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Motions to Withdraw the Reference - An Empirical Study

by

Laura B. Bartell*

One of the key provisions of the Judicial Code enacted by the Bankruptcy Amendments and Federal Judgeship Act of 1984¹ to address the constitutional infirmities of the jurisdictional provisions of the Bankruptcy Reform Act of 1978² was 28 U.S.C. § 157(d). That section empowers, 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.*,³ the Supreme Court found that the broad jurisdictional grant to bankruptcy courts set forth in 28 U.S.C. § 1471(b)⁴ 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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¹Pub. L. No. 98-353, 98 Stat. 333 (1984) (the “1984 Amendments”).

²Pub. L. No. 95-598, 92 Stat. 2549 (1978).

³458 U.S. 50 (1982).

⁴At 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.”

cle 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.⁵ "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,'"⁶ 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.⁷ 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,⁸ 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."⁹

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.¹⁰ The key issue, according to the plurality, was whether the Article III district court retained "the essential attributes of the judicial power."¹¹ 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.

⁸U.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.¹² Comparing the bankruptcy court with the administrative agency challenged in *Crowell v. Benson*¹³ and the U.S. magistrates considered in *United States v. Raddatz*,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.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.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.¹⁷

The Supreme Court stayed the effective date of its *Northern Pipeline* judgment first to October 4, 1982,¹⁸ and then to December 24, 1982,¹⁹ 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 *Northern Pipeline*.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.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.²² In "related proceedings,"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

¹²*Id.* at 81.

¹³285 U.S. 22 (1932).

¹⁴447 U.S. 667 (1980).

¹⁵*Northern Pipeline*, 458 U.S. at 86-87.

¹⁶*Id.* at 91 (Rehnquist, J., concurring).

¹⁷*Id.*

¹⁸*Id.* at 88.

¹⁹459 U.S. 813 (1982).

²⁰The Emergency Rule adopted by the district courts in the Sixth Circuit is set out in full as an appendix to *White Motor Corp. v. Citibank, N.A.*, 704 F.2d 254 (6th Cir. 1983).

²¹*Id.* at 265-66.

²²*Id.* at 266.

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").

judgment or order to the district court.²⁴ In other proceedings, the bankruptcy court's orders and judgments were final, subject to de novo review by the district court.²⁵

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.²⁶ 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,"²⁷ to serve as "judicial officers of the United States district court established under Article III of the Constitution."²⁸ 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.²⁹ The concept of "referral" was a familiar one to Congress: a similar approach had been used in the Federal Magistrates Act.³⁰ Under that act, a district court could designate a magistrate judge to hear and determine nondispositive pretrial matters,³¹ and to conduct hearings (but not enter a final judgment unless the parties consented³²) in dispositive pretrial matters.³³ 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.³⁴

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"³⁵ arising under title 11 or arising in a case under

²⁴*Id.*

²⁵*Id.* 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.

²⁷28 U.S.C. § 151.

²⁸*Id.* § 152(a)(1).

²⁹*Id.* § 157(a).

³⁰28 U.S.C. § 631-39.

³¹*Id.* § 636(b)(1)(A).

³²*Id.* § 636(c).

³³*Id.* § 636(b)(1)(B).

³⁴*Id.* § 636(b)(1).

³⁵"Core proceedings" were defined as follows:

"Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

title 11.³⁶ 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,³⁷ unless the parties consented.³⁸ 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.”³⁹ 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.”⁴⁰ The district court was permitted to withdraw the reference to the

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- (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.”

Id. § 157(b)(2). The list was expanded by amendments included in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 to add clause (P), the “recognition of foreign proceedings and other matters under chapter 15 of title 11.” Pub. L. No. 109-8, § 802(c)(1), 119 Stat. 23 (2005).

³⁶*Id.* § 157(b)(2).

³⁷*Id.* § 157(c)(1).

³⁸*Id.* § 157(c)(2).

³⁹*Id.* § 157(c)(1).

⁴⁰*Id.* § 157(d) (second sentence). This is familiarly known as “mandatory withdrawal of the reference.”

bankruptcy court, in whole or in part, “for cause shown.”⁴¹ 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.”⁴²

The jurisdictional scheme enacted by the 1984 Amendments survived without major challenge⁴³ until the Supreme Court decision in *Stern v. Marshall*.⁴⁴ 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.⁴⁵ 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.”⁴⁶ 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.”⁴⁷

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

⁴¹*Id.* § 157(d) (first sentence). This is known as “permissive withdrawal of the reference.”

⁴²*Id.* § 157(e).

⁴³In *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.

⁴⁴131 S. Ct. 2594 (2011).

⁴⁵*Id.* at 2611.

⁴⁶*Id.* at 2614.

⁴⁷*Id.* at 2618.

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,

⁴⁸*Id.* at 2619 (quoting *Commodity Futures Trading Comm’n v. Schor*, 478 U.S. 833, 851 (1986)).

⁴⁹*Id.* at 2620.

⁵⁰*See, e.g.,* *Gecker v. Flynn (In re Emerald Casino, Inc.)*, 467 B.R. 128, 132-33 (N.D. Ill. 2012); *In re Olde Prairie Block Owner, LLC*, 457 B.R. 692, 698-99 (Bankr. N.D. Ill. 2011); *Stoebner v. PNY Technologies, Inc. (In re Polaroid Corp.)*, 451 B.R. 493, 496 (Bankr. D. Minn. 2011).

⁵¹*See, e.g.,* *Albert v. Site Management, Inc.*, 506 B.R. 453, 458-459 (D. Md. 2014); *In re CorrLine Int’l, LLC*, 516 B.R. 106, 136-37 (Bankr. S.D. Tex. 2014); *In re Thongta*, 480 B.R. 317, 318-19 (Bankr. E.D. Wis. 2012); *Burns v. Dennis (In re Southeastern Materials, Inc.)*, 467 B.R. 337, 358 (Bankr. M.D.N.C. 2012); *West v. Davis (In re Davis)*, No. 11-10879, 2012 WL 3292944 (Bankr. M.D.N.C. Aug. 10, 2012); *McClelland v. Grubb & Ellis Valuation & Advisory Grp. (In re McClelland)*, 460 B.R. 397, 407 (Bankr. S.D.N.Y. 2011); *Husky Int’l Electronics, Inc. v. Ritz (In re Ritz)*, 459 B.R. 623, 631 (Bankr. S.D. Tex. 2011).

⁵²*See, e.g., In re Woods*, 517 B.R. 106, 115-16 (Bankr. N.D. Ill. 2014); *In re Smith*, No. 12-10142, 2013 WL 665991, at *1 (Bankr. D. Vt. Feb. 22, 2013); *Souther v. Bacon County Health Servs., Inc. (In re*

§ 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

Matrix Imaging Servs., Inc.), 479 B.R. 182, 189-90 (Bankr. S.D. Ga. 2012); *Yellow Sign, Inc. v. Freeway Foods, Inc. (In re Freeway Foods of Greensboro, Inc.)*, 466 B.R. 750, 769, 771-72 (Bankr. E.D.N.C. 2012); *In re Borin*, 461 B.R. 719, 720 (Bankr. W.D. Mich. 2011).

⁵³See, e.g., *Int'l Tobacco Partners, Ltd., v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 391-92 (Bankr. E.D.N.Y. 2011); see generally Alec P. Ostrow, *Let Us Sternly Marshal the Case for Mostly Constitutional Core Jurisdiction*, 2012 NORTON ANN. SURV. BANKR. LAW 2 at n. 132 (2012).

⁵⁴See, e.g., *Shaia v. Taylor (In re Connelly)*, 476 B.R. 223, 230 (Bankr. E.D. Va. 2012); *Southeastern Materials*, 467 B.R. at 353-57; *In re Larkins*, No. 11-18295, 2012 WL 1378470, at *1 (Bankr. N.D. Ohio Apr. 19, 2012); *In re Miller*, No. 10-15891, 2011 WL 3741846, at *1 (Bankr. N.D. Ohio Aug. 24, 2011); *Int'l Tobacco Partners*, 462 B.R. at 392.

⁵⁵See, e.g., *Martino v. Miskowicz (In re Miskowicz)*, 513 B.R. 553, 556-57 (Bankr. N.D. Ill. 2014); *Shurn v. Gilbert (In re Gulf Coast Glass & Erection Co.)*, 484 B.R. 685, 692 (Bankr. S.D. Tex. 2013); *KHI Liquidation Trust v. Wisenbaker Builder Servs., Inc. (In re Kimball Hill, Inc.)*, 480 B.R. 894, 905-06 (Bankr. N.D. Ill. 2012); *West v. Freedom Med., Inc. (In re Apex Long Term Acute Care-Katy, L.P.)*, 465 B.R. 452, 468 (Bankr. S.D. Tex. 2011); but see *Pryor v. Tromba*, No. 13-CV-676, 2014 WL 1355623, at *7 (E.D.N.Y. Apr. 7, 2014); *Carroll v. Raynor (In re Innovative Communication Corp.)*, No. 3:07-30012, 2013 WL 26313744, at *5 (D.V.I. June 12, 2013); *Penson Fin. Servs. v. O'Connell (In re Arbco Capital Mgmt., LLP)*, 479 B.R. 254, 265-66 (S.D.N.Y. 2012); *In re Am. Hous. Found.*, 469 B.R. 257 (Bankr. N.D. Tex. 2012) (stating that preference claims, when coupled with fraudulent transfer claims, are beyond constitutional authority of bankruptcy courts to decide). See also *Murphy v. Felice (In re Felice)*, 480 B.R. 401, 428 (Bankr. D. Mass. 2012) (holding that the bankruptcy court has constitutional authority to enter final judgment on a claim to recover an unauthorized postpetition transfer under § 549).

⁵⁶See, e.g., *In re Medlar*, No. 11-17909, 2013 WL 6152324, at *2 n.1 (Bankr. N.D. Ohio Nov. 22, 2013); *Meoli v. Huntington Nat'l Bank (In re Teleservices Grp., Inc.)*, 456 B.R. 318, 335-36 (Bankr. W.D. Mich. 2012); *In re Ramsey*, No. 10-16609, 2011 WL 2680575, at *1 (Bankr. N.D. Ohio July 7, 2011).

⁵⁷See, e.g., *H. Brooks & Co. v. Yerges (In re Yerges)*, 512 B.R. 916, 918 (Bankr. W.D. Wis. 2014); *Karr Plex, Ltd. v. Hollier (In re Hollier)*, No. 09-51789, 2014 WL 4198907, at *1 (Bankr. W.D. La. Aug. 22, 2014); *Gilley v. Sec. & Exch. Comm'n (In re Gilley)*, No. 12-11443, 2013 WL 690818, at *2 (Bankr. M.D.N.C. Feb. 26, 2013); *Husky Int'l Electronics, Inc. v. Ritz (In re Ritz)*, 459 B.R. 623, 631 (Bankr. S.D. Tex. 2011); *Gila Reg'l Med. Ctr. v. Lobera (In re Lobera)*, No. 7-10-13203-SL, 2012 WL 3263730, at *7-8 (Bankr. D. N.M. Aug. 9, 2012); *First Horizon Home Loan Corp. v. Apostle (In re Apostle)*, 467 B.R. 433, 436 (Bankr. W.D. Mich. 2012); *Groves v. Duke (In re Duke)*, No. 11-51521, 2012 WL 4506662, at *2 (Bankr. M.D.N.C. Sept. 28, 2012); *Ramsey*, 2011 WL 2680575, at *1.

⁵⁸See, e.g., *Hollier*, 2014 WL 4198907, at *1; *Wan Ho Indus. Co., v. Hemken (In re Hemken)*, 513 B.R. 344, 349 (Bankr. E.D. Wis. 2014).

⁵⁹See, e.g., *DeGiacomo v. Traverse (In re Traverse)*, 485 B.R. 815, 818-19 (B.A.P. 1st Cir. 2013), *rev'd on other grounds*, 753 F.3d 19 (1st Cir.), *cert. denied*, 135 S.Ct. 459 (2014); *Res. Funding, Inc. v. Pac. Cont'l Bank (In re Washington Coast I, L.L.C.)*, 485 B.R. 393, 405-06 (B.A.P. 9th Cir. 2012); *GMAC Mortgage, LLC v. Orcutt*, 506 B.R. 52, 60-64 (D. Vt. 2014); *Green Tree Servicing LLC v. Fleishhauer (In re Staggs)*, No. 12-60517-13, 2014 WL 1796664, at *1 (Bankr. D. Mont. May 6, 2014); *Albracht v. Hamilton State Bank (In re Albracht)*, 505 B.R. 347 (Bankr. N.D. Ga. 2013); *Gonzales v. La Vista Homeowners' Ass'n (In re Potter)*, No. 7-05-14071-TRC, 2013 WL 2897036, at *1-2 (Bankr. D.N.M. June 12, 2013); *Fleury v. Specialized Loan Servicing, LLC*, No. 11-26987-E-13, 2011 WL 4851141, at *1-2 (Bankr. E.D. Cal. Oct. 6, 2011); *Int'l Tobacco Partners, Ltd., v. Ohio (In re Int'l Tobacco Partners, Ltd.)*, 462 B.R. 378, 391-92 (Bankr. E.D.N.Y. 2011); *Tibble v. Wells Fargo Bank, N.A. (In re Hudson)*, 455 B.R. 648 (Bankr. W.D. Mich. 2011).

plan confirmation disputes, § 157(b)(2)(L);⁶⁰ orders regarding the sale, lease, or use of property, § 157(b)(2)(M) and (N);⁶¹ and other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor relationship, § 157(b)(2)(O).⁶² (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

⁶⁰See, e.g., *In re Batista-Sanchez*, 505 B.R. 222, 224 (Bankr. N.D. Ill. 2014); *In re Scott*, No. 13-12135, 2013 WL 5567319, at *1 (Bankr. N.D. Ohio Oct. 9, 2013); *In re Safety Harbor Resort & Spa*, 456 B.R. 703, 716 (Bankr. M.D. Fla. 2011).

⁶¹See, e.g., *Traverse*, 485 B.R. at 818-19; *Falck Props., LLC v. Parkvale Fin. Corp. (In re Brownsville Property Corp.)*, 469 B.R. 216, 224 (Bankr. W.D. Pa. 2012).

⁶²See, e.g., *Neilson v. Monterey Cnty. Bank (In re Cedar Funding, Inc.)*, No. C-12-00643, 2012 WL 3309683, at *5 (N.D. Cal. Aug. 13, 2012); *S. Elec. Coil, LLC v. FirstMerit Bank, N.A.*, No. 11 C 6135, 2011 WL 6318963, at *3-4 (N.D. Ill. Dec. 16, 2011); *In re CorrLine Int'l, LLC*, 516 B.R. 106, 136-37 (Bankr. S.D. Tex. 2014); *In re Webb*, No. 07-13703, 2012 WL 3638005, at *1 (Bankr. N.D. Ohio Aug. 22, 2012); *Int'l Tobacco Partners*, 462 B.R. at 392; *Husky Int'l Electronics, Inc. v. Ritz (In re Ritz)*, 459 B.R. 623, 631 (Bankr. S.D. Tex. 2011); but see *DeGirolamo v. Devonshire Fund, LLC (In re Myers)*, No. 11-61426, 2013 WL 6080270, at *6 (Bankr. N.D. Ohio Nov. 18, 2013).

⁶³*Compare Miller v. Enviro Care, Inc. (In re Rock Structures Excavating, Inc.)*, No. 2:12-CV-856, 2013 WL 1284969, at *5 (D. Utah Mar. 27, 2013); Official Committee of Unsecured Creditors of Appalachian Fuels, LLC v. Energy Coal Res., Inc. (*In re Appalachian Fuels, LLC*), 472 B.R. 731, 741 (E.D. Ky. 2012); *Burtch v. Seaport Capital, LLC (In re Direct Response Media, Inc.)*, 466 B.R. 626, 646 (Bankr. D. Del. 2012); *In re Safety Harbor Resort & Spa*, 456 B.R. 703, 718 (Bankr. M.D. Fla. 2011); *Heller Ehrman LLP v. Arnold & Porter, LLP (In re Heller Ehrman, LLP)*, No. 08-32514, 2011 WL 4542512, at *6 (Bankr. N.D. Cal. Sept. 28, 2011) (holding that bankruptcy court has constitutional power to enter final judgment in fraudulent transfer proceedings) with *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553, 562 (9th Cir. 2012), *aff'd on other grounds*, 134 S.Ct. 2165 (2014); *Feldman v. ABN Amro Mortg. Grp. Inc.*, 515 B.R. 443, 448-51 (E.D. Pa. 2014); *Carroll v. Raynor (In re Innovative Communication Corp.)*, No. 3:07-30012, 2013 WL 2631344, at *5 (D.V.I. June 12, 2013); *Kirschner v. Agoglia*, 476 B.R. 75, 81 (S.D.N.Y. 2012); *Rosenberg v. Bookstein*, 479 B.R. 584, 589 (D. Nev. 2012); *Adelphia Recovery Trust v. FLP Grp., Inc.*, No. 11 Civ. 6847, 2012 WL 264180, at at *4 (S.D.N.Y. Jan. 30, 2012); *Penson Fin. Servs., Inc. v. O'Connell (In re Arbco Capital Mgmt., LLP)*, 479 B.R. 254, 264 (S.D.N.Y. 2012); *Gibson v. Tucker (In re G & S Livestock Co.)*, 478 B.R. 906, 915-916 (S.D. Ind. 2012); *McCarthy v. Wells Fargo Bank, N.A. (In re El-Atari)*, No. 1:11cv1090, 2011 WL 5828013, at *2 (E.D. Va. Nov. 18, 2011); *In re Am. Hous. Found.*, 469 B.R. 257, 267-68 (Bankr. N.D. Tex. 2012); *Burns v. Dennis (In re Southeastern Materials, Inc.)*, 467 B.R. 337, 361-67 (Bankr. M.D.N.C. 2012); *Meoli v. Huntington Nat'l Bank (In re Teleservices Grp., Inc.)*, 456 B.R. 318, 338 (Bankr. W.D. Mich. 2012); *Heller Ehrman LLP v. Arnold & Porter, LLP (In re Heller Ehrman LLP)*, 464 B.R. 348, 354 (Bankr. N.D. Cal. 2011) (concluding that fraudulent conveyance claims brought under against a noncreditor are governed by *Stern*). See also *Boyd v. King Par, LLC*, No. 11-1106, 2011 WL 5509873 (W.D. Mich. Nov. 10, 2011) (noting the split in authority but not stating a conclusion). See generally Joshua C. Gerber, Note, “Why the Fuss?": *Stern v. Marshall and the Supreme Court's Understanding of Bankruptcy Court Jurisdiction*, 78 BROOKLYN L. REV. 989, 1021-1025 (2013) (arguing that the minority position is correct).

