson, Prevost, Pry, Raimondo; Renzo; Sanborn, Scaccianoce, Sharp; Shengdatech; Slobodian, Spencer (treated preference as a Stern claim); Stege, Steetlin, SVS, Swinson, TCB, Timco, Transcontinental; Vanderpol, Villegas, Wagner I; Wagner II; Wagner III; West; Wilenchik, Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Zazzali.

340 Al Dosari, Bonarrigo, Innova, Rosales, R2D2, SNTL.

341 Able Machine Works, Advanced Telecommunication, Allen, Axam, Bonarrigo, Chesapeake, Edwards, Fulbright, Hauf, Imperva, Lehman II; Limor, Locke; McZeal, Melech; Ng, Prior, Pro-Pac; Ricoh I, Roll Tide I; Roll Tide II; R2D2; Saad, Sladky, Sun Capital, Texas Sterling, Torchia; Vaccaro, Weiss. Whether the causes of action were core or noncore was unclear in SNTL, and the issue was not decided by the district court when it denied the motion.

342 Austin, Calderon, Global Aviation, Gold, Grossman, Imperva, Krakowski, Lain, Lehman I, Lemons; Limor, Logan, Matheny, Needle; New Energy, New Mexico, Nguyen, Ogier, Paulo, Ricoh II, Rosales, Rosen, Scaccianoce, Sladky, SNTL, TPG, T3, UPH I, UPH II, UPH III. Whether the causes of action were core or noncore was unclear in SNTL, and the issue was not decided by the district court when it denied the motion.

343 Advanced Telecommunication, Athos, Bell, Cobe, Field, Ginsburg, Hourey I; Hourey II; Hourey III; Hourey IV; Hourey V; Hourey VI; Hourey VII, Jerseck, Kirkland; Limor, McDermott, Melech, Munoz-Flores, Roll Tide I, Roll Tide II; Springil II; Springil II, Sun Capital, Torchia; USA United, Weiss, Wysterski.

344 ABC, ABN, Adams, Agile I, Agile II, Archdiocese I, Archdiocese II; Baer, Bagley, Bell Builders; Berg, Canal Walk; Cary, Chambers, Chance, Country Fare; C.R. Stone, Cushman; Diamond Decision; Diamond Offshore, Hess; Keba; Kite I; Kite II, LightSquared, Lisenby, MacQuarie, Motamedi; Nakamura, Newman, Panther II, Petranos, PNC Bank, Polverari, Posey; Prevost; Pulsifer I, Pulsifer II, Schroder, Shaffer, Spence, THQ, Villegas, Wagner I; Wagner II; Wagner III. Cf. Cyber (case was originally filed in district court and
follows from the importance of the considerations of uniformity of bankruptcy administration and efficient use of judicial resources or judicial economy in determining whether there is cause for withdrawal of the reference. But it also means that if the camel can get its nose into the tent, the rest of the body will likely follow. This encourages litigants to file multiple motions in related cases, particularly if the first motion is successful.

Because a bankruptcy judge cannot conduct a jury trial without the consent of the parties, withdrawal of the reference for the purpose of conducting a jury trial before an Article III judge is mandatory. Although some district courts in the cases in the study either denied the motion without prejudice to allow renewal of the motion when the case was ready for trial, or granted the motion but referred the case back to the bankruptcy judge for all pretrial matters, the district court withdrew the proceeding immediately if a jury trial was contemplated in 104 out of 174 cases, 60% of the time. The former two options are substantively identical, with the exception that a denial without prejudice closes the docket on the district court case unless and until a new motion is made, while granting the motion and referring pretrial proceedings back to the bankruptcy court keeps the civil case open at the district court unless otherwise ordered. Even when no litigant has demanded a jury trial, some district courts treat the adversary proceeding the same way, referring the matter to the bankruptcy court to manage pretrial proceedings.

Of the 104 motions for withdrawal which the district court granted immediately, forty-five involved fraudulent conveyance claims, the type of claim which is statutorily “core” and which the bankruptcy court has substantial experience in handling. District courts should be reluctant to withdraw the reference so quickly with respect to fraudulent conveyance claims, even if they are combined with other state law claims, because in these cases the bankruptcy court has the expertise to handle pretrial matters referred to bankruptcy court; court granted motion to withdraw reference). But see Roll Tide I; Roll Tide II; Springel I; Springel II; TPG; T3; UPH I; UPH II; UPH III; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.