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,⁶⁴ most courts quickly concluded that they had the authority to do so.⁶⁵ 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.⁶⁶

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.

⁶⁴See *Samson v. Blixseth* (*In re Blixseth*), No. 09-60452-7, 2011 WL 3274042, at *12 (Bankr. D. Mont. Aug. 1, 2011) (holding that the bankruptcy court cannot constitutionally hear a fraudulent transfer claim), amended by 463 B.R. 896, 906 (Bankr. D. Mont. 2012) (holding that the bankruptcy court has subject matter jurisdiction over such claims).

⁶⁵See, e.g., *Osborne v. Kadoch* (*In re Aurora Capital, Inc.*, No. 12-61421, 2013 WL 2156821, at *4 (S.D. Fla. May 17, 2013); *Rothrock v. PNC Bank, N.A.* (*In re Parco Merged Media Corp.*), 489 B.R. 323, 326-327 (D. Me. 2013); *Arbco Capital Mgmt.*, 479 B.R. at 258; *Blixseth v. Brown*, 470 B.R. 562, 572 (D. Mont. 2012); *Adelphia Recovery Trust*, 2012 WL 264180, at *6; *Res-Ga Four LLC v. Avalon Builders of Ga. LLC*, No. 5:10-CV-463, 2012 WL 13544, at *10 (M.D. Ga. Jan. 4, 2012); *Paloian v. Am. Express Co.* (*In re Canopy Fin., Inc.*), 464 B.R. 770, 775 (N.D. Ill. 2011); *Field v. Lindell* (*In re Mortg. Store, Inc.*), 464 B.R. 421, 428 (D. Hawaii 2011); *Heller Ehrman*, 464 B.R. at 354-361 *El-Atari*, 2011 WL 5828013, at *4; *Tolliver v. Bank of America* (*In re Tolliver*), 464 B.R. 720, 734-35 (Bankr. E.D. Ky. 2012); *Justmed, Inc. v. Byce* (*In re Byce*), No. 1:11-cv-00378, 2011 WL 6210938, at *5 (D. Idaho Dec. 14, 2011); *D & B Swine Farms, Inc. v. Murphy-Brown, L.L.C.* (*In re D & B Swine Farms, Inc.*), No. 09-02813-8-JRL, 2011 WL 6013218, at *3 (Bankr. E.D.N.C. Dec. 2, 2011).

⁶⁶See, e.g., Amended Standing Order of Reference (D. Del. Feb. 29, 2012); Standing Order of Reference, No. 6:12-MC-26-ORL-22 (M.D. Fla. Feb. 22, 2012); Standing Order of Reference Regarding Title 11 (N.D. Fla. June 5, 2012); *In re Bankruptcy Proceedings*, No. 2012-25 (S.D. Fla. Mar. 27, 2012); Amended Standing Order of Reference (M.D. Ga. Feb. 21, 2012); Standing Order No. 13-1 (D. Kan. June 24, 2013); Standing Order of Reference to the Bankr. Court under Title 11, No. 12-1 (D.N.J. Sept. 18, 2012); Referral of Matters to the Bankruptcy Judges (E.D.N.Y. Dec. 5, 2012); Standing Order of Reference, 12 Misc. 00032 (S.D.N.Y. Jan. 31, 2012); Standing Order of Reference (W.D.N.Y. Feb. 29, 2012); Amended Standing Order of Reference, No. 3:14mc44 (W.D.N.C. Apr. 14, 2014); Standing Order Concerning Title 11 Proceedings (D.S.C. Dec. 4, 2013); Amended Standing Order of Reference (D. Vt. June 22, 2012). The language is almost identical in all these orders:

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.⁶⁹ 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.

⁶⁷134 S. Ct. 2165 (2014).

⁶⁸*Id.* at 2173.

⁶⁹*Id.* at 2175.

⁷⁰*Id.*

⁷¹The 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.

⁷²135 S. Ct. 1932 (2015).

⁷³*Id.* at 1939.

⁷⁴See part IV *infra*. See generally Tyson A. Crist, *Stern v. Marshall: Application of the Supreme Court's Landmark Decision in the Lower Courts*, 86 AM. BANKR. L.J. 627, 644-47 (2012).

III. STANDARDS FOR GRANTING MOTIONS TO WITHDRAW THE REFERENCE

As previously discussed,⁷⁵ 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.”⁷⁶ 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.”⁷⁷

Although the literal language of the mandatory withdrawal provision would seem to require withdrawal of a great many bankruptcy proceedings,⁷⁸ 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.”⁷⁹ The court must be required to interpret the federal law, not merely apply it, to resolve the proceeding before withdrawal is required.⁸⁰ In addition, mandatory withdrawal is limited to cases in which

⁷⁵See *supra* notes 40-41 and accompanying text.

⁷⁶28 U.S.C. § 157(d) (second sentence).

⁷⁷*Murray v. Warren County Sheriff's Dept.* (*In re Avtex Fibers-Font Royal, Inc.*), No. 90-20290T, 1991 WL 25460, at *2 (E.D. Pa. Feb. 26, 1991).

⁷⁸The mandatory withdrawal provisions are applicable only to “proceedings,” not to the bankruptcy case as a whole. See, e.g., *Manila Indus. Inc. v. Ondova Ltd.*, No. 3:09-CV-1551-RF, 2009 WL 3673026, at *1 (N.D. Tex. Nov. 3, 2009).

⁷⁹*In re White Motor Corp.*, 42 B.R. 693, 703, 704 (N.D. Ohio. 1984). See also *Shugrue v. Air Line Pilots Ass'n* (*In re Ionosphere Clubs, Inc.*), 922 F.2d 984, 995 (2d Cir. 1990); *Schwab v. Capital Blue Cross*, No. 3:13-1772, 2013 WL 3947125, at *1 (M.D. Pa. Aug. 1, 2013); *Federated Dept. Stores, Inc. v. U.S. Envtl. Prot. Agency* (*In re Federated Dept. Stores, Inc.*), 189 B.R. 142, 144 (S.D. Ohio 1995); *Am. Body Armor & Equip., Inc. v. Clark* (*In re Am. Body Armor & Equip., Inc.*), 155 B.R. 588, 590 (M.D. Fla. 1993); *Carter Day Indus., Inc. v. U.S. Envtl. Prot. Agency* (*In re Combustion Equip. Assocs., Inc.*), 67 B.R. 709, 711-12 (S.D.N.Y. 1986).

⁸⁰See, e.g., *In re Vicars Ins. Agency, Inc.* 96 F.3d 949, 954 (7th Cir. 1993); *City of New York v. Exxon Corp.*, 932 F.2d 1020, 1026 (2d Cir. 1991); *Greenspan v. Paul Hastings Janofsky & Walker LLP*, No. C12-01148, 2012 WL 3283516, at *4 (N.D. Cal. Aug. 10, 2012); *Am. Freight Sys., Inc. v. Interstate Comm'n* (*In re Am. Freight Sys., Inc.*), 150 B.R. 790, 793 (D. Kan. 1993).

the federal law at issue regulates interstate commerce. Therefore, only if the laws are “rooted in” the Commerce Clause of the Constitution⁸¹ will the district court be required to withdraw the reference.⁸² Courts have uniformly rejected the contention that the district court must withdraw the reference of any proceedings that the bankruptcy judge cannot constitutionally decide under *Stern*.⁸³

The permissive withdrawal provision permits the district court to withdraw all or any part of a case or proceeding “for cause shown.”⁸⁴ 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.”⁸⁵ The Second Circuit in the *Orion Pictures* case⁸⁶ 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.”⁸⁷ Because it was assumed at the time *Orion* was decided that bankruptcy judges could hear and determine all core matters, the Second Cir-

⁸¹U.S. Const. Art. I, § 8, cl. 3 empowers Congress to “regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

⁸²*See, e.g., In re Ziviello-Howell*, No. 2:11-cv-00916, 2011 WL 2144417, at *2-3 (E.D. Cal. May 31, 2011); *S. Pac. Transp. Co. v. Voluntary Purchasing Grps., Inc.* 252 B.R. 373, 382 (E.D. Tex. 2000); *Hatzel & Buehler, Inc. v. Orange & Rockland Utilities, Inc.* 107 B.R. 34, 38 (D. Del. 1989); *U.S. v. ILCO, Inc.*, 48 B.R. 1016, 1021-22 (N.D. Ala. 1985). *See generally* Erich D. Andersen, *Closing the Escape Hatch in the Mandatory Withdrawal Provision of 28 U.S.C. § 157(d)*, 36 UCLA L. REV. 417, 422-24 (1988).

⁸³*See, e.g., Gecker v. Flynn (In re Emerald Casino, Inc.)*, 467 B.R. 128, 133 (N.D. Ill. 2012); *Heller Ehrman LLP v. Arnold & Porter, LLP (In re Heller Ehrman LLP)*, 464 B.R. 348, 354-57 (N.D. Cal. 2012); *Greenspan*, 2012 WL 3283516, at *3; *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, No. 12-C-0295, 2012 BL 233386 at *5 (E.D. Wis. Sep[t. 7, 2012]; *Walker, Truesdell, Roth & Assocs. v. Blackstone Grp., L.P. (In re Extended Stay, Inc.)*, 466 B.R. 188, 200-202 (S.D.N.Y. 2011); *Justmed, Inc. v. Byce (In re Byce)*, No. 1:11-cv-00378, 2011 WL 6210938, at *2-4 (D. Idaho Dec. 14, 2011); *McCarthy v. Wells Fargo Bank, N.A. (In re El-Atari)*, No. 1:11cv1090, 2011 WL 5828013, at *3-7 (E.D. Va. Nov. 18, 2011); *Kelley v. JPMorgan Chase & Co.*, 464 B.R. 854, 863 (D. Minn. 2011).

⁸⁴28 U.S.C. § 157(d) (first sentence).

⁸⁵*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)*, 453 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).

⁸⁶*Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095 (2d Cir. 1993).

⁸⁷*Id.* at 1101.

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.”⁸⁸ 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.”⁸⁹ After the Supreme Court’s decision in *Stern*, 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.⁹⁰

If one of the parties files a jury demand, and all parties do not consent to a jury trial in the bankruptcy court,⁹¹ cause for withdrawal is established.⁹² 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.⁹³

IV. MOTIONS TO WITHDRAW THE REFERENCE—AN EMPIRICAL ANALYSIS

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

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰*See, e.g.,* Kirschenbaum v. Fed. Ins. Co. (*In re* EMS Fin. Servs., LLC), 491 B.R. 196, 202 (E.D.N.Y. 2013); Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC, 486 B.R. 579, 582 & n.1 (S.D.N.Y. 2013); Dev. Specialists, Inc. v. Akin Gump Strauss Hauer & Feld LLP, 462 B.R. 457, 467 (S.D.N.Y. 2011); Dynegy Danskammer, L.L.C. v. Peabody COALTRADE Int’l Ltd., 905 F. Supp. 2d 526, 530 (S.D.N.Y. 2012); Penson Fin. Servs., Inc. v. O’Connell (*In re* Arbco Capital Mgmt., LLP), 479 B.R. 254, 262 (S.D.N.Y. 2012).

⁹¹Under 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.”

⁹²*See, e.g.,* Manning v. Methodist Hosps., Inc. (*In re* Merrillville Surgery Ctr., LLC), No. 2:12-CV-253, 2012 WL 3732855, at *3 (N.D. Ind. Aug. 28, 2012); Manley Truck Line, Inc. v. Mercantile Bank of Kansas City, 106 B.R. 696, 697 (D. Kan. 1989).

⁹³*See, e.g.,* Sigma Micro Corp. v. Healthcentral.com (*In re* Healthcentral.com), 504 F.3d 775, 787 (9th Cir. 2007); Loveridge v. Hall (*In re* Renewable Dev. Corp.), 500 B.R. 77, 92 (D. Utah 2013); Osborne v. Kadoch (*In re* Aurora Capital, Inc., No. 12-61421, 2013 WL 2156821, at *2 (S.D. Fla. May 17, 2013); Lehman Bros. Holdings Inc. v. JPMorgan Chase Bank, N.A. (*In re* Lehman Bros. Holdings Inc.), 480 B.R. 179, 194-195 (S.D.N.Y. 2012); Official Committee of Unsecured Creditors v. Nat’l Patent Dev. Corp. (*In re* TMG Liquidation Co.), No. 7:12-629, 2012 WL 1986526, at *3 (D.S.C. June 4, 2012); Carpenter v. US Bank, NA (*In re* Carpenter), No. 12-21, 2012 WL 5990222, at *3-4 (W.D. Pa. Nov. 30, 2012); McCarthy v. Wells Fargo Bank, N.A. (*In re* El-Atari), No. 1:12-cv-01237, 2012 WL 6020110, at *6 (E.D. Va. Nov. 27, 2012); Boyd v. King Par, LLC, No. 1:11-CV-1106, 2011 WL 5509873, at *2 (W.D. Mich. Nov. 10, 2011); Lattig v. 820 Mgmt. Trust (*In re* Lake At Las Vegas Joint Venture), No. 2:10-cv-1679, 2011 WL 1303216 (D. Nev. Mar. 31, 2011); CDX Liquidating Trust v. Venrock Assocs., No. 04C7236, 2005 WL 3953895, at *4 (N.D. Ill. Aug. 10, 2005); Hassett v. BancOhio Nat’l Bank (*In re* CIS Corp.), 172 B.R. 748, 763-64 (S.D.N.Y. 1994).

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 year⁹⁴ for which motions to withdraw the reference had been filed with the district courts.⁹⁵ In doing 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.⁹⁶ I then eliminated any cases in

⁹⁴The 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.

⁹⁵In 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); N.D. Cal. 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. Cv. 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); M.D. Tenn. L.B.R. 5011-2(a); N.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. 5011-1(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 with 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(f); W.D. Mich. L.B.R. 5011(f); 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(e); 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. Va. L.B.R. 5011-1(E); 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).

⁹⁶Most 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).⁹⁷ 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.

⁹⁷For 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

⁹⁸Figures are taken from Table F-2, U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the Twelve-Month Period Ending December 31, 2013, available at <http://www.uscourts.gov/Statistics/BankruptcyStatistics/2013-bankruptcy-filings.aspx>.

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 Commenced, 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.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 circuit 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.

NUMBER OF MOTIONS TO WITHDRAW REFERENCE BY CIRCUIT												
Circuit	D.C.	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
Number	0	11 ¹⁰²	22 ¹⁰³	20 ¹⁰⁴	17 ¹⁰⁵	46 ¹⁰⁶	16 ¹⁰⁷	17 ¹⁰⁸	6 ¹⁰⁹	65 ¹¹⁰	14 ¹¹¹	19 ¹¹²

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

¹⁰¹See Table F-8, note 99, *supra*.

¹⁰²*Adams; Atlas; Cary; C.R. Stone; Cruickshank; Ng; Scarcelli; Schroder; Shaffer; Weiss; Yestramski.*

¹⁰³*Billet; Country Fare; Dreier; Federal Housing; Flaxer; Global Aviation; Kirschenbaum; Krahowski; Lehman I; Lehman II; LightSquared; McCord; Polverari; Refco; Renco; Ricoh I; Ricoh II; SageCrest I; SageCrest II; TPG; T3; USA United.*

¹⁰⁴*Allen; Bonarrigo; IH; Innova; Kretz; Lengyel; Majestic; Matheny; Okechuku; Peterson; Pressman; Raval; Schwab; Slobodian; Springel I; Springel II; Sun Capital; TH2; Transcontinental; WL Homes. IH and Sun Capital were both filed with respect to the same adversary proceeding.*

¹⁰⁵*Al Dosari; Applewood; Arzt; Bell Builders; BF Saul; Bullard; Canal Walk; Chesapeake; Gold; Jemsek; Lemons; McGuire; NMF; Plum Creek; Spencer; Viera; Warren.*

¹⁰⁶*Able Machine Works; Adventure Harbor; Alabama/Main; Ansung; Barra; Biesiada; Brown; Cage; Cailloet; Compton; Diamond Offshore; Englehart; Erchonia; Fulbright; Global Gaming; Hearthwood; Keba; Kite I; Kite II; Macquarie; Magnificent; Mcloba; Motamedi; Nakamura; Newhouse; Nguyen; Pal-Con; Parker; Romo; Santa Barbara; Seacor; Sojourner; 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.*

¹⁰⁷*Austin; Chambers; Cyber; Energy Conversion; Greektown; Grossman; Hauk; Laijin; Lain; Limor; Logan; Lucas; McKinstry; Posey; Timco; Villages.*

¹⁰⁸*Archdiocese I; Archdiocese II; Athos; Baldi; Desmond; Home Casual; H&P; Moglia; New Energy; PNC Bank; Pro-Pac; Pry; Pulsifer I; Pulsifer II; Steege; Triad Group; Triad Pharmaceuticals.*

¹⁰⁹*Calderon; Needler; Panther I; Panther II; Willson; Winkler.*

¹¹⁰*ABC; Azam; Bagley; Bell; Berg; Borton; 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; Impeva; Kirkland; Klein; Lancaster; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Locke; Marini; McZeal; Melcher; Melech; Munoz-Flores; New Meatco; Oracle; Parriott; Paulo; Prevost; Prior; Roll Tide I; Roll Tide II; Rosales; R2D2; Sanson; Scaccianoce; Sharp; Shengdatech; Sladky; SNTL; Taicom; Torchia; Vaccaro; Wilenchik; Zazzali.*

¹¹¹*Brown-Minneapolis; Chance; Gould; Hess; Jubber; Melot I; Melot II; SVS; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; Yee-Smith.*

¹¹²*ABN; Advanced Telecommunication; Agile I; Agile II; Beck; Gowdy; Herendeen; Laddin; Lisenby; Mansmann; McKean; Newman; Ogier; Petrano; Raimondo; Rosen; Saad; Stettin; Stevenson.*

filed,¹¹³ 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.*¹¹⁴ and *Quality Infusion Care Inc.*¹¹⁵ Similarly, all of the thirteen motions filed in the Western District of Washington were filed in just two cases, *LLS America*¹¹⁶ and *Meridian Investors Trust*.¹¹⁷ Of the fourteen motions filed in the Northern District of California, seven were filed in the bankruptcy case of *Howrey LLP*.¹¹⁸ Other districts that had multiple motions from single bankruptcy cases were the District of Massachusetts,¹¹⁹ the District of Connecticut,¹²⁰ the Eastern District of New York,¹²¹ the Southern District of New York,¹²² the District of Delaware,¹²³ the District of the Virgin Islands,¹²⁴ the District of Maryland,¹²⁵ the Western District of Louisiana,¹²⁶ the Northern District of Texas,¹²⁷ the Western District of Texas,¹²⁸ the Eastern District of Wisconsin,¹²⁹ the Western District of Arkansas,¹³⁰ the District of Arizona,¹³¹ the District of New Mexico,¹³² and the Southern District of Florida.¹³³ 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

¹¹³S.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 VI.*

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*IH; 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.¹³⁴

NUMBER OF MOTIONS TO WITHDRAW BY DISTRICT	
1st Circuit	11
D. Mass.	9 ¹³⁵
D. Me.	1 ¹³⁶
D.N.H.	0
D.R.I.	0
D.P.R.	1 ¹³⁷
2nd Circuit	22
D. Conn.	4 ¹³⁸
E.D.N.Y.	5 ¹³⁹
S.D.N.Y.	13 ¹⁴⁰
W.D.N.Y.	0
D. Vt.	0
3rd Circuit	20
D. Del.	6 ¹⁴¹
D.N.J.	6 ¹⁴²
E.D. Pa.	1 ¹⁴³
M.D. Pa.	5 ¹⁴⁴
W.D. Pa.	0
D.V.I.	2 ¹⁴⁵
4th Circuit	17
D. Md.	6 ¹⁴⁶
E.D.N.C.	1 ¹⁴⁷
M.D.N.C.	0
W.D.N.C.	2 ¹⁴⁸
D.S.C.	2 ¹⁴⁹

¹³⁴See discussion at note 283, *infra*.

¹³⁵*Adams; Cary; C.R. Stone; Cruickshank; Ng; Schroder; Shaffer; Weiss; Yestranski.*

¹³⁶*Scarcelli.*

¹³⁷*Atlas.*

¹³⁸*Country Fare; Polverari; SageCrest I; SageCrest II.*

¹³⁹*Billet; Global Aviation; Kirschenbaum; McCord; USA United.*

¹⁴⁰*Dreier; Federal Housing; Flaxer; Krakowski; Lehman I; Lehman II; LightSquared; Refco; Renco; Ricoh I; Ricoh II; TPG; T3.*

¹⁴¹*IH; Majestic; Matheny; Sun Capital; THQ; WL Homes.*

¹⁴²*Allen; Innova; Kretz; Oketchuku; Peterson; Raval.*

¹⁴³*Pressman.*

¹⁴⁴*Bonarrigo; Lengyel; Schwab; Slobodian; Transcontinental.*

¹⁴⁵*Springel I; Springel II.*

¹⁴⁶*Al Dosari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.*

¹⁴⁷*Warren.*

¹⁴⁸*Applewood; Jemsek.*

¹⁴⁹*NMFC; Viera.*

E.D. Va.	3 ¹⁵⁰
W.D. Va.	1 ¹⁵¹
N.D. W. Va.	0
S.D. W. Va.	2 ¹⁵²
5th Circuit	46
E.D. La.	4 ¹⁵³
M.D. La.	0
W.D. La.	3 ¹⁵⁴
N.D. Miss.	0
S. D. Miss.	0
E.D. Tex.	2 ¹⁵⁵
N. D. Tex.	9 ¹⁵⁶
S.D. Tex.	20 ¹⁵⁷
W.D. Tex.	8 ¹⁵⁸
6th Circuit	16
E.D. Ky.	1 ¹⁵⁹
W.D. Ky.	0
E.D. Mich.	7 ¹⁶⁰
W.D. Mich.	1 ¹⁶¹
N.D. Ohio	2 ¹⁶²
S.D. Ohio	2 ¹⁶³
E.D. Tenn.	0
M.D. Tenn.	3 ¹⁶⁴
W.D. Tenn.	0
7th Circuit	17
N.D. Ill.	6 ¹⁶⁵
C.D. Ill.	0

¹⁵⁰Arzt; Chesapeake; Gold.

¹⁵¹Plum Creek.

¹⁵²Lemons; McGuire.

¹⁵³Able Machine Works; Adventure Harbor; Caillouet; Magnificent.

¹⁵⁴Global Gaming; Kite I; Kite II.

¹⁵⁵Parker; TCB.

¹⁵⁶Ansung; Brown; Erchonia; Hearthwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.

¹⁵⁷Alabama/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.

¹⁵⁸Barra; Fulbright; Nakamura; Romo; Texas Sterling; UPH I; UPH II; UPH III.

¹⁵⁹McKinstry.

¹⁶⁰Austin; Chambers; Energy Conversion; Greektown; Hauk; Timco; Villages.

¹⁶¹Cyber.

¹⁶²Grossman; Laiqin.

¹⁶³Logan; Lucas.

¹⁶⁴Lain; Limor; Posey.

¹⁶⁵Athos; 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.	17 ¹⁷⁶
N.D. Cal.	15 ¹⁷⁷
S.D. Cal.	0
D. Hawaii	1 ¹⁷⁸
D. Idaho	1 ¹⁷⁹
D. Mont.	1 ¹⁸⁰

¹⁶⁶*New Energy.*

¹⁶⁷*Pry.*

¹⁶⁸*Archdiocese I; Archdiocese II; H&P; Pro-Pac; Pulsifer I; Pulsifer II; Triad Group; Triad Pharmaceuticals.*

¹⁶⁹*Home Casual.*

¹⁷⁰*Calderon; Panther I; Panther II.*

¹⁷¹*Willson.*

¹⁷²*Needler.*

¹⁷³*Winkler.*

¹⁷⁴*Clinica; Lancaster; Roll Tide I; Roll Tide II; Wilenchiq.*

¹⁷⁵*Bell; Dick; Prior; Sharp.*

¹⁷⁶*Azam; Cobe; Diamond Decisions; Edwards; Evergreen; Ginzburg; IES; Kirkland; Klein; McZeal; Munoz-Flores; New Meatco; Oracle; Paulo; R2D2; Scaccianoce; SNTL.*

¹⁷⁷*Hoskins; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Melcher; Rosales; Sladky; Taicom; Torchia; Vaccaro.*

¹⁷⁸*Field.*

¹⁷⁹*Zazzali.*

¹⁸⁰*Samson.*

D. Nev.	8 ¹⁸¹
D. Ore.	0
E.D. Wash.	0
W.D. Wash.	13 ¹⁸²
10th Circuit	14
D. Colo.	2 ¹⁸³
D. Kansas	2 ¹⁸⁴
D.N.M.	6 ¹⁸⁵
E.D. Okla.	0
N.D. Okla.	1 ¹⁸⁶
W.D. Okla.	1 ¹⁸⁷
D. Utah	2 ¹⁸⁸
D. Wyo.	0
11th Circuit	19
N.D. Ala.	0
M.D. Ala.	0
S.D. Ala.	2 ¹⁸⁹
N.D. Ga.	3 ¹⁹⁰
M.D. Ga.	0
S.D. Ga.	0
N.D. Fla.	1 ¹⁹¹
M.D. Fla.	3 ¹⁹²
S.D. Fla.	10 ¹⁹³

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

¹⁸¹Bagley; Borton; Cushman; Locke; Marini; Melech; Parriott; Shengdatech.

¹⁸²ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Prevost.

¹⁸³SVS; Vanderpol.

¹⁸⁴Chance; Hess.

¹⁸⁵Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.

¹⁸⁶Swinson.

¹⁸⁷Gould.

¹⁸⁸Jubber; Yee-Smith.

¹⁸⁹Beck; Mansmann.

¹⁹⁰Laddin; Lisenby; Ogier.

¹⁹¹Petrano.

¹⁹²Advanced Telecommunication; Herendeen; Stevenson.

¹⁹³ABN; Agile I; Agile II; Gowdy; McKean; Newman; Raimondo; Rosen; Saad; Stettin.

¹⁹⁴See Table F-2, note 97 *supra*.

Although there are vastly more chapter 13 cases filed than chapter 11 cases (333,626 in 2013),¹⁹⁵ 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.¹⁹⁶ (Note that the number of cases is significantly lower than the number of motions, because of multiple motions in several of the cases.)

CHAPTER OF CASE IN WHICH MOTIONS TO WITHDRAW WERE FILED					
Chapter	7	11	12	13	15
Number of Cases	95 ¹⁹⁷ (107 motions)	87 ¹⁹⁸ (125 motions)	3 ¹⁹⁹	15 ²⁰⁰ (16 motions)	1 ²⁰¹

¹⁹⁵*Id.*

¹⁹⁶*Plum Creek* is not included in the chart, because the bankruptcy case with which the motion was related was closed in 1929, long before the Bankruptcy Code was enacted.

¹⁹⁷*Able Machine Works; Al Dosari; Alabama/Main; Arzt* (converted from chapter 11); *Athos; Atlas; Austin; Baldi; Bell; Bell Builders; BF Saul; Biesiada; Billet; Bonarrigo; Borton; Brown-Minneapolis; Bullard; Cage; Caillouet; Canal Walk; Chambers; Chance; Chesapeake* (converted from chapter 11); *Cobe* (converted from chapter 11); *C.R. Stone; Cruickshank; Desmond* (converted from chapter 11); *Diamond Decisions; Dick; Englehart; Field; Ginzburg* (converted from chapter 11); *Gold; Gowdy; Greektown; Herendeen; Hess; Home Casual* (converted from chapter 11); *Hoskins; IH* (converted from chapter 11); *Jubber; Kirkland; Kirschenbaum; Laiqin; Limor; Lisenby; Logan* (converted from chapter 11); *Lucas; McCord; McGuire; Melcher* (converted from chapter 11); *Melech; Melot I; Melot II; Moglia; Munoz-Flores; Newhouse; Ng; Nguyen; NMFCC; Ogier; Okechuku; Oracle; Pal-Con; Parker* (converted from chapter 13); *Peterson; PNC Bank; Polverari; Pressman; Pry; Roll Tide I* (converted from chapter 11); *Roll Tide II* (converted from chapter 11); *Romo; Saad; Samsom* (converted from chapter 11); *Schwab; Sladky; Slobodian; Spencer; Steege; Stevenson; Sun Capital* (converted from chapter 11); *SVS; Swinson; Timco; Torchia* (converted from chapter 11); *TPG; T3; USA United; Vanderpol; Viera; Villegas; Warren; Weiss; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; WL Homes; Yee-Smith; Yestranski.*

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, Canal 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.

¹⁹⁸*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; Clinica; Compton; Country Fare; Cushman; Cyber; Diamond Offshore; Dreier; Energy Conversion; Erchonia; Evergreen; Federal Housing; Flaxer; Fulbright; Global Aviation; Global Gaming; Gould; Grossman; Hearthwood; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; H&P; IES; Impeva; Innova; Jemsek; Kebe; 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; Locke; Macquarie; Magnificent; Majestic; Marini; Matheny; McKinstry; Mcloba; Motamedi* (converted from chapter 13); *Needler; New Energy; New Meatco; Newman; Panther I; Panther II*; the seven *Howrey* cases; *Parriott; Posey; Prevost; Prior; Pro-Pac; Raimondo; Raval; Refco; Renco; Ricoh I; Ricoh II; Rosen; R2D2; SageCrest I; SageCrest II; Santa Barbara; Scaccianoce* (converted from chapter 13); *Scarcelli; Schroder; Seacor; Shaffer; Sharp; Shengdatech; SNTL; Sojourner; Springel I; Springel II; Stettin; TCB; Texas Sterling; THQ; 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 the debtor,²⁰³ 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*); *Keba*, *Macquarie* and *Seacor* (*ATP Oil & Gas Corp.*); *Panther I* and *Panther II* (*Panther Mountain Land Development LLC*); *SageCrest I* and *SageCrest II* (*SageCrest II LLC*); *Erchonina* and *Santa Barbara* (*PrimCogent 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*.

¹⁹⁹*Hauk*, *Lenons*; *Petrano*.

²⁰⁰*Azam*; *Beck*; *Calderon*; *Edwards*; *Kretz*; *Lancaster*; *Lengyel*; *Mansmann*; *McKean*; *McZeal*; *Naķamura*; *Paulo*; *Pulsifer I*; *Pulsifer II*; *Rosales*; *Vaccaro*. *Pulsifer I* and *Pulsifer II* were filed in the same chapter 13 case.

²⁰¹*Taicom*.

²⁰²*Brown-Minneapolis*; *Caillouet*; *Chambers*; *Desmond*; *IH*; *Laddin*; *Limor*; *LLS I*; *LLS II*; *LLS III*; *LLS IV*; *LLS V*; *LLS VI*; *LLS VII*; *LLS VIII*; *LLS IX*; *LLS X*; *McKinstry*; *Melcher*; *Ogier*; *Renco*; *Slobodian*; *Stevenson*; *Sun Capital*; *Timco*; *Willson*; cf. *Transcontinental* (motion filed by liquidating agent).

²⁰³*Austin* (pro se chapter 7 debtor); *Azam*; *Bonarrigo*; *Borton*; *Dick* (pro se chapter 7 debtor); *Edwards* (pro se chapter 13 debtor); *Hauk*; *Kretz*; *Lengyel*; *Mansmann*; *Paulo* (pro se chapter 13 debtor); *Pulsifer II*.

²⁰⁴*Advanced Telecommunication*; *Country Fare*; *H&P*; *Magnificent*; *Motamedi*; *Needler*; *Texas Sterling*; *Triad Group*; *Triad Pharmaceuticals*.

²⁰⁵*ABC*; *Able Machine Works*; *ABN*; *Agile I*; *Agile II*; *Alabama/Main*; *Ansung*; *Archdiocese I*; *Archdiocese II*; *Arzt*; *Athos*; *Atlas*; *Bagley*; *Baldi*; *Barra*; *Beck*; *Bell*; *Bell Builders*; *Berg*; *BF Saul*; *Biesiada*; *Billet*; *Brown*; *Bullard*; *Cage*; *Calderon*; *Canal Walk*; *Chance*; *Clinica*; *Cobe*; *Compton*; *C.R. Stone*; *Cruickshank*; *Diamond Decisions*; *Dreier*; *Energy Conversion*; *Englehart*; *Erchonina*; *Evergreen*; *Field*; *Flaxer*; *Ginzburg*; *Global Aviation*; *Global Gaming* (counterclaim defendant was also plaintiff in original declaratory judgment action against debtor); *Gold*; *Gould*; *Gowdy*; *Grossman*; *Hearthwood*; *Hess*; *Hoskins*; *Howrey I*; *Howrey II*; *Howrey III*; *Howrey IV*; *Howrey V*; *Howrey VI*; *Howrey VII*; *IES*; *Impeva*; *Innova*; *Jubber*; *Kirkland*; *Kirschenbaum*; *Klein*; *Laiķin*; *Lain*; *Lancaster*; *Lehman I*; *Lehman II*; *Lenons*; *LightSquared*; *Lisenby*; *Locke*; *Logan*; *Majestic*; *Marini*; *McCord*; *McGuire*; *McKean*; *Mcloba*; *McZeal*; *Melech*; *Moglia*; *Munoz-Flores*; *New Meatco*; *Newhouse*; *Newman*; *Ng*; *Nguyen*; *NMFCC*; *Oķechuku*; *Panther I*; *Panther II*; *Parķer*; *Parriott*; *Peterson*; *Pressman*; *Prevost*; *Prior*; *Pro-Pac*; *Pry*; *Pulsifer I*; *Raimondo*; *Refco*; *Ricoh II*; *Roll Tide I*; *Roll Tide II*; *Rosales*; *Saad*; *SageCrest I*; *SageCrest II*; *Samson*; *Santa Barbara*; *Scaccianoce*; *Schwab*; *Sharp*; *Shengdatech*; *Sladky*; *SNTL*; *Sojourner*; *Spencer*; *Springel I*; *Springel II*; *Steege*; *Stettin*; *SVS*; *Swinson*; *Torchia*; *TPG*; *T3*; *UPH I*; *UPH II*; *UPH III*; *USA United*; *Vaccaro*; *Viera*; *Villages*; *Villegas*; *Wagner I*; *Wagner II*; *Wagner III*; *Weiss*; *Wilenchik*; *Williams I*; *Williams II*; *Williams III*; *Williams IV*; *Williams V*; *Williams VI*; *Williams VII*; *WL Homes*; *Yestramski*.