This category includes those cases in which all pretrial matters had already been concluded by the bankruptcy court, so the case was ready for trial.

See Goudy; Keba; Macquarie (district court ordered cases administratively closed until pretrial proceedings completed; cases not reopened a year later).

See, e.g., Mansmann.

Alabama/Main; Baldi; Bell Builders; Brown; Brown-Minneapolis; Cage; C.R. Stone; Dreier; Gould; IH; Jubber, LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Manni; Moglia; Pannuto; Pry; Raimondo; Renzo; Samson; Sharp; Shengdatech; Steege; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; West; Wilechek; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.

See § 157(b)(2)(H).
more efficiently than the district court and can submit proposed findings of fact and conclusions of law with respect to dispositive motions in the event that the proceeding does not settle before trial (which many of them do).

<table>
<thead>
<tr>
<th>Disposition of Motions to Withdraw Reference in which Jury Trial was Sought</th>
</tr>
</thead>
<tbody>
<tr>
<td>Granted Motion Immediately</td>
</tr>
<tr>
<td>----------------------------------</td>
</tr>
<tr>
<td>104351</td>
</tr>
</tbody>
</table>

The rate at which district courts in the various circuits withdraw the reference immediately in cases where a jury trial may ensue (as opposed to leaving the proceeding with the bankruptcy court for pretrial proceedings) generally mirrors their respective rates of granting all motions to withdraw, with the exception of the district courts in the First, Eighth and Eleventh

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351 Adams; Adventure Harbor; Al Dosari, Alabama/Main; Archdiocese I; Archdiocese II; Arzt; Atlas; Bagley; Baldi; Barra; Bell Builders; Biesiada; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Cary; Chambers; Chance; Clinica; Compton; C.R. Stone; Cruickshank; Cushman; Dreier; Energy Conversion; Erchonia; Evergreen; Gould; Herenden; Hess; Hoskins; IES; IH; Innovia; Jubber; Kite I; Kite II; Klein; Kretz; Laikin; LightSquared; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Magnificent; Marin; McGuire; McKinstry; Moglia; NMFC; Okêkuku; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petraso; Plum Creek; Pressman; Pry; Raimondo; Raval; Refco; Renco; SageCrest I; SageCrest II; Samson; Schroder; Schwab; Seaco; Shaffer; Sharp; Shengdatech; Steege; Swinson; Taicom; Transcontinental; Vanderpol; Viera; Wagner II; Wagner III; Warren (all pretrial matters were already concluded); West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler.

Adams, Cary, Schroder and Shaffer were related cases involving the bankruptcy of New England Compounding Pharmacy and were consolidated for trial with many other personal injury tort cases pending against the debtor and its affiliates in other federal courts. The Adventure Harbor case was withdrawn for consolidation with another case pending in the district court by the same plaintiff against the officers of the debtor. The Al Dosari case was originally filed in the district court immediately following the involuntary bankruptcy filing and without notice of the filing. Atlas was withdrawn without objection for consolidation with another case pending in the district court. The district court had previously refused to grant a motion for withdrawal of the reference in Chambers without prejudice for renewal when the case was ready for trial, but no progress had been made in the bankruptcy court in the previous two years. The motions in Energy Conversion and Gould were the second in the proceeding, the first having been denied without prejudice until the case was ready for trial and the second coming when the case was ready for trial.

352 ABC; ABN; Agile I; Agile II; Berg; Canal Walk; Diamond Offshore; Engelhart; Flaxer; Gowydy; Hearthwood; H&P; Keba; Macquarie; McKean; Mcloba; Newhouse; Prevost; Scaccianoce; Sojourner; Spencer; Stettin; SVS; Triad Group; Triad Pharmaceuticals; Villegas; WL Homes.

353 Able Machine Works; Advanced Telecommunication; Arthos; Azam; Bell; Bonarrego; Edwards; Field; Fulbright; Gold; Jensek (stating that proceeding would be withdrawn when case was ready for trial); Krakowsk; Lain; Limor; Locke; Logan; Matheny; McCord; McZeal; Melech; Mamon-Flores; New Mexico; Newman; Ng; Ogier; Ricoh I; Roll Tide I; Roll Tide II; Sauch; Springer I; Springer II; Stevenson; Sun Capital; Torchia; UPH I; UPH II; UPH III; USA United; Yestramski. Cf. Hauk (denying motion because bankruptcy court could conduct jury trial with consent of parties).