²⁰⁶*Naķamura*; *PNC Bank* (motion filed by receiver for debtor jointly with creditor in involuntary chapter 7 before order for relief entered); *Taicom* (joint motion filed by foreign representative and defendant); *THQ*; *Warren*; *Winkler*; *Zazzali*.

party in a proceeding against the debtor.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.²⁰⁸ In four cases, the bankruptcy judge recommended withdrawal *sua sponte*.²⁰⁹ In another case, withdrawal was sought by the United States Trustee with respect to proposed sanctions for civil contempt.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 against other parties, some of whom have no other involvement in the bankruptcy case and no interest in litigating there. In many of these cases, the bankruptcy court lacks the power to enter a final judgment and therefore litigants may seek withdrawal to the district court to avoid duplication of efforts.

4. WAS THE MOTION OPPOSED?

In approximately 58% of the cases (147 cases) the motion was unopposed.²¹¹ In the others, a response in opposition to the motion was filed (and

²⁰⁷*Adventure Harbor*; *Al Dosari*; *Allen*; *Cyber*; *Diamond Offshore*; *Federal Housing*; *Fulbright*; *Home Casual*; *Jemsek* (motion brought by original defendant in action by 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*; *Romo*; *Rosen*; *Scarcelli*; *TCB*; *Yee-Smith*.

²⁰⁸*Adams*; *Cary*; *Chesapeake*; *Cushman*; *Greektown*; *R2D2*; *Schroder*; *Seacor*; *Shaffer*.

²⁰⁹*Applewood*; *Herendeen*; *Petrano*; *West*. Many local rules explicitly invite a bankruptcy judge to move to withdraw the motion *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)*.

²¹⁰*Lucas*.

²¹¹*Advanced Telecommunication*; *Al Dosari*; *Alabama/Main*; *Allen*; *Applewood*; *Archdiocese II*; *Arzt*; *Atlas*; *Baldi*; *Bell Builders*; *Berg*; *BF Saul*; *Biesiada*; *Billet*; *Bonarrigo*; *Borton*; *Brown*; *Brown-Minneapolis*; *Bullard*; *Cage*; *Caillouet*; *Canal Walk*; *Chance*; *Compton*; *C.R. Stone*; *Cruikshank*; *Cyber*; *Diamond Decisions*; *Diamond Offshore*; *Dreier*; *Engelhart*; *Energy Conversion*; *Erchonia*; *Flaxer*; *Gould*; *Gowdy*; *Greektown*; *Hearthwood*; *Herendeen*; *Hess*; *Home Casual*; *Howrey I*; *Howrey II*; *Howrey III*; *Howrey IV*; *Howrey V*; *Howrey VI*; *Howrey VII*; *H&P*; *IH*; *Jubber*; *Kretz*; *Laijin*; *Lancaster*; *Lengyel*; *Lisenby*; *LLS I*; *LLS II*; *LLS III*; *LLS IV*; *LLS V*; *LLS VI*; *LLS VII*; *LLS VIII*; *LLS IX*; *LLS X*; *Logan*; *Lucas*; *Magnificent*; *Majestic*; *Mansmann*; *McGuire*; *McKean*; *Mcloba*; *McZeal*; *Motamedi*; *Naqamura*; *Newhouse*; *NMFC*; *Ogier*; *Okechuku*; *Pal-Con*; *Panther I*; *Panther II*; *Parriott*; *Peterson*; *PNC Bank*; *Polverari*; *Posey*; *Pressman*; *Prevost*; *Pry*; *Pulsifer I*; *Pulsifer II*; *Raimondo*; *Raval*; *Refco*; *Renco*; *Ricoh II*; *Roll Tide I*; *Roll Tide II*; *Romo*; *Rosales*; *R2D2*; *SageCrest I*; *SageCrest II*; *Santa Barbara*; *Schwab*; *Slobodian*; *Spencer*; *Springel I*; *Springel II*; *Steege*; *Stevenson*; *Swinson*; *Taicom*; *TCB*; *THQ*; *Timco*; *Triad Group*; *Triad Pharmaceuticals*; *Vaccaro*; *Vanderpol*; *Viera*; *Villages*; *Villegas*; *Wagner I*; *Wagner II*; *Wagner III*; *Warren*; *West*; *Wilenchik*; *Williams I*; *Williams II*; *Williams III*; *Williams IV*; *Williams V*; *Williams VI*; *Williams VII*; *Willson*; *Winkler*; *Yee-Smith*; *Zazzali*. 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).²¹² 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.²¹³ Some local bankruptcy rules require such a report and recommendation in connection with every motion to withdraw the reference.²¹⁴ Some bankruptcy courts employ forms for such reports and recommendations.²¹⁵ 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.²¹⁶

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

²¹²ABC; ABN; Adams; Agile I; Agile II; Ansung; Athos; Austin; Azam; Bagley; Barra; Beck; Bell; Calderon; 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; Jemsek; Keba; Kirklund; Kirschenbaum; Kite I; Kite II; Klein; Krakowski; Laddin; Lain; Lehman I; Lehman II; Lemons; LightSquared; Limor; Locke; Macquarie; Marini; Matheny; McCord; McKinstry; Melcher; Melech; Melot I; Melot II; Moglia; Munoz-Flores; Needler; New Energy; New Meatco; Newman; Ng; Nguyen; Oracle; Parker; Paulo; Petrano; Plum Creek; Prior; Pro-Pac; Ricoh I; Rosen; Saad; Samson; Scaccianoce; Scarcelli; Schroder; Seacor; Shaffer; Sharp; Shengdatech; Sladky; SNTL; Sojourner; Stettin; Sun Capital; Texas Sterling; Torchia; Transcontinental; TPG; T3; UPH I; UPH II; UPH III; USA United; Weiss; WL Homes; Yestranski. 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).

²¹³Alabama/Main; Ansung; Applewood; Beck; Biesiada; Brown; Cage; Chance; Compton; C.R. Stone; Cushman; Diamond Offshore; Energy Conversion; Englehart; Erchonja; Gould; Hearthwood; Herendeen; Hess; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Keba; Macquarie; Mansmann; Marini; Mcloba; Motamedi; New Energy; Newhouse; Nguyen; Pal-Con; Parker; Petrano; Pressman; Santa Barbara; Seacor; Sojourner; TCB; Torchia; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Winkler.

²¹⁴D. Neb. Gen. Rule 1.5(b)(1); W.D. Okla. L. Cv. R. 81.4(b)(3); N.D. Tex. L.B.R. 5011-1(b); S.D. Tex. L.B.R. 5011-1.

²¹⁵Ansung; Brown; Pal-Con; Santa Barbara.

²¹⁶Swinson.

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

²¹⁷ABC; ABN; Adams; Advanced Telecommunication; Adventure Harbor; Agile I; Agile II; Alabama/Main; Allen; Ansung; Applewood; Archdiocese I; Archdiocese II; Arzt; Atlas; Bagley; Baldi; Bell; Bell Builders; Berg; BF Saul; Biesiada; Billet; Borton; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Calderon; Canal Walk; Cary; Chambers; Chance; Chesapeake; Clinica; Cobe; Compton; C.R. Stone; Cushman; Cyber; Desmond; Diamond Decisions; Dick; Dreier; Engelhart; Erchonia; Evergreen; Field; Flaxer; Fulbright; Gimzburg; Global Gaming; Gold; Gould; Gowdy; Greektown; Grossman; Hawk; Hearthwood; Herendeen; Hess; Home Casual; Hoskins; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; IES; IH; Impeva; Jemsek; Jubber; Kirschenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Laikin; Lain; Lancaster; Lehman I; Lehman II; Lemons; Lengyel; 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; Marini; McCord; McGuire; Mcloba; McKean; McKinstry; McZeal; Melcher; Melech; Melot I; Melot II; Motamedi; Munoz-Flores; Naqamura; New Energy; New Meatco; Newhouse; Newman; Ng; Nguyen; NMF; Ogie; Okchuku; Oracle; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petrano; Plum Creek; PNC Bank; Polverari; Pressman; Prevost; Pro-Pac; Pry; Pulsifer I; Pulsifer II; Raimondo; Refco; Renco; Roll Tide I; Roll Tide II; Romo; Rosen; Saad; SageCrest I; SageCrest II; Samson; Santa Barbara; Scaccianoce; Scarcelli; Schroder; Shaffer; Sharp; Shengdatech; Sladky; Slobodian; Sojourner; Spencer; Springel I; Springel II; Steege; Stettin; Stevenson; Sun Capital; Swinson; Taicom; Texas Sterling; THQ; Timco; Torchia; TPG; T3; Transcontinental; USA United; Vaccaro; Vanderpol; Viera; Villages; Villegas; Wagner I; Wagner II; Wagner III; Warren; Weiss; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; WL Homes; Yestramski; Zazzali. Cf. Austin (pro se debtor did not specify legal basis for motion, but no federal statute was cited).

²¹⁸Diamond Offshore; Federal Housing; Global Aviation; Keba; Macquarie; Seacor.

²¹⁹Al Dosari; Azam; Barra; Beck; Bonarrigo; Country Fare; Edwards; Innova; Kirkland; Krakowski; LightSquared; Mansmann; Matheny; Moglia; Needler; Paulo; Posey; Prior; Raval; R2D2; Schuab; SNTL; TCB; UPH I; UPH II; UPH III; Yee-Smith.

²²⁰ABC; Adams; Archdiocese I; Archdiocese II; Baer; Bagley; Bell Builders; Berg; Canal Walk; Cary; Chambers; Chance; Country Fare; C.R. Stone; Cushman; Diamond Decisions; Diamond Offshore; Hess; Home Casual; Keba; Kretz; Laddin; LightSquared; Lisenby; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Macquarie; Melot I; Melot II; Motamedi; Naqamura; Oracle; Pal-Con; Panther II; Petrano; PNC Bank; Polverari; Posey; Prevost; Pulsifer I; Pulsifer II; Ricoh I; Ricoh II; Roll

With respect to mandatory withdrawal, the non-bankruptcy federal laws cited by the movant as the basis for the motion included the following:

- Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961-1968
- Home Owner Equity Procedures Act, 12 U.S.C. §§ 2601-2617
- Securities Act of 1933, 15 U.S.C. §§ 77a-77aa
- Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78pp
- Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-78lll
- Fair Housing Act, 42 U.S.C. §§ 3601-3619
- Truth in Lending Act, 15 U.S.C. §§ 1601-1616
- Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x
- Lanham Act, 15 U.S.C. §§ 1051-1141n
- 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
- Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1191c
- Housing and Economic Recovery Act of 2008, 12 U.S.C. §§ 4501-4642
- Copyright Act, 17 U.S.C. § 106
- Patent Act, 15 U.S.C. §§ 101-390
- 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)
- Equal Credit Opportunity Act, 15 U.S.C. § 1691
- Foreign Investment and National Security Act of 2007 (FISIA), 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 noncore²²¹ and could not be decided by a non-Article III bankruptcy judge absent consent.²²² In thirty-five cases,

Tide I; Roll Tide II; Rosales; SageCrest I; SageCrest II; Samson; Santa Barbara; Schroder; Shaffer; Spencer; Springel I; Springel II; SVS; TH2; TPG; T3; UPH I; UPH II; UPH III; Villages; Villegas; Wagner I; Wagner II; Wagner III; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; cf. Cyber (case was originally filed in district court and referred to bankruptcy court).

²²¹Often 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.

²²²*Advanced Telecommunication; Adventure Harbor; Al Dosani; Ansong; Applewood; Archdiocese I; Archdiocese II; Arzt; Atlas; Bagley; Barra; Beck; Bell; Bell Builders; Berg; BF Saul; Biesiada; Billet; Bonarrigo; Borton; Brown-Minneapolis; Bullard; Cailouet; Canal Walk; Chesapeake; Clinica; C.R. Stone; Cruickshank; Cushman; Cyber; Dick; Dreier; Edwards; Energy Conversion; Erchonia; Evergreen; Field; Fulbright; Global*

one or more of the causes of action were core matters that were unaffected by *Stern*.²²³ Another two cases involved a state law claim that constituted a core proceeding and was allegedly governed by *Stern*.²²⁴ 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; Gowdy; Greektown; Hawk; Hearthwood; Herendeen; Home Casual; Hoskins; H&P; IES; IH; Impeva; Innova; Jubber; Kirschenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Laijin; Lehman II; Lengyel; LightSquared; Limor; Locke; Logan; Magnificent; Majestic; Marini; McGuire; Mcloba; McZeal; Melech; Melot I; Melot II; Moglia; Nakamura; Ng; NMFCC; Okechuku; Pal-Con; Panther I; Panther II; Parker; Peterson; Petrano; Polverari; Pressman; Prior; Pro-Pac; Pulsifer I; Raval; Refco; Renco; Ricoh I; Roll Tide I; Roll Tide II; Romo; Rosales; R2D2; Saad; SageCrest I; SageCrest II; Schwab; Sladky; Sojourner; Stettin; Sun Capital; TCB; Timco; Torchia; TPG; T3; Triad Group; Triad Pharmaceuticals; UPH I; UPH II; UPH III; Vaccaro; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Weiss; Willson; Winkler; WL Homes; Yee-Smith. Whether the causes of action were core or noncore was unclear in *Plum Creek; Taicom*; 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; SVS; Texas Sterling; Triad Group; Triad Pharmaceuticals and *Clinica* 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.

²²³*Allen; Calderon; Compton; Gold; Impeva; Krakowski; Lain; Lancaster; Lehman I; Lenons; Limor; Lisenby; Lucas; Matheny; McCord; McKinstry; Motamedi; Needler; New Energy; Nguyen; Ogier; Oracle; Paulo; PNC Bank; Pulsifer II; Ricoh II; Rosales; Sladky; THQ; USA United; cf. Grossman; Melcher* (involving sanctions under 28 U.S.C. § 1927); *Posey; Rosen; Scarcelli* (withdrawal sought as to entire case); but see *New Meatco; Spencer* (arguing for withdrawal of a preference action on the basis of *Stern*). Whether the causes of action were core or noncore was unclear in *Plum Creek; Taicom*; and *SNTL*, and the issue was not decided by the district court when it ruled on the motion.

²²⁴*Desmond; Jemsek; 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).

²²⁵*ABC; ABN; Advanced Telecommunication; Agile I; Agile II; Alabama/Main; Athos; Austin; Baldi; Bell; Bell Builders; Berg; Brown; Brown-Minneapolis; Cage; Canal Walk; Chambers; Cobe; C.R. Stone; Diamond Decisions; Dreier; Engelhart; Field; Flaxer; Ginzburg; Gould; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; IH; Jubber; Kirkland; Limor; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Marini; McKean; Mcloba; Melech; Moglia; Munoz-Flores; Newhouse; Newman; Parriott; Prevost; Pry; Raimondo; Renco; Roll Tide I; Roll Tide II; Samson; Scaccianoce; Sharp; Shengdatech; Slobodian; Springel I; Springel II; Steege; Stettin; Sun Capital; SVS; Swinson; Timco; Torchia; Transcontinental; Vanderpol; Villegas; Wagner I; Wagner II; Wagner III; Weiss; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Yestramski; Zazzali.*

²²⁶*ABC; ABN; Able Machine Works; Adams; Advanced Telecommunication; Adventure Harbor; Agile I; Agile II; Al Dosari; Alabama/Main; Archdiocese I; Archdiocese II; Arzt; Athos; Atlas; Azam; Bagley; Baldi; Barra; Bell; Bell Builders; Berg; Biesiada; Brown; Bonarrigo; Brown-Minneapolis; Bullard; Cage; Cailouet; Calderon; Canal Walk; Cary; Chambers; Chance; Clinica; Compton; C.R. Stone; Cruickshank; Cushman; Diamond Offshore; Dreier; Edwards; Energy Conversion; Engelhart; Erchonia; Evergreen; Field;*

some of those movants simply cited 28 U.S.C. § 157(e)²²⁷ 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%).²²⁸ 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%),²²⁹ 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; Hawk; Heathwood; Herendeen; Hess; Hoskins; H&P; IES; IH; Innova; Jemsek; Jubber; Keba; Kite I; Kite II; Klein; Krakowski; Kretz; Laijin; Lain; 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; McKean; McKinstry; Mcloba; McZeal; Melech; Moglia; Munoz-Flores; New Energy; New Meatco; Newhouse; Newman; Ng; NMFCC; Ogier; Okechuku; Pal-Con; Panther I; Panther II; Parker; Parriott; Paulo; Peterson; Petrano; Plum Creek; Pressman; Prevost; Pry; Raimondo; Raval; Refco; Renco; Ricoh I; Roll Tide I; Roll Tide II; Saad; SageCrest I; SageCrest II; Samson; Scaccianoce; Schroder; Schwab; Seacor; Shaffer; Sharp; Shengdatech; Sojourner; Spencer; Springel I; Springel II; Steege; Stettin; Stevenson; Sun Capital; SVS; Swinson; Taicom; Torchia; Transcontinental; Triad Group; Triad Pharmaceuticals; UPH I; UPH II; UPH III; USA United; Vanderpol; Viera; Villegas; Wagner II; Wagner III; Warren; Weiss; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; WL Homes; Yestramski.