354 Calderon; New Energy; Paula; Weiss.
Circuits. District courts in the First and Eighth Circuits granted all their motions to withdraw the reference immediately in jury trial cases, giving them a higher percentage of the cases immediately withdrawn. District courts in the Eleventh Circuit seem to be more reluctant to withdraw jury trial proceedings immediately than they are to withdraw proceedings in general.

<table>
<thead>
<tr>
<th>Circuit</th>
<th>1st</th>
<th>2nd</th>
<th>3rd</th>
<th>4th</th>
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<th>9th</th>
<th>10th</th>
<th>11th</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. and % of all 177 motions granted</td>
<td>7</td>
<td>12</td>
<td>14</td>
<td>13</td>
<td>39</td>
<td>10</td>
<td>14</td>
<td>4</td>
<td>36</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>No. and % of all 104 immediate withdrawals in jury cases</td>
<td>77</td>
<td>63</td>
<td>93</td>
<td>93</td>
<td>23</td>
<td>59</td>
<td>43</td>
<td>61</td>
<td>4</td>
<td>36</td>
<td>36</td>
</tr>
</tbody>
</table>

Unless a proceeding is ready for trial, it is generally a better practice to deny a motion to withdraw the reference based on a jury trial demand, without prejudice to its renewal when pretrial proceedings are completed. Jury trial demands may be made for the strategic reason of buttressing a motion to withdraw the reference, and such blatant forum-shopping should not be encouraged. Moreover, many proceedings will settle before they actually go to trial, meaning that the district court will never see a renewed motion to withdraw. If this were the general practice among

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355 Adams; Atlas; Cary; C.R. Stone; Cruickshank; Schroder; Shaffer.
356 Dreier; LightSquared; Refco; Renco; SageCrest I; SageCrest II.
357 HH; Innova; Kretz; O'Kechniku; Peterson; Pressman; Raval; Schwab; Transcontinental.
358 Al Dosari; Arzt; Bell Builders; Bullard; McGuire; NMFC; Plum Creek; Viera; Warren.
359 Adventure Harbor; Alabama/Main; Bara; Biesiada; Brown; Cage; Caillouet; Compton; Erchonia; Kite I; Kite II; Magnificent; Pal-Con; Parker; Seacor; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.
360 Chambers; Energy Conversion; Laikin; McKinstry.
361 Archdiocese I; Archdiocese II; Baldi; Moglia; Pry; Steege.
362 Panther I; Panther II; Willson; Winkler.
363 Bagley; Clinica; Cushman; Evergreen; Hoshing; IES; Klein; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Marini; Parriots; Samson; Sharp; Shengdake; Taicom; Wilenchik.
364 Brown-Minneapolis; Chance; Gould; Hess; Juber; Swinson; Vanderpol; Wagner II; Wagner III.
365 Herenden; Petrano; Raimondo.
district courts with respect to motions to withdraw the reference for cause, such motions would not be made quite so frequently.

V. QUESTIONS AND CONCLUSIONS

What can we learn from this study? When I undertook this project, I assumed that I would find both the filing of motions to withdraw the reference, and the granting of such motions, to be a rare occurrence. I was surprised to find that this is not true.

First, motions to withdraw the reference are made more often than I anticipated. District courts in California lead the nation in withdrawal motions, followed by those in Texas. Perhaps litigants believe that the district courts in those districts will handle their proceedings more quickly than the bankruptcy courts. Indeed, there is evidence that district courts in the districts in which the highest number of the motions to withdraw the reference in the study were filed were among the most efficient in the country in 2013, based on their median time intervals from filing to disposition of civil cases. At the same time, the bankruptcy courts in those districts had among the highest number of adversary proceedings pending in the country in 2013. But that certainly cannot be the only explanation because, for example, the Northern District of Georgia had a very respectable median time interval from filing to disposition in 2013 of 6.8 months, and its bankruptcy judges had 4,451 adversary proceedings pending during 2013 but only three motions to withdraw the reference was filed and decided in that year.

I certainly do not intend to exaggerate the frequency of withdrawal motions. If one looks at the number of motions to withdraw the reference as a percentage of total adversary proceedings filed in 2013 (although the motions to withdraw were not necessarily filed in the adversary proceedings filed in that year so the numbers are not completely accurate), the percentages are relatively small, even for the districts in which most motions were filed. The highest percentage was in the S.D. Tex. where there were 425 adversary proceedings commenced in 2013, and twenty motions to withdraw on which a decision was rendered, or 4.7%. Percentages for the other districts in which ten or more motions were filed are smaller:

- S.D. N.Y. (13 motions, 1,049 adversaries filed, 1.2%);
- C.D. Cal. (17 motions, 2,834 adversaries filed, 0.6%);
- N.D. Cal. (15 motions, 889 adversaries filed, 1.7%);
- W.D. Wash. (13 motions, 1,137 adversaries filed, 1.14%);
- S.D. Fla. (10 motions, 1,007 adversaries filed, 1%).

The number of adversary proceedings filed in 2013 was taken from Table F-8, note 99 supra.

367 I certainly do not intend to exaggerate the frequency of withdrawal motions. If one looks at the number of motions to withdraw the reference as a percentage of total adversary proceedings filed in 2013 (although the motions to withdraw were not necessarily filed in the adversary proceedings filed in that year so the numbers are not completely accurate), the percentages are relatively small, even for the districts in which most motions were filed. The highest percentage was in the S.D. Tex. where there were 425 adversary proceedings commenced in 2013, and twenty motions to withdraw on which a decision was rendered, or 4.7%. Percentages for the other districts in which ten or more motions were filed are smaller:

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368 S.D. N.Y. (13 motions); S.D. Tex. (20 motions); C.D. Cal. (17 motions); N.D. Cal. (15 motions); W. D. Wash. (13 motions); S.D. Fla. (10 motions).

369 S.D. N.Y. (8.2 months); S.D. Tex. (6.8 months); C.D. Cal. (5.9 months); N.D. Cal. (7.8 months); W.D Wash. (6.6 months); S.D. Fla. (4.8 months). All, except for the N.D. Cal., are well below the median intervals for their respective circuits. See Table C-5, U.S. District Courts—Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition, During the 12-Month Period Ending December 31, 2013, available at www.uscourts.gov/uscourts/Statistics/Statisti-calTablesForTheFederalJudiciary/2013/december/ COSDecl3.pdf.

370 S.D. N.Y. (5,183); S.D. Tex. (702); C.D. Cal. (3,042); N.D. Cal. (836); W.D. Wash. (781); S.D. Fla. (1,044). See Table F-8, note 99 supra.

371 See Table C-5, note 368 supra.

372 See Table F-8, note 99 supra.
year in that district.\textsuperscript{373}

The willingness of district court judges to grant those motions to withdraw the reference was also unexpected. Courts have suggested that such a motion should not be granted without “compelling” circumstances.\textsuperscript{374} Congress intended that, as a general matter, bankruptcy cases and proceedings should be adjudicated in the bankruptcy courts; “cause” for withdrawing those matters from the bankruptcy court is intended to be read narrowly to avoid the exception swallowing the rule.\textsuperscript{375} Yet despite the rigor of the standards for mandatory and permissive withdrawal, the study showed that in every circuit,\textsuperscript{376} and in almost every district in which four or more motions were made,\textsuperscript{377} more motions to withdraw the reference were granted than denied. Surprisingly, the district courts in California are the least likely to grant such motions, and still are deluged with more motions to withdraw than district courts in any other state.

District courts should follow the example of the district courts in California, and apply the requirements for withdrawal of the reference more strictly, whether or not there is opposition to the motion, and whether or not a jury trial is demanded. The district courts should certainly grant motions in the case of mandatory withdrawal, and when an appropriate jury trial demand has been made and the proceeding is ready for that trial. But in cases where a motion for permissive withdrawal is made, the district court should consider that the statutory allocation of responsibility between the district courts and bankruptcy courts with respect to bankruptcy jurisdiction creates a strong presumption that a matter should remain in the bankruptcy court unless there is a compelling reason to withdraw the reference. Congress did not intend that litigants should be able to choose to move from the bankruptcy courts to the district courts at their pleasure, even if both parties would prefer that venue. Nor did Congress mandate immediate withdrawal of the reference every time a litigant mentions the words “jury trial.” If district courts were more willing to deny motions to withdraw the reference and take advantage of the experience and diligence of the bankruptcy bench,

\textsuperscript{373}Laddin; Lisenby; Ogier.