²²⁷28 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 jur trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.”

²²⁸The cases are listed by circuit below.

²²⁹See 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

²³⁰See 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.

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

²³²See 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*; *Mcloba*; *Newhouse*; *Villegas*; *West*; *Williams I*; *Williams II*; *Williams III*; *Williams IV*; *Williams V*; *Williams VI*; *Williams II*.

²³⁵*ABC*; *Bell*; *Berg*; *Cobe*; *Diamond Decisions*; *Field*; *Ginzburg*; *Howrey I*; *Howrey II*; *Howrey III*; *Howrey IV*; *Howrey V*; *Howrey VI*; *Howrey VII*; *Kirkland*; *Melech*; *Mumoz-Flores*; *Parriott*; *Prevost*; *Roll Tide I*; *Roll Tide II*; *Samson*; *Scaccianoce*; *Sharp*; *Shengdatech*; *Torchia*; *Wilenchik*; *Zazzali*.

²³⁶*ABC*; *Berg*; *Diamond Decisions*; *Parriott*; *Prevost*; *Samson*; *Scaccianoce*; *Sharp*; *Shengdatech*; *Wilenchik*; *Zazzali*.

MOTIONS TO WITHDRAW GRANTED AND DENIED BY CIRCUIT											
Circuit	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
Granted (%)	7 ²³⁷ (64%)	12 ²³⁸ (55%)	14 ²³⁹ (70%)	13 ²⁴⁰ (76%)	39 ²⁴¹ (85%)	10 ²⁴² (62.5%)	14 ²⁴³ (82%)	4 ²⁴⁴ (67%)	36 ²⁴⁵ (54%)	14 ²⁴⁶ (100%)	14 ²⁴⁷ (74%)
Denied (%)	4 ²⁴⁸ (36%)	10 ²⁴⁹ (45%)	6 ²⁵⁰ (30%)	4 ²⁵¹ (24%)	7 ²⁵² (15%)	6 ²⁵³ (37.5%)	3 ²⁵⁴ (18%)	2 ²⁵⁵ (33%)	30 ²⁵⁶ (46%)	0 (0%)	5 ²⁵⁷ (26%)

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

²³⁷Adams, Atlas; Cary, C.R. Stone; Cruickshank; Schroder; Shaffer.

²³⁸Billet; Country Fare; Dreier; Federal Housing; Flaxer; Kirschenbaum; LightSquared; Polverari; Refco; Renco; SageCrest I; SageCrest II.

²³⁹IH; 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; Artz; 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.

²⁴¹Adventure Harbor; Alabama/Maim; Ansong; Barra; Biesiada; Brown; Cage; Caillouet; Compton; Diamond Offshore; Engelhart; Erchonia; Global Gaming; Hearthwood; Keba; Kite I; Kite II; Macquarie; Magnificent; Mcloba; Motamedi; Nakamura; Newhouse; Pal-Con; Parker; Romo; Santa Barbara; Seacor; Sojourner; TCB; Villegas; 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 ready for trial."

²⁴²Chambers; Cyber; Energy Conversion; Greektown; Laijin; 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; Borton; 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; Parriott; Prevost; Rosales (granted as to noncore issues only); Samson; Scaccianoce; Sharp; Shengdatech; Taicom; Wilencnik; 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; SVS; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; Yee-Smith.

²⁴⁷ABN; Agile I; Agile II; Beck; Gowdy; Herendeen; Laddin; Lisenby; Mansmann; McKean; Newman; Petrano; Raimondo; Stettin.

²⁴⁸Ng; Scarcelli; Weiss; Yestranski.

²⁴⁹Global Aviation; Krakowski; 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.

²⁵⁵Calderon; Needler.

²⁵⁶Azam; Bell; Cobe; Edwards; Field; Gimzburg; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Kirkland; Locke; McZeal; Melech; Munoz-Flores; New Measco; Paulo; Prior; Roll Tide I; Roll Tide II; Rosales (denied as to core issue); R2D2; Sladky; SNTL; Torchia; 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.

PERCENTAGE OF MOTIONS GRANTED BY CIRCUIT AND DISTRICT			
Circuit and District	Number of Motions	Number Granted	%
1st Circuit	11	7	64%
D. Mass.	9 ²⁵⁸	6 ²⁵⁹	67%
2nd Circuit	22	12	55%
D. Conn.	4 ²⁶⁰	4 ²⁶¹	100%
E.D.N.Y.	5 ²⁶²	2 ²⁶³	40%
S.D.N.Y.	13 ²⁶⁴	6 ²⁶⁵	46%
3rd Circuit	20	14	70%
D. Del.	6 ²⁶⁶	4 ²⁶⁷	67%
D.N.J.	6 ²⁶⁸	5 ²⁶⁹	83%
M.D. Pa.	5 ²⁷⁰	4 ²⁷¹	80%
4th Circuit	17	13	76%
D. Md.	6 ²⁷²	6 ²⁷³	100%
5th Circuit	46	39	85%
E.D. La.	4 ²⁷⁴	3 ²⁷⁵	75%
N. D. Tex.	9 ²⁷⁶	9 ²⁷⁷	100%
S.D. Tex.	20 ²⁷⁸	19 ²⁷⁹	95%

²⁵⁸Adams; Cary; C.R. Stone; Cruickshank; Ng; Schroder; Shaffer; Weiss; Yestramski.

²⁵⁹Adams; Cary; C.R. Stone; Cruickshank; Schroder; Shaffer.

²⁶⁰Country Fare; Polverari; SageCrest I; SageCrest II.

²⁶¹Country Fare; Polverari; SageCrest I; SageCrest II.

²⁶²Billet; Global Aviation; Kirschenbaum; McCord; USA United.

²⁶³Billet; Kirschenbaum.

²⁶⁴Dreier; Federal Housing; Flaxer; Krakowski; Lehman I; Lehman II; LightSquared; Refco; Renco; Ricoh I; Ricoh II; TPG; T3.

²⁶⁵Dreier; Federal Housing; Flaxer; LightSquared; Refco; Renco.

²⁶⁶IH; Majestic; Matheny; Sun Capital; THQ; WL Homes.

²⁶⁷IH; Majestic; THQ; WL Homes.

²⁶⁸Allen; Innova; Kretz; Okechuku; Peterson; Raval.

²⁶⁹Innova; Kretz; Okechuku; Peterson; Raval.

²⁷⁰Bonarrigo; Lengyel; Schwab; Slobodian; Transcontinental.

²⁷¹Lengyel; Schwab; Slobodian; Transcontinental.

²⁷²Al Dosari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.

²⁷³Al Dosari; Bell Builders; BF Saul; Bullard; Canal Walk; Spencer.

²⁷⁴Able Machine Works; Adventure Harbor; Caillouet; Magnificent.

²⁷⁵Adventure Harbor; Caillouet; Magnificent.

²⁷⁶Ansung; Brown; Erchonia; Hearthwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.

²⁷⁷Ansung; Brown; Erchonia; Hearthwood; Mcloba; Newhouse; Pal-Con; Santa Barbara; Sojourner.

²⁷⁸Alabama/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.

²⁷⁹Alabama/Main; Biesiada; Cage; Compton; Diamond Offshore; Englehart; Keba; Macquarie;

W.D. Tex.	8 ²⁸⁰	3 ²⁸¹	37.5%
6th Circuit	16	10	62.5%
E.D. Mich.	7 ²⁸²	4 ²⁸³	57%
7th Circuit	17	14	82%
N.D. Ill.	6 ²⁸⁴	5 ²⁸⁵	83%
E.D. Wis.	8 ²⁸⁶	7 ²⁸⁷	87.5%
8th Circuit	6	4	67%
9th Circuit	65	36	54%
D. Ariz.	5 ²⁸⁸	3 ²⁸⁹	60%
E.D. Cal.	4 ²⁹⁰	2 ²⁹¹	50%
C.D. Cal.	17 ²⁹²	6 ²⁹³	35%
N.D. Cal.	15 ²⁹⁴	4 ²⁹⁵	27%
D. Nev.	8 ²⁹⁶	7 ²⁹⁷	87.5%
W.D. Wash.	13 ²⁹⁸	13 ²⁹⁹	100%
10th Circuit	14	14	100%
D.N.M.	6 ³⁰⁰	6 ³⁰¹	100%
11th Circuit	19	14	74%
S.D. Fla.	10 ³⁰²	8 ³⁰³	80%

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

²⁸⁰Barra; Fulbright; Nakamura; Romo; Texas Sterling; UPH I; UPH II; UPH III.

²⁸¹Barra; Nakamura; Romo.

²⁸²Austin; Chambers; Energy Conversion; Greektown; Hawk; Timco; Villages.

²⁸³Chambers; Energy Conversion; Timco; Villages.

²⁸⁴Athos; Baldi; Desmond; Moglia; PNC Bank; Steege.

²⁸⁵Baldi; Desmond; Moglia; PNC Bank; Steege.

²⁸⁶Archdiocese I; Archdiocese II; H&P; Pro-Pac; Pulsifer I; Pulsifer II; Triad Group; Triad Pharmaceuticals.

²⁸⁷Archdiocese I; Archdiocese II; H&P; Pulsifer I; Pulsifer II; Triad Group; Triad Pharmaceuticals.

²⁸⁸Clinica; Lancaster; Roll Tide I; Roll Tide II; Wilenchik.

²⁸⁹Clinica; Lancaster; Wilenchik.

²⁹⁰Bell; Dick; Prior; Sharp.

²⁹¹Dick; Sharp.

²⁹²Azam; Cobe; Diamond Decisions; Edwards; Evergreen; Ginzburg; IES; Kirkland; Klein; McZeal; Munoz-Flores; New Meatco; Oracle; Paulo; R2D2; Scaccianoce; SNTL.

²⁹³Diamond Decisions; Evergreen; IES; Klein; Oracle; Scaccianoce.

²⁹⁴Hoskins; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Melcher; Rosales; Sladky; Taicom; Torchia; Vaccaro.

²⁹⁵Hoskins; Melcher; Rosales; Taicom.

²⁹⁶Bagley; Borton; Cushman; Locke; Marini; Melech; Parriott; Shengdatech.

²⁹⁷Bagley; Borton; Cushman; Marini; Melech; Parriott; Shengdatech.

²⁹⁸ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X;

Prevost.

²⁹⁹ABC; Berg; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X;

Prevost.

³⁰⁰Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.

³⁰¹Brown-Minneapolis; Melot I; Melot II; Wagner I; Wagner II; Wagner III.

³⁰²ABN; Agile I; Agile II; Gowdy; McKean; Newman; Raimondo; Rosen; Saad; Stettin.

³⁰³ABN; Agile I; Agile II; Gowdy; 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.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.

MOTIONS GRANTED AND DENIED BY CHAPTER OF CASE					
Chapter	7	11	12	13	15
Motion Granted	78 ³⁰⁵	90 ³⁰⁶	1 ³⁰⁷	9 ³⁰⁸	1 ³⁰⁹
(%)	(73%)	(71%)	(33%)	(69%)	(100%)
Motion Denied	29 ³¹⁰	36 ³¹¹	2 ³¹²	7 ³¹³	0
(%)	(27%)	(29%)	(67%)	(31%)	(0%)

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

³⁰⁴Plum Creek was not connected to a pending bankruptcy case.

³⁰⁵Al Dosari; Alabama/Main; Arzt; Atlas; Baldi; Bell Builders; BF Saul; Biesiada; Billet; Borton; Brown-Minneapolis; Bullard; Cage; Caillouet; Canal Walk; Chambers; Chance; C.R. Stone; Cruickshank; Desmond; Diamond Decisions; Engelhart; Gould; Gowdy; Greektown; Herendeen; Hess; Home Casual; Hoskins; IH; Jubber; Kirkland; Kirschenbaum; Laihin; Lisenby; Lucas; McGuire; Melcher; Melot I; Melot II; Moglia; Munoz-Flores; Newhouse; NMFC; Okechuku; Oracle; Pal-Con; Parker; Peterson; PNC Bank; Polverari; Pressman; Pry; Renco; Romo; Samson; Schwab; Slobodian; Spencer; Steege; SVS; Swinson; Vanderpol; Viera; Villegas; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; WL Homes; Yee-Smith.

³⁰⁶ABC; 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; Erchonia; Evergreen; Federal Housing; Flaxer; Global Gaming; Hearthwood; H&P; IES; Innova; Keba; Kite I; Kite II; Klein; Laddin; LightSquared; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Macquarie; Magnificent; Majestic; Marini; McKean; McKinstry; Mcloba; Motamedi; Newman; Panther I; Panther II; Parriott; Posey; Prevost; Raimondo; Raval; Refco; SageCrest I; SageCrest II; Santa Barbara; Scaccianoce; Schroder; Seacor; Shaffer; Sharp; Shengdatech; Sojourner; Stettin; TCB; TH2; Timco; Transcontinental; Triad Group; Triad Pharmaceuticals; Villages; Wagner I; Wagner II; Wagner III; Warren; Winkler; Zazzali.

³⁰⁷Petrano.

³⁰⁸Beck; Kretz; Lancaster; Lengyel; Mansmann; Nakamura; Pulsifer I; Pulsifer II; Rosales (granted as to noncore issues).

³⁰⁹Taicom.

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

³¹¹Advanced Telecommunication; Allen; Fulbright; Global Aviation; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Jemsek; Krakowski; Lain; Lehman I; Lehman II; Locke; Matheny; Needler; New Energy; New Meatco; Prior; Pro-Pac; Ricoh I; Ricoh II; Roll Tide I; Roll Tide II; Rosen; R2D2; Scarcelli; SNTL; Springel I; Springel II; Texas Sterling; UPH I; UPH II; UPH III.

³¹²Hauk; Lemons.

³¹³Azam; 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.³¹⁴

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		
Party Seeking Withdrawal	Granted	Denied
Trustee or Foreign Representative	28 ³¹⁵ (87%)	4 ³¹⁶ (13%)
Debtor in possession or Reorganized debtor	7 ³¹⁷ (70%)	3 ³¹⁸ (30%)
Debtor	7 ³¹⁹ (54%)	6 ³²⁰ (46%)
Defendant in action by trustee, DIP or debtor	105 ³²¹ (67%)	52 ³²² (33%)
Plaintiff in action against debtor	26 ³²³ (74%)	9 ³²⁴ (26%)

³¹⁴Compare *Austin*; *Edwards*; *Paulo*; *Rosen* (motion denied) with *Dick* (motion granted). Cf. *Melcher*; *Melot I*; *Melot II*; *Parķer* (motion granted when opposed by *pro se* defendants).

³¹⁵*Brown-Minneapolis*; *Caillouet*; *Chambers*; *Desmond*; *IH*; *Laddin*; *LLS I*; *LLS II*; *LLS III*; *LLS IV*; *LLS V*; *LLS VI*; *LLS VII*; *LLS VIII*; *LLS IX*; *LLS X*; *Magnificent*; *McKinstry*; *Melcher*; *Renco*; *Slobodian*; *Taicom*; *Timco*; *Transcontinental* (liquidating agent); *Warren*; *Willson*; *Winkler*; *Zazzali*.

³¹⁶*Limor*; *Ogier*; *Stevenson*; *Sun Capital*.

³¹⁷*Country Fare*; *H&P*; *Majestic*; *Motamedi*; *TH2*; *Triad Group*; *Triad Pharmaceuticals*.

³¹⁸*Advanced Telecommunication*; *Needler*; *Texas Sterling*.

³¹⁹*Borton*; *Dick*; *Kretz*; *Lengyel*; *Mansmann*; *Naķamura*; *Pulsifer II*.

³²⁰*Austin*; *Azam*; *Bonarrigo*; *Edwards*; *Hauķ*; *Paulo*.

³²¹*ABC*; *ABN*; *Ansung*; *Agile I*; *Agile II*; *Alabama/Main*; *Archdiocese I*; *Archdiocese II*; *Arzt*; *Atlas*; *Bagley*; *Baldi*; *Barra*; *Beck*; *Bell Builders*; *Berg*; *BF Saul*; *Biesiada*; *Billet*; *Brown*; *Bullard*; *Cage*; *Canal Walk*; *Chance*; *Clinica*; *Compton*; *C.R. Stone*; *Cruickshank*; *Diamond Decisions*; *Dreier*; *Energy Conversion*; *Engelhart*; *Evergreen*; *Flaxer*; *Global Gaming*; *Gould*; *Gowdy*; *Hearthwood*; *Hess*; *Hosķins*; *IES*; *Innova*; *Jubber*; *Kirschenbaum*; *Klein*; *Laiķin*; *Lancaster*; *LightSquared*; *Lisenby*; *Marini*; *McGuire*; *McKean*; *Mcloba*; *Moglia*; *Naķamura*; *Neuhouse*; *Newman*; *NMFCC*; *Oķechuķu*; *Panther I*; *Panther II*; *Parķer*; *Parriott*; *Peterson*; *Pressman*; *Prevost*; *Pry*; *Pulsifer I*; *Raimondo*; *Refco*; *Rosales* (granted as to noncore issues); *SageCrest I*; *SageCrest II*; *Samson*; *Scaccianoce*; *Schwab*; *Sharp*; *Shengdatech*; *Sojourner*; *Spencer*; *Steege*; *Stettin*; *SVS*; *Swinson*; *Taicom*; *TH2*; *Viera*; *Villages*; *Villegas*; *Wagner I*; *Wagner II*; *Wagner III*;

Party in action not involving trustee, DIP or debtor	6 ³²⁵ (75%)	2 ³²⁶ (25%)
Bankruptcy Judge or U.S. Trustee	5 ³²⁷ (100%)	0 (0%)

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		
	Opposed	Unopposed
Motion Granted	57 ³²⁸	121 ³²⁹
Motion Denied	62 ³³⁰	14 ³³¹

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

³²²Able Machine Works; Athos; Bell; Calderon; Cobe; Field; Ginzburg; Global Aviation; Gold; Grossman; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Kirkland; Lain; Lehman I; Lehman II; Lemons; Locke; Logan; McCord; McZeal; Melech; Munoz-Flores; New Meatco; Ng; Nguyen; Plum Creek; Pro-Pac; Ricoh II; Roll Tide I; Roll Tide II; Rosales (denied as to core issue); Saad; Sladky; SNTL; Springel I; Springel II; Torchia; TPG; T3; UPH I; UPH II; UPH III; USA United; Vaccaro; Vanderpol; Weiss; Yestranski.

³²³Adventure 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.

³²⁴Fulbright; Jemsek (counterclaim in action originally brought by trustee); Krakowski; Matheny; New Energy; Prior; Ricoh I; Rosen; Scarcelli; Seacor; TCB.

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

³²⁶Chesapeake; R2D2.

³²⁷Applewood; Herendeen; Lucas; Petrano; West.

³²⁸ABN; Adams; Adventure Harbor; Agile I; Agile II; Ansung; Archdiocese I (opposed only by plaintiffs other than debtor); Bagley; Barra; Beck; Cary; Chambers; Clinica; Country Fare; Cushman; Desmond; Diamond Offshore; Dick; Evergreen; Federal Housing; Hoskins; H&P; Kirschenbaum; Klein; Laddin; LightSquared; Schroder; Shaffer; H&P; Hearthwood; IES; Innova; Keba; Kite I; Kite II; Macquarie; Marini; McKinstry; Melcher; Melot II; Moglia; Newman; Oracle; Parker; Petrano; Plum Creek; Rosales (granted as to noncore issues); Samson; Scaccianoce; Seacor; Sharp; Shengdatech; Sojourner; Stettin; Transcontinental; Triad Group; Triad Pharmaceuticals; WL Homes.

³²⁹ABC; Al Dosari; Alabama/Main; Applewood; Archdiocese II; Arzt; Atlas; Baldi; Bell Builders; Berg; BF Saul; Biesiada; Billet; Borton; Brown; Brown-Minneapolis; Bullard; Cage; Caillouet; Canal Walk; Chance; Compton; C.R. Stone; Cruickshank; Cyber; Diamond Decisions; Dreier; Energy Conversion; Engelhart; Erchonia; Flaxer; Global Gaming; Gould; Gowdy; Greektown; Herendeen; Hess; Home Casual; IH; Jubber; Kretz; Laijin; Lancaster; Lengyel; 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); Motamedi; Nakamura; Newhouse; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parriott; Peterson; PNC Bank; Polverari; Posey; Pressman; Prevost; Pry; Pulsifer I; Pulsifer II; Raimondo; Raval; Refco; Renco; Romo; SageCrest I; SageCrest II; Santa Barbara; Schwab; Slobodian; Spencer; Steege; 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 cases³³² that recommendation was to withdraw the reference; in ten cases³³³ 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.³³⁴

Villegas; Wagner I; Wagner II; Wagner III; Warren; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Willson; Winkler; Yee-Smith; Zazzali.

³³⁰*Athos; Austin; Azam; Bell; Calderon; Chesapeake; Cobe; Edwards; Field; Fulbright; Ginzburg; Global Aviation; Grossman; Hawk; Heathwood; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Impeva; Jemsek; Kirkland; Krakowski; Lain; Lehman I; Lehman II; Lemons; Limor; Locke; Matheny; McCord; Melech; Munoz-Flores; Needler; New Energy; New Meatco; Ng; Nguyen; Paulo; Prior; Pro-Pac; Ricoh I; Rosales (denied as to core issue); Rosen; Scarcelli; Sladky; SNTL; Springel I; Springel II; Sun Capital; Texas Sterling; Torchia; TPG; T3; UPH I; UPH II; UPH III; USA United; Weiss; Yestramski.*

³³¹*Able Machine Works; Advanced Telecommunication; Allen (no opposition papers filed but attorney participated in hearing); Bonarrigo; Logan; McZeal; Ogier; Ricoh II; Roll Tide I; Roll Tide II; R2D2; Stevenson; Vaccaro.*

³³²*Alabama/Main; Ansung; Applewood; Beck; Biesiada; Brown; Chance; Compton; C.R. Stone; Diamond Offshore; Energy Conversion; Engelhart; Erchonia; Gold; Gould; Heathwood; Herendeen; Hess; Keba; Macquarie; Mansmann; Marini; McLoba; Motamedi; Newhouse; Pal-Con; Parker; Petrano; Pressman; Santa Barbara; Seacor; Sojourner; Swinson; TCB; Villegas; West; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII; Winkler. In Keba and Macquarie the district court did not explicitly grant the motion, although it purported to follow the recommendation of the bankruptcy court by staying the civil proceeding at the district court and administratively closing it until the cases were ready for trial.*

³³³*New Energy; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Nguyen; Torchia;*

³³⁴See discussion at notes 79-80 *supra*.

If the movant sought permissive withdrawal of what appeared to be a noncore matter,³³⁵ 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.

MOTIONS GRANTED AND DENIED BASED ON NATURE OF CLAIM				
	Mandatory Withdrawal	Permissive Withdrawal		
		Noncore	Core—Non- <i>Stern</i>	Core— <i>Stern</i>
Motion Granted	12 ³³⁶	104 ³³⁷	14 ³³⁸	72 ³³⁹
Motion Denied	6 ³⁴⁰	35 ³⁴¹	25 ³⁴²	28 ³⁴³

³³⁵The 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.

³³⁶*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); *Keba*, *Macquarie* and *Seacor* (Outer Continental Shelf Lands Act); *TCB* (Equal Credit Opportunity Act); *SVS* (FINSAs); *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; Biesiada; Billet; Borton; Brown-Minneapolis; Bullard; Caillouet; Cary; Chance; Clinica; C.R. Stone; Cushman; Cyber; Dick; Dreier; Energy Conversion; Erchonia; Evergreen; Global Gaming; Gould; Gowdy; Greektown; Hearthwood; Herendeen; Hess; Home Casual; Hoskins; H&P; IES; IH; Innova; Jubber; Kirschenbaum; Kite I; Kite II; Klein; Kretz; Laddin; Laiqin; Lengyel; LightSquared; Magnificent; Majestic; Mansmann; Marini; McGuire; Mcloba; Melot I; Melot II; Moglia; Nakamura; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parker; Peterson; Petrano; Polverari; Pressman; Pulsifer I; Raval; Refco; Renco; Romo; Rosales; SageCrest I; SageCrest II; Santa Barbara; Scaccianoce; Schroder; Schwab; Shaffer; Shengdatech; Sojourner; Steege; TCB; Timco; Triad Group; Triad Pharmaceuticals; Viera; Villages; Wagner I; Wagner II; Wagner III; Warren; Willson; 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. § 157(b)(5) 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; Cruickshank; Desmond; Diamond Decisions; Dreier; Engelhart; Flaxer; Global Gaming* (movant asserted that ordinary counterclaim was a Stern counterclaim); *Gould; IH; Jubber; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Marini; McKean; Mcloba; Moglia; Newhouse; Newman; Parriott; Stevenson; Prevost; Pry; Raimondo; Renco; Samson; Scaccianoce; Sharp; Shengdatech; Slobodian; Spencer* (treated preference as a Stern claim); *Steege; Stettin; 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; Azam; Bonarrigo; Chesapeake; Edwards; Fulbright; Hauk; Impeva; 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; Impeva; Krakowski; Lain; Lehman I; Lemons; Limor; Logan; Matheny; Needler; New Energy; New Meatco; Nguyen; Ogier; Paulo; Ricoh II; Rosales; Rosen; Scarcelli; 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; Ginzburg; Howrey I; Howrey II; Howrey III; Howrey IV; Howrey V; Howrey VI; Howrey VII; Jemsek; Kirkland; Limor; McCord; Melech; Munoz-Flores; Roll Tide I; Roll Tide II; Springel I; Springel II; Sun Capital; Torchia; USA United; Weiss; Yestranski*.

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; Petrano; 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,³⁴⁵ 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.³⁴⁶ 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.³⁴⁷ 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.³⁴⁸

Of the 104 motions for withdrawal which the district court granted immediately, forty-five involved fraudulent conveyance claims,³⁴⁹ the type of claim which is statutorily “core”³⁵⁰ 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.*

³⁴⁵28 U.S.C. § 157(e).

³⁴⁶This category includes those cases in which all pretrial matters had already been concluded by the bankruptcy court, so the case was ready for trial.

³⁴⁷See *Gowdy; Keba; Macquarie* (district court ordered cases administratively closed until pretrial proceedings completed; cases not reopened a year later).

³⁴⁸See, e.g., *Mansmann*.

³⁴⁹*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; Marini; Moglia; Parriott; Pry; Raimondo; Renco; Samson; Sharp; Shengdatech; Steege; Swinson; Vanderpol; Wagner I; Wagner II; Wagner III; West; Wilenchik; Williams I; Williams II; Williams III; Williams IV; Williams V; Williams VI; Williams VII.*

³⁵⁰See § 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).

Disposition of Motions to Withdraw Reference in which Jury Trial was Sought			
Granted Motion Immediately	Granted Motion, Bankruptcy Court to Conduct Pretrial Proceedings	Denied Motion (without Prejudice to Renew When Ready for Trial)	Denied Motion - No Right to Jury Trial Established
104 ³⁵¹	27 ³⁵²	39 ³⁵³	4 ³⁵⁴

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

³⁵¹Adams; 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; Herendeen; Hess; Hoskins; IES; IH; Innova; Jubber; Kite I; Kite II; Klein; Kretz; Laiqin; LightSquared; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Magnificent; Marini; McGuire; McKinstry; Moglia; NMFC; Okechuku; Pal-Con; Panther I; Panther II; Parker; Parriott; Peterson; Petrano; Plum Creek; Pressman; Pry; Raimondo; Raval; Refco; Renco; SageCrest I; SageCrest II; Samson; Schroder; Schwab; Seacor; 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.

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

³⁵³Able Machine Works; Advanced Telecommunication; Athos; Azam; Bell; Bonarrigo; Edwards; Field; Fulbright; Gold; Jemsek (stating that proceeding would be withdrawn when case was ready for trial); Krakowski; Lain; Limor; Locke; Logan; Matheny; McCord; McZeal; Melech; Munoz-Flores; New Meatco; Newman; Ng; Ogier; Ricoh I; Roll Tide I; Roll Tide II; Saad; Springel I; Springel II; Stevenson; Sun Capital; Torchia; UPH I; UPH II; UPH III; USA United; Yestranski. Cf. Hauk (denying motion because bankruptcy court could conduct jury trial with consent of parties).

³⁵⁴Calderon; New Energy; Paulo; 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.

COMPARISON OF WITHDRAWAL IN ALL CASES AND JURY TRIAL CASES											
Circuit	1st	2nd	3rd	4th	5th	6th	7th	8th	9th	10th	11th
No. and % of all 177 motions granted	7 4%	12 7%	14 8%	13 7%	39 22%	10 6%	14 8%	4 2%	36 20%	14 8%	14 8%
No. and % of all 104 immediate withdrawals in jury cases	7 ³⁵⁵ 7%	6 ³⁵⁶ 6%	9 ³⁵⁷ 9%	9 ³⁵⁸ 9%	23 ³⁵⁹ 22%	4 ³⁶⁰ 4%	6 ³⁶¹ 6%	4 ³⁶² 4%	24 ³⁶³ 23%	9 ³⁶⁴ 9%	3 ³⁶⁵ 3%

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,³⁶⁶ 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

³⁵⁵*Adams; Atlas; Cary; C.R. Stone; Cruickshank; Schroder; Shaffer.*

³⁵⁶*Dreier; LightSquared; Refco; Renco; SageCrest I; SageCrest II.*

³⁵⁷*IH; Innova; Kretz; Oğechuğu; Peterson; Pressman; Raval; Schwab; Transcontinental.*

³⁵⁸*Al Dosari; Arzt; Bell Builders; Bullard; McGuire; NMFCC; Plum Creek; Viera; Warren.*

³⁵⁹*Adventure Harbor; Alabama/Main; Barra; Biesiada; Brown; Cage; Cailouet; 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; Laiqin; McKinstry.*

³⁶¹*Archdiocese I; Archdiocese II; Baldi; Moglia; Pry; Steege.*

³⁶²*Panther I; Panther II; Willson; Winkler.*

³⁶³*Bagley; Clinica; Cushman; Evergreen; Hoskins; IES; Klein; LLS I; LLS II; LLS III; LLS IV; LLS V; LLS VI; LLS VII; LLS VIII; LLS IX; LLS X; Marini; Parriott; Samson; Sharp; Shengdatech; Taicom; Wilenchik.*

³⁶⁴*Brown-Minneapolis; Chance; Gould; Hess; Jubber; Swinson; Vanderpol; Wagner II; Wagner III.*

³⁶⁵*Herendeen; Petrano; Raimondo.*

³⁶⁶*See, e.g., In re OCA, Inc., No. 06-3811, 2007 WL 1728914 (E.D. La. June 13, 2007); Superior Precast, Inc. v. Buckley & Co., No. 97-218, 1998 WL 110594 (E.D. Pa. Feb. 19, 1998); Peachtree Lane Assocs., Ltd. v. Granader, 175 B.R. 232 (N.D. Ill. 1994); Sender v. Hardie (In re Hedged-Investments Assocs., Inc.), 153 B.R. 69 (D. Colo. 1993); Markwood Invs. Ltd. v. Neves (In re Neves), 500 B.R. 651 (Bankr. S.D. Fla. 2013) (making unsuccessful arguments that movant was entitled to jury trial).*

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.³⁶⁷ 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 filed³⁶⁸ were among the most efficient in the country in 2013, based on their median time intervals from filing to disposition of civil cases.³⁶⁹ At the same time, the bankruptcy courts in those districts had among the highest number of adversary proceedings pending in the country in 2013.³⁷⁰ 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,³⁷¹ and its bankruptcy judges had 4,451 adversary proceedings pending during 2013,³⁷² but only three motions to withdraw the reference was filed and decided in that

³⁶⁷I 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*.

³⁶⁸S.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).

³⁶⁹S.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/StatisticalTablesForTheFederalJudiciary/2013/december/C05Dec13.pdf.

³⁷⁰S.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*.

³⁷¹See Table C-5, note 368 *supra*.

³⁷²See Table F-8, note 99 *supra*.

year in that district.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.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.³⁷⁵ Yet despite the rigor of the standards for mandatory and permissive withdrawal, the study showed that in every circuit,³⁷⁶ and in almost every district in which four or more motions were made,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,

³⁷³Laddin; Lisenby; Ogier.

³⁷⁴See, e.g., Official Committee of Unsecured Creditors of Appalachian Fuels, LLC v. Energy Coal Res., Inc. (*In re* Appalachian Fuels, LLC), 472 B.R. 731, 737 (E.D. Ky. 2012); U.S. v. Kaplan, 146 B.R. 500, 504 (D. Mass. 1992); Citicorp N. Am., Inc. v. Finley (*In re* Washington Mfg. Co.), 133 B.R. 113, 116 (M.D. Tenn. 1991); Chrysler Credit Corp. v. Fifth Third Bank of Columbus (*In re* Onyx Motor Car Corp.), 116 B.R. 89, 91 (S.D. Ohio 1990); Allard v. Benjamin (*In re* DeLorean Motor Co.), 49 B.R. 900, 912 (Bankr. E.D. Mich. 1985).

³⁷⁵See, e.g., Kaplan, 146 B.R. at 502-503; *Washington Mfg.*, 133 B.R. at 116. Cf. *Field v. Lindell (In re* Mortg. Store, Inc.), 464 B.R. 421, 428 (D. Hawaii 2011) (finding the standard for permissive withdrawal is “high”).

³⁷⁶See chart at notes 227-247 *supra*.

³⁷⁷See 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

- In re* Able Machine Works Inc., No. 2:13-cv-05521 (E.D. La. Aug. 21, 2013) (“Able Machine Works”)
- Adams v. Cadden, No. 1:13-cv-10229 (D. Mass. Feb. 5, 2013) (“Adams”)
- Advanced Telecomm. Network Inc. v. Flaster/Greenberg, PC, Nos. 8:13-cv-00993 & 6:13-cv-00700 (M.D. Fla. Apr. 18, 2013) (“Advanced Telecommunication”)
- Adventure Harbor Estates, LLC v. Forty Acre Corp., No. 2:13-cv-00142 (E.D. La. Jan. 25, 2013) (“Adventure Harbor”)
- Al Dosari v. McCormick, No. 1:13-cv-02335 (D. Md. Aug. 9, 2013) (“Al Dosari”)
- In re* Allen, No. 1:13-cv-01363 (D.N.J. Mar. 6, 2013) (“Allen”)
- Ansung USA, LLC v. Hyundai Marine & Fire Ins. Co., No. 3:13-cv-03485 (N.D. Tex. Aug. 29, 2013) (“Ansung”)
- In re* Applewood Properties, LLC, No. 3:13-cv-00270 (W.D.N.C. May 3, 2013) (“Applewood”)
- Archdiocese of Milwaukee v. Stonewall Ins. Co., No. 2:13-cv-00058 (E.D. Wis. Jan. 16, 2013) (“Archdiocese I”)
- Arzt v. Shaia, No. 13-cv-00568 (E.D. Va. Aug. 21, 2013) (“Arzt”)
- Athos v. Crane, No. 1:13-cv-01269 (N.D. Ill. Feb. 15, 2013) (“Athos”)
- In re* Atlas IT Export Corp. v. Point IT Services, No. 3:13-cv-01854 (D.P.R. Nov. 14, 2013) (“Atlas”)
- In re* Austin, No. 2:13-cv-11156 (E.D. Mich. Mar. 15, 2013) (“Austin”)
- In re* Azam, No. 8:13-cv-01354 (C.D. Cal. Aug. 30, 2013) (“Azam”)
- Baer v. Persels & Assocs., LLC, No. 5:13-cv-04011 (D. Kan. Jan. 17, 2013) (“Chance”)
- Baer v. Persels & Assocs., LLC, No. 5:13-cv-04024 (D. Kan. Feb. 7, 2013) (“Hess”)
- Bagley v. Beville, No. 2:13-cv-01119 (D. Nev. June 21, 2013) (“Bagley”)
- Baldi v. Discepolo, No. 1:13-cv-08676 (N.D. Ill. Dec. 4, 2013) (“Baldi”)
- Beck v. Ally Fin., Inc., No. 1:13-cv-00016 (S.D. Ala. Oct. 4, 2013) (“Beck”)
- Bell v. Lehr, No. 2:13-cv-02483 (E.D. Cal. Nov. 26, 2013) (“Bell”)
- Bell Builders Remodeling, Inc. v. Schlossberg, No. 8:13-civ-03760 (D. Md. Dec. 13, 2013) (“Bell Builders”)
- Billet, Feit & Preis, P.C. v. Barnard, No. 2:13-civ-03154 (E.D.N.Y. Feb. 8, 2013) (“Billet”)
- Blue Cross and Blue Shield of North Carolina v. Jemsek Clinic, P.A., No. 3:13-cv-00674 (W.D.N.C. Dec. 11, 2013) (“Jemsek”)
- Bonarrigo v. LexisNexis Risk Solutions FL Inc., No. 1:13-cv-02705 (M.D. Pa. Nov. 5, 2013) (“Bonarrigo”)

- Borton v. Interstate Plumbing & Air Conditioning, LLC, No. 2:13-cv-00349 (D. Nev. Feb. 28, 2013) (“Borton”)
- Brickley v. Barra, No. 5:13-cv-00336 (W.D. Tex. Apr. 23, 2013) (“Barra”)
- Brown v. Zouvas, No. 4:13-cv-00575 (N.D. Tex. July 16, 2013) (“Brown”)
- In re* Brown-Minneapolis Tank Co., No. 1:13-cv-01099 (D.N.M. Nov. 12, 2013) (“Brown-Minneapolis”)
- Cage v. Clark, No. 4:13-cv-02545 (S.D. Tex. Aug. 12, 2013) (“Cage”)
- Caillouet v. Louisiana Delta Farms LLC, No. 2:13-cv-00332 (E.D. La. Feb. 22, 2013) (“Caillouet”)
- Calderon v. Bank of America NA, No. 4:13-mc-00005 (E.D. Ark. Apr. 4, 2013) (“Calderon”)
- Calvert v. ABC Bus Companies Inc., No. 2:13-cv-00295 (W.D. Wash. Feb. 15, 2013) (“ABC”)
- Calvert v. Berg, No. 2:13-cv-01019 (W.D. Wash. June 13, 2013) (“Berg”)
- Calvert v. Prevost Car (US) Inc., No. 2:13-cv-00294 (W.D. Wash. Feb. 15, 2013) (Prevost”)
- Cary v. New England Compounding Pharmacy, Inc., No. 1:13-cv-10228 (D. Mass. Feb. 5, 2013) (“Carey”)
- Chesapeake Bay Enters., Inc. v. Chesapeake Trust, No. 3:13-cv-00344 (E.D. Va. May 29, 2013) (“Chesapeake”)
- Clinica Real LLC v. State Farm Mut. Auto. Ins. Co., No. 1:13-cv-00429 (D. Ariz. Feb. 28, 2013) (“Clinica”)
- In re* Cobe Chem. Co. Inc., No. 2:13-cv-02573 (C.D. Cal. Apr. 11, 2013) (“Cobe”)
- Compton v. GL Noble Denton, No. 4:13-cv-01279 (S.D. Tex. Apr. 26, 2013) (“Compton”)
- In re* Country Fare LLC, No. 3:13-cv-00784, No. 3:13-cv-00672, No. 3:13-11153 (D. Conn. Apr. 2, 2013) (“Country Fare”)
- C.R. Stone Concrete Contractors, Inc. v. Anderson, No. 1:13-cv-11109 (D. Mass. May 3, 2013) (“C.R. Stone”)
- Cruickshank v. Cook, No. 1:13-cv-1127 (D. Mass. May 22, 2013) (“Cruickshank”)
- Cushman & Wakefield of Texas, Inc. v. Rhodes, No. 2:13-cv-00704 (D. Nev. Apr. 25, 2013) (“Cushman”)
- Cyber Solutions Int’l, LLC v. Priva Sec. Corp., No. 1:13-cv-00867 (W.D. Mich. Aug. 12, 2013) (“Cyber”)
- Desmond v. Ng, No. 1:13-cv-13005 (D. Mass. Nov. 25, 2013) (“Ng”)
- In re* Diamond Decisions Inc., No. 2:13-cv-00441 (C.D. Cal. Jan. 22, 2013) (“Diamond Decisions”)
- Diamond Offshore Co. v. ATP Oil & Gas Corp., No. 4:13-cv-02799 (S.D. Tex. Sept. 17, 2013) (“Diamond Offshore”)

- Dick v. Am. Home Mortg. Servicing Inc., No. 2:13-cv-00201 (E.D. Cal. Feb. 5, 2013) (“Dick”)
- In re* Edwards, No. 2:13-cv-08666 (C.D. Cal. Nov. 22, 2013) (“Edwards”)
- In re* Energy Conversion Devices, Inc., No. 2:13-cv-12932 (E.D. Mich. July 5, 2013) (“Energy Conversion”)
- Englehart v. Stephan Estate LLC, No. 4:13-cv-03801 (S.D. Tex. Nov. 25, 2013) (“Englehart”)
- In re* EPD Inv. Co., No. 2-13-cv-05536 (C.D. Cal. July 31, 2013) (“Kirkland”)
- 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”)
- In re* Evergreen Oil Inc., No. 8:13-cv-02016 (C.D. Cal. Dec. 30, 2013) (“Evergreen”)
- Fed. Hous. Fin. Agency v. Lehman Bros. Holdings Inc., No. 1:13-cv-07481 (S.D.N.Y. Oct. 23, 2013) (“Federal Housing”)
- Field v. Mano Mgmt. Trust, No. 1:13-cv-00259 (D. Hawaii May 22, 2013) (“Field”)
- Flaxer v. Travel Yesterday, Inc., No. 1:13-cv-03628 (S.D.N.Y. May 30, 2013) (“Flaxer”)
- Fulbright & Jaworski, L.L.P. v. Verano Land Group, LP, No. 5:13-mc-00490 (W.D. Tex. June 5, 2013) (“Fulbright”)
- Gargula v. New Energy Corp., No. 3:13-cv-00205 (N.D. Ind. Mar. 14, 2013) (“New Energy”)
- In re* Ginzburg, No. 2:13-cv-02144 (C.D. Cal. Mar. 25, 2013) (“Ginzburg”)
- In re* Global Aviation Holdings Inc., No. 1:13-mc-00014 (E.D.N.Y. Jan. 9, 2013) (“Global Aviation”)
- In re* Global Gaming Solutions LLC v. Legends Gaming of Louisiana 1 LLC, No. 5:13-cv-03123 (W.D. La. Nov. 15, 2013) (“Global Gaming”)
- Gold v. Thermacor Process, Inc., No. 1:13-cv-01255 (E.D. Va. Oct. 9, 2013) (“Gold”)
- Gould v. Harold’s Stores Inc., Nos. 5:09-ap-01119 (Bankr. W.D. Okla. Aug. 3, 2009) & No. 5:13-cv-00807 (W.D. Okla. Aug. 2, 2013) (“Gould”)
- In re* Greektown Holdings LLC, No. 2:13-cv-10291 (E.D. Mich. Jan. 23, 2013) (“Greektown”)
- Grossman v. Royal Manor Mgmt., Inc., No. 5:13-mc-0008 (N.D. Ohio Jan. 29, 2013) (“Grossman”)
- In re* Hauk, No. 2:13-cv-111607 (E.D. Mich. Apr. 10, 2013) (“Hauk”)
- Hearthwood North 1 Ass’n v. Prime Ins. Co., No. 3:13-cv-02832 (N.D. Tex. July 19, 2013) (“Hearthwood”)
- Herendeen v. JP Morgan Chase Bank, N.A., Nos. 8:13-mc-00057 & 8:13-cv-01921 (M.D. Fla. July 22, 2013) (“Herendeen”)

- Hernandez v. Ketz, No. 3:13-cv-00672 (D.N.J. Feb. 4, 2013) (“Kretz”)
Home Casual, LLC v. Corning, No. 3:13-cv-00523 (W.D. Wis. July 24, 2013)
 (“Home Casual”)
Hoskins v. Gaylord, No. 3:13-cv-04320 (N.D. Cal. Sept. 18, 2013)
 (“Hoskins”)
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”)
In re H&P Indus. Inc., No. 2:13-cv-01389 (E.D. Wis. Dec. 11, 2013) (“H&P”)
In re IH 1 Inc., No. 1:13-cv-01996 (D. Del. Dec. 4, 2013) (“IH”)
Impeva Labs, Inc. v. System Planning Corp., No. 3:13-cv-02753 (N.D. Cal.
 June 14, 2013) (“Impeva”)
Innovasystems, Inc. v. Proveris Scientific Corp., No. 1:13-cv-05077 (D.N.J.
 Aug. 26, 2013) (“Innova”)
In re Int’l Envtl. Solutions Corp., No. 5:13-cv-01286 (C.D. Cal. July 23, 2013)
 (“IES”)
Jubber v. Mast, No. 2:13-cv-00683 (D. Utah July 22, 2013) (“Jubber”)
Keba Energy LLC v. ATP Oil & Gas Corp., No. 4:13-cv-01189 (S.D. Tex.
 Apr. 25, 2013) (“Keba”)
Kirschenbaum v. Fed. Ins. Co., No. 2:13-cv-02405 (E.D.N.Y. May 1, 2013)
 (“Kirschenbaum”)
Kite v. Kite, No. 2:13-cv-2131 (W.D. La. June 25, 2013) (“Kite II”)
Kite v. Kite, No. 2:13-cv-2117 (W.D. La. June 25, 2013) (“Kite I”)
In re Klein, No. 2:13-cv-05030 (C.D. Cal. July 12, 2013) (“Klein”)
Krakowski v. American Airlines, Inc., No. 1:13-cv-02045 (S.D.N.Y. Mar. 27,
 2013) (“Krakowski”)
Laddin v. Odom, No. 1:13-cv-03016 (N.D. Ga. Sept. 10, 2013) (“Laddin”)
Laikin v. Bash, No. 5:13-cv-02098 (N.D. Ohio Sept. 20, 2013) (“Laikin”)
Lain v. King & Spalding LLP, No. 3:13-cv-01281 (M.D. Tenn. Nov. 18,
 2013) (“Lain”)
In re Lancaster, No. 3:13-cv-08101 (D. Ariz. Apr. 29, 2013) (“Lancaster”)

- Lehman Bros. Holdings Inc. v. Credit Agricole Corp. & Inv. Bank, No. 1:13-cv-03373 (S.D.N.Y. May 17, 2013) ("Lehman I")
- Lehman Bros. Holdings Inc. v. Fed. Home Loan Bank of Cincinnati, No. 1:13-cv-04121 (S.D.N.Y. June 14, 2013) ("Lehman II")
- Lemons v. Kanzmeier, No. 5:13-mc-00109 (S.D. W. Va. Sept. 5, 2013) ("Lemons")
- Lengyel v. Chase Home Fin., LLC, No. 3:13-cv-02821 (M.D. Pa. Nov. 18, 2013) ("Lengyel")
- LightSquared Inc. v. Deere & Co, No. 1:13-cv-08157 (S.D.N.Y. Nov. 15, 2013) ("LightSquared")
- Limor v. Equities-Bradford Green Oaks, L.L.C., No. 3:13-civ-00835 (M.D. Tenn. Aug. 21, 2013) ("Limor")
- Lisenby v. Criswell, No. 1:13-cv-00449 (N.D. Ga. Feb. 11, 2013) ("Lisenby")
- In re* LLS Am. LLC (Krieger v. Szalay), No. 2:13-cv-00011 (E.D. Wash. Jan. 9, 2013) ("LLS I")
- 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. Briscoe), No. 2:13-cv-00013 (E.D. Wash. Jan. 9, 2013) ("LLS III")
- 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. Power), No. 2:13-cv-00015 (E.D. Wash. Jan. 9, 2013) ("LLS V")
- In re* LLS Am. LLC (Krieger v. Hasty Living Trust), No. 2:13-cv-00016 (E.D. Wash. Jan. 9, 2013) ("LLS VI")
- In re* LLS Am. LLC (Krieger v. Kowal), No. 2:13-cv-00017 (E.D. Wash. Jan. 9, 2013) ("LLS VII")
- In re* LLS Am. LLC (Krieger v. Romani), No. 2:13-cv-00018 (E.D. Wash. Jan. 9, 2013) ("LLS VIII")
- In re* LLS Am. LLC (Krieger v. Beyer), No. 2:13-cv-00019 (E.D. Wash. Jan. 9, 2013) ("LLS IX")
- In re* LLS Am. LLC (Krieger v. Jordan), No. 2:13-cv-00022 (E.D. Wash. Jan. 9, 2013) ("LLS X")
- Locke Lord LLP v. Bagley, No. 2:13-cv-01114 (D. Nev. June 21, 2013) ("Locke")
- Logan v. Johnson, No. 2:13-cv-00156 (S.D. Ohio Feb. 20, 2013) ("Logan")
- Louis Di Raimondo Worldwide Invs. & Export Corp v. Honda Fin. Corp., Nos. 1:13-bk-0002, 1:13-mc-21771 & 1:13-cv-21771 (S.D. Fla. May 16, 2013) ("Raimondo")
- Macquarie Invs. LLC v. ATP Oil & Gas Corp., No.4:13-cv-01188 (S.D. Tex. Apr. 25, 2013) ("Macquarie")

- Magnesium Corp. of Am. v. Renco Group, Inc., No. 1:13-cv-07948 (S.D.N.Y. Nov. 7, 2013) (“Renco”)
- Magnificent Eight, L.L.C. v. First NBC Bank, Nos. 2:13-cv-05713 & 2:13-cv-05714 (E.D. La. Aug. 30, 2013) (“Magnificent”)
- Majestic Holdco LLC v. Stephens, No. 1:13-cv-00415 (D. Del. Mar. 13, 2013) (“Majestic”)
- Mansmann v. Ocwen Loan Servicing, LLC, No. 1:13-mc-00005 (S.D. Ala. Apr. 30, 2013) (“Mansmann”)
- Matheny v. Polymedica Corp., No. 1:13-cv-01463 (D. Del. Aug. 20, 2013) (“Matheny”)
- In re* McCord, No. 1:13-mc-00694 (E.D.N.Y. Aug. 27, 2013) (“McCord”)
- In re* McGuire, No. 5:13-mc-00128 (S.D. W. Va. Oct. 8, 2013) (“McGuire”)
- McKean, Chrycy Fletcher & Co v. Welt, No. 0:13-mc-60433 (S.D. Fla. Feb. 25, 2013) (“McKean”)
- McKinstry v. Genser, No. 7:13-cv-00145 (E.D. Ky. Dec. 27, 2013) (“McKinstry”)
- In re* McZeal, No. 5:13-cv-00003 (C.D. Cal. Jan. 2, 2013) (“McZeal”)
- In re* Melcher, No. 5:13-cv-04930 (N.D. Cal. Oct. 23, 2013) (“Melcher”)
- Melech v. Polhill, No. 2:13-ccv-01113 (D. Nev. June 25, 2013) (“Melech”)
- Miller v. Sun Capital Partners Inc., No. 1:13-cv-00577 (D. Del. Apr. 11, 2013) (“Sun Capital”)
- In re* Miller Auto. Group Inc., No. 2:13-cv-04041 (W.D. Mo. Feb. 15, 2013) (“Needler”)
- Moglia v. Pasquinelli, No. 1:13-cv-05024 (N.D. Ill. July 15, 2013) (“Moglia”)
- Morton v. Mcloba Partners, No. 1:13-cv-00175 (N.D. Tex. Oct. 17, 2013) (“Mcloba”)
- Morton v. Sojourner Drilling Corp., No. 1:13-cv-00186 (N.D. Tex. Nov. 19, 2013) (“Sojourner”)
- Motamedi v. Wells Fargo Bank NA, No. 4:13-cv-03800 (S.D. Tex. Nov. 4, 2013) (“Motamedi”)
- Mukamal v. ABN AMRO Fund Services Bk. (Cayman) Ltd., Nos. 9:13-cv-80102 & 9:13-bk-00802 (S.D. Fla. Jan. 30, 2013) (“ABN”)
- Mukamal v. Agile Prime Strategies Fund, LP, No. 9:13-cv-80104 (S.D. Fla. Jan. 31, 2013) (“Agile I”)
- Mukamal v. Agile Prime Strategies Fund, LP, Nos. 9:13-cv-80103 & 9:13-bk-00804 (S.D. Fla. Jan. 30, 2013) (“Agile II”)
- Mukamal v. Newman Family Revocable Trust, Nos. 9:13-cv-80101 & 9:13-bk-00803 (S.D. Fla. Jan. 30, 2013) (“Newman”)
- Nakamura v. Clark, No. 5:13-mc-00831 (W.D. Tex. Sept. 11, 2013) (“Nakamura”)
- In re* New Meatco Provisions, LLC, No. 2:13-cv-06637 (C.D. Cal. Sept. 10, 2013) (“New Meatco”)

- Newhouse v. Corley, No. 3:13-cv-01055 (N.D. Tex. Mar. 11, 2013) ("Newhouse")
- Nguyen v. Wells Fargo Home Mortg., No. 4:13-cv-01512 (S.D. Tex. May 20, 2013) ("Nguyen")
- NMFC LLC v. Ettin, No. 7:13-cv-01052 (D.S.C. Apr. 18, 2013) ("NMFC")
- Official Committee of Unsecured Creditors v. Marini, No. 3:13-cv-00010 (D. Nev. Jan. 4, 2013) ("Marini")
- Official Committee of Unsecured Creditor v. Dreier LLP v. Success Systems, Inc., No. 1:13-cv-00578 (S.D.N.Y. Jan. 25, 2013) ("Dreier")
- Ogier v. Johnson, No. 1:13-cv-01490 (N.D. Ga. May 3, 2013) ("Ogier")
- Okechuku v. Sharp Mgmt., No. 2:13-cv-05698 (D.N.J. Sept. 25, 2013) ("Okechuku")
- Oracle Am. Inc. v. Mai, No. 8:13-cv-00119 (C.D. Cal. Jan. 24, 2013) ("Oracle")
- Osborne v. Saad, No. 13-cv-61898 (S.D. Fla. Aug. 30, 2013) ("Saad")
- Pal-Con, Ltd. v. Brantley, No. 13-cv-01007 (N.D. Tex. Dec. 23, 2013) ("Pal-Con")
- Panther Mountain Land Dev. LLC v. National Bank of Arkansas, No. 4:13-mc-00015 (E.D. Ark. July 29, 2013) & No. 4:13-cv-00620 (E.D. Ark. Oct. 30, 2013) ("Panther I")
- Panther Mountain Land Dev. LLC v. National Bank of Arkansas, No. 4:13-mc-00024 (E.D. Ark. Dec. 16, 2013) & No. 4:13-cv-00734 (E.D. Ark. Dec. 23, 2013) ("Panther II")
- Parker v. Wells Fargo Bank, N.A., No. 4:13-cv-00281 (E.D. Tex. May 20, 2013) ("Parker")
- Parriott v. Bagley, No. 2:13-cv-01802 (D. Nev. Sept. 26, 2013) ("Parriott")
- In re* Paulo, No. 2:13-cv-08667 (C.D. Cal. Nov. 22, 2013) ("Paulo")
- Peterson v. Imhof, No. 2:13-cv-00537 (D.N.J. Jan. 29, 2013) ("Peterson")
- Petrano v. Rhodes, No. 1:13-cv-00079 (N.D. Fla. Apr. 22, 2013) ("Petrano")
- Plum Creek Timberlands, L.P. v. Yellow Poplar Lumber Co., No. 1:13-mc-00047 (W.D. Va. June 3, 2013) & No. 1:13-cv-00062 (W.D. Va. July 31, 2013) ("Plum Creek")
- PNC Bank NA v. 35th & Morgan Dev. Corp., No. 1:13-cv-08885 (N.D. Ill. Dec. 13, 2013) ("PNC Bank")
- In re* Polverari, No. 3:13-mc-00009 (D. Conn. Jan. 23, 2013) & No. 3:13-cv-00446 (D. Conn. Mar. 13, 2013) ("Polverari")
- Posey v. F&M Bank, No. 3:13-cv-00578 (M.D. Tenn. June 13, 2013) ("Posey")
- Pressman v. Raggi & Weinstein, LLP, No. 2:13-mc-00197 (E.D. Pa. July 24, 2013) ("Pressman")
- Prior v. Tri Counties Bk., No. 2:13-cv-02021 (E.D. Cal. Sept. 27, 2013) ("Prior")

- Pro-Pac Inc. v. WOW Logistics Co., No. 2:13-cv-00902 (E.D. Wis. Aug. 8, 2013) (“Pro-Pac”)
- Pry v. Koller, No. 4:13-cv-00028 (S.D. Ind. Feb. 25, 2013) (“Pry”)
- Pulsifer v. US Bank NA, No. 2:13-cv-00648 (E.D. Wis. June 10, 2013) (“Pulsifer I”)
- Raval [sic] Hotel LLC v. Revel Entm’t Group, LLC, No. 1:13-cv-02581 (D.N.J. Apr. 23, 2013) (“Raval”)
- Reaves v. Roll Tide LLP, No. 2:13-cv-00286 (D. Ariz. Feb. 8, 2013) (“Roll Tide I”)
- Reaves v. Roll Tide LLP, No. 2:13-cv-00366 (D. Ariz. Feb. 21, 2013) (“Roll Tide II”)
- Reaves v. Wilenchik & Bartness PC, No. 2:13-cv-01413 (D. Ariz. July 15, 2013) (“Wilenchik”)
- Refco Inc. v. Cantor Fitzgerald, L.P., No. 1:13-cv-01654 (S.D.N.Y. Mar. 12, 2013) (“Refco”)
- Republic Bank of Chicago v. Desmond, No. 1:13-cv-06835 (N.D. Ill. Sept. 23, 2013) (“Desmond”)
- Ricoh Co., Ltd. v. Eastman Kodak Co., No. 1:13-cv-02808 (S.D.N.Y. Apr. 26, 2013) (“Ricoh I”)
- Ricoh Co., Ltd. v. Eastman Kodak Co., No. 1:13-cv-003394 (S.D.N.Y. May 20, 2013) (“Ricoh II”)
- Romo v. Burris, No. 5:13-cv-01115 (W.D. Tex. Dec. 10, 2013) & No. 5:13-mc-01103 (W.D. Tex. Dec. 4, 2013) (“Romo”)
- Rosales v. North Am. Title Co., No. 5:13-cv-01316 (N.D. Cal. Mar. 22, 2013) (“Rosales”)
- Rosen v. Pecan, No. 1:13-cv-23768 (S.D. Fla. Oct. 17, 2013) (“Rosen”)
- In re* R2D2 LLC, No. 2:13-cv-02740 (C.D. Cal. Apr. 18, 2013) (“R2D2”)
- In re* SageCrest II LLC, No. 3:13-cv-00973 (D. Conn. July 1, 2013) & No. 3:13-mc-00060 (D. Conn. Apr. 5, 2013) (“SageCrest I”)
- In re* SageCrest II LLC, No. 3:13-cv-00974 (D. Conn. July 1, 2013) & No. 3:13-mc-00061 (D. Conn. Apr. 5, 2013) (“SageCrest II”)
- Samson v. Manlove, No. 9:13-cv-00212 (D. Mont. Oct. 16, 2013) (“Samson”)
- Santa Barbara Med. Innovations, LLC v. Primcogent Solutions LLC, No. 4:13-cv-00747 (N.D. Tex. Sept. 12, 2013) (“Santa Barbara”)
- In re* Scaccianoce, No. 2:13-cv-00454 (C.D. Cal. Jan. 22, 2013) (“Scaccianoce”)
- Scarcelli v. Oak Knoll Assocs. LP, No. 2:13-mc-00062 (D. Me. Mar. 26, 2013) (“Scarcelli”)
- Schlossberg v. BF Saul Ins. Agency of Md., Inc., No. 8:13-cv-03076 (D. Md. Oct. 11, 2013) (“BF Saul”)
- Schlossberg v. Bullard, No. 8:13-cv-03000 (D. Md. Oct. 10, 2013) (“Bullard”)
- Schlossberg v. Canal Walk Constr., LLC, No. 8:13-civ-03759 (D. Md. Dec. 13, 2013) (“Canal Walk”)

- Schlossberg v. Spencer & Assocs. LLC, No. 8:13-cv-03932 (D. Md. Dec. 27, 2013) (“Spencer”)
- Schmidt v. Villegas, No. 7:13-cv-00311 (S.D. Tex. May 29, 2013) (“Villegas”)
- Schoenmann v. Torchia, No. 3:13-cv-00306 (N.D. Cal. Jan. 23, 2013) (“Torchia”)
- Schroder v. New England Compounding Pharmacy, Inc., No. 1:13-cv-10227 (D. Mass. Feb. 5, 2013) (“Schroder”)
- Schwab v. Capital Blue Cross, No. 3:13-cv-01772 (M.D. Pa. June 28, 2013) (“Schwab”)
- Seacor Marine, LLC v. ATP Oil & Gas Corp., No. 4:13-cv-01616 (S.D. Tex. May 30, 2013) (“Seacor”)
- Shaffer v. Cadden, No. 1:13-cv-10226 (D. Mass. Feb. 5, 2013) (“Shaffer”)
- Sharp v. Segal & Kirby LLP, No. 2:13-cv-01363 (E.D. Cal. July 9, 2013) (“Sharp”)
- Shengdatech Liquidating Trust v. Hansen, Barnett & Maxwell, P.C., No. 3:13-cv-00563 (D. Nev. Oct. 9, 2013) (“Shengdatech”)
- Sladky v. LPP Mortg. Ltd., No. 2:13-cv-01083 (N.D. Cal. Mar. 8, 2013) (“Sladky”)
- Slobodian v. U.S.A. IRS, No. 1:13-cv-02677 (M.D. Pa. Oct. 28, 2013) (“Slobodian”)
- In re* SNTL Corp., No. 2:13-cv-05027 (C.D. Cal. July 12, 2013) (“SNTL”)
- Springel v. AMJ, Inc., No. 3:13-cv-00025 (D.V.I. Mar. 15, 2013) (“Springel I”)
- Springel v. Oakland, No. 3:13-cv-00026 (D.V.I. Mar. 15, 2013) (“Springel II”)
- Steege v. RSC & Assocs., LLC, No. 1:13-cv-06967 (N.D. Ill. Sept. 27, 2013) (“Steege”)
- Stettin v. Ballamor Capital Mgmt. Inc., No. 0:13-cv-60307 (S.D. Fla. Feb. 7, 2013) (“Stettin”)
- Stevenson v. Stamatakis & Thalji, P.L., No. 8:13-cv-00058 (M.D. Fla. July 22, 2013) (“Stevenson”)
- In re* SVS Holdings, Inc., No. 1:13-cv-00169 (D. Colo. Jan. 23, 2013) (“SVS”)
- Sweet v. Chambers, No. 2:13-cv-11127 (E.D. Mich. Mar. 14, 2013) (“Chambers”)
- Swinson v. Armstrong Bank, No. 4:13-cv-00793 (N.D. Okla. Dec. 17, 2013) (“Swinson”)
- Tabas v. Gowdy, Nos. 1:13-bk-00006 & 1:13-cv-20161 (S.D. Fla. Jan. 16, 2013) (“Gowdy”)
- In re* Taicom Sec. Co., No. 2:13-cv-03528 (C.D. Cal. May 16, 2013) (“Taicom”)
- Texas Capital Bk., N.A. v. Dallas Roadster, Ltd., No. 4:13-cv-00625 (E.D. Tex. Sept. 27, 2013) (“TCB”)

- Texas Sterling Constr. Co., v. VTLM Texas, L.P., No. 5:13-cm-00475 (W.D. Tex. June 4, 2013) (“Texas Sterling”)
- THQ Inc. v. Zuffa LLC, No. 1:13-cv-01975 (D. Del. Nov. 26, 2013) (“THQ”)
- In re* Timco, LLC, No. 4:13-cv-10034 (E.D. Mich. Jan. 4, 2013) (“Timco”)
- TPG Troy, LLC v. SPQR Capital (Cayman) Ltd., No. 1:13-cv-03976 (S.D.N.Y. June 11, 2013) (“TPG”)
- Transcontinental Refrigerated Lines Inc. v. New Prime Inc., No. 1:13-cv-02163 (M.D. Pa. Aug. 15, 2013) (“Transcontinental”)
- In re* Triad Group Inc., No. 2:13-cv-01307 (E.D. Wis. Nov. 19, 2013) (“Triad Group”)
- In re* Triad Pharm. Inc., No. 2:13-cv-01308 (E.D. Wis. Nov. 19, 2013) (“Triad Pharmaceuticals”)
- T3 Troy, LLC v. SPQR Capital (Cayman) Ltd., No. 1:13-cv-03977 (S.D.N.Y. June 11, 2013) (“T3”)
- Underwriters at Lloyd’s London v. Archdiocese of Milwaukee, No. 2:13-cv-00060 (E.D. Wis. Jan. 16, 2013) (“Archdiocese II”)
- US v. Melot, No. 1:13-cv-00766 (D.N.M. Aug. 16, 2013) (“Melot I”)
- US v. Melot, No. 1:13-cv-00895 (D.N.M. Sept. 17, 2013) (“Melot II”)
- US Bank NA v. Pulsifer, No. 2:13-cv-00835 (E.D. Wis. July 24, 2013) (“Pulsifer II”)
- USA United Fleet, Inc. v. J&R Imports LTD, No. 1:13-mc-00675 (E.D.N.Y. Aug. 20, 2013) (“USA United”)
- United States Trustee v. Lucas, No. 1:13-cv-00393 (S.D. Ohio June 6, 2013) (“Lucas”)
- In re* UPH Holdings, Inc., No. 1:13-cv-00748 (W.D. Tex. Aug. 28, 2013) (“UPH I”)
- In re* UPH Holdings, Inc., No. 1:13-cv-00766 (W.D. Tex. Aug. 28, 2013) (“UPH II”)
- In re* UPH Holdings, Inc., No. 1:13-cv-00847 (W.D. Tex. Aug. 28, 2013) (“UPH III”)
- In re* Vaccaro, No. 4:13-cv-05424 (N.D. Cal. Nov. 21, 2013) (“Vaccaro”)
- Vanderpol v. Vanderpol, No. 1:13-cv-02966 (D. Colo. Oct. 29, 2013) (“Vanderpol”)
- Viera v. Siimpson, No. 2:13-cv-02610 (D.S.C. Sept. 24, 2013) (“Viera”)
- In re* Villages of Capital Pointe, LLC, No. 2:13-cv-13334 (E.D. Mich. Aug. 5, 2013) (“Villages”)
- Wagner v. Johnson, No. 1:13-cv-00662 (D.N.M. July 17, 2013) (“Wagner I”)
- Wagner v. Hilliard, No. 1:13-cv-00790 (D.N.M. Aug. 23, 2013) (“Wagner II”)
- Wagner v. Jones, No. 1:13-cv-00857 (D.N.M. Sept. 10, 2013) (“Wagner III”)
- Warren v. Bourne, No. 5:13-cv-00583 (E.D.N.C. Aug. 8, 2013) (“Warren”)

- Weiss v. Lockwood, No. 1:13-cv-10812 (D. Mass. Apr. 9, 2013) (“Weiss”)
- West v. Al-Azem, No. 4:13-cv-01976 (S.D. Tex. June 28, 2013) (“West”)
- Williams v. Abdelsayed, No. 4:13-cv-00379 (S.D. Tex. Feb. 13, 2013) (“Williams II”)
- Williams v. Alabama/Main Partners, Ltd., No. 4:13-cv-00281 (S.D. Tex. Jan. 29, 2013) (“Alabama/Main”)
- Williams v. Alabama/Main Partners, Ltd., No. 4:13-cv-00274 (S.D. Tex. Jan. 29, 2013) (“Williams I”)
- Williams v. Biesiada, No. 4:13-cv-00990 (S.D. Tex. Apr. 3, 2013) (“Biesiada”)
- Williams v. Knafo, No. 4:13-cv-00412 (S.D. Tex