\textsuperscript{376}See chart at notes 227-247 supra.

\textsuperscript{377}See chart at notes 256-279 supra.
fewer litigants would make motions to withdraw the reference, and the bankruptcy system as a whole would operate more efficiently.
EXHIBIT A


MOTIONS TO WITHDRAW THE REFERENCE

Chesapeake Bay Enters., Inc. v. Chesapeake Trust, No. 3:13-cv-00344 (E.D. Va. May 29, 2013) ("Chesapeake")
Diamond Offshore Co. v. ATP Oil & Gas Corp., No. 4:13-cv-02799 (S.D. Tex. Sept. 17, 2013) ("Diamond Offshore")
In re EPD Inv. Co., No. 2:13-cv-03320 (C.D. Cal. May 9, 2013) ("Munoz-Flores")
Erchonia Corp. v. Primcogent Solutions LLC, No. 4:13-cv-00428 (N.D. Tex. May 24, 2013) ("Erchonia")
2015) MOTIONS TO WITHDRAW THE REFERENCE 447

In re Howrey LLP, No. 13-cv-03905 (N.D. Cal. Aug. 23, 2013) ("Howrey I")
In re Howrey LLP, No. 13-cv-03906 (N.D. Cal. Aug. 23, 2013) ("Howrey II")
In re Howrey LLP, No. 13-cv-03907 (N.D. Cal. Aug. 23, 2013) ("Howrey III")
In re Howrey LLP, No. 13-cv-03909 (N.D. Cal. Aug. 23, 2013) ("Howrey IV")
In re Howrey LLP, No. 13-cv-03910 (N.D. Cal. Aug. 23, 2013) ("Howrey V")
In re Howrey LLP, No. 13-cv-03911 (N.D. Cal. Aug. 23, 2013) ("Howrey VI")
In re Howrey LLP, No. 13-cv-03912 (N.D. Cal. Aug. 23, 2013) ("Howrey VII")
Keba Energy LLC v. ATP Oil & Gas Corp., No. 4:13-cv-01189 (S.D. Tex. Apr. 25, 2013) ("Keba")
Lain v. King & Spalding LLP, No. 3:13-cv-01281 (M.D. Tenn. Nov. 18, 2013) ("Lain")
In re LLS Am. LLC (Krieger v. 685937 BC Ltd.), No. 2:13-cv-00012 (E.D. Wash. Jan. 9, 2013) ("LLS II")
In re LLS Am. LLC (Krieger v. Sumlin), No. 2:13-cv-00014 (E.D. Wash. Jan. 9, 2013) ("LLS IV")
In re LLS Am. LLC (Krieger v. Hasty Living Trust), No. 2:13-cv-00016 (E.D. Wash. Jan. 9, 2013) ("LLS VI")
Macquarie Invs. LLC v. ATP Oil & Gas Corp., No.4:13-cv-01188 (S.D. Tex. Apr. 25, 2013) ("Macquarie")
Motions to Withhold the Reference

Magnesium Corp. of Am. v. Renco Group, Inc., No. 1:13-cv-07948 (S.D.N.Y. Nov. 7, 2013) ("Renco")
McKean, Chrycy Fletcher & Co v. Welt, No. 0:13-mc-60433 (S.D. Fla. Feb. 25, 2013) ("McKean")
Nakamura v. Clark, No. 5:13-mc-00831 (W.D. Tex. Sept. 11, 2013) ("Nakamura")
NMFC LLC v. Etting, No. 7:13-cv-01052 (D.S.C. Apr. 18, 2013) ("NMFC")
MOTIONS TO WITHDRAW THE REFERENCE

2015)

Pro-Pac Inc. v. WOW Logistics Co., No. 2:13-cv-00902 (E.D. Wis. Aug. 8, 2013) (“Pro-Pac”)


In re R2D2 LLC, No. 2:13-cv-02740 (C.D. Cal. Apr. 18, 2013) (“R2D2”)


451
T3 Troy, LLC v. SPQR Capital (Cayman) Ltd., No. 1:13-cv-03977 (S.D.N.Y. June 11, 2013) ("T3")
In re Vaccaro, No. 4:13-cv-05424 (N.D. Cal. Nov. 21, 2013) ("Vaccaro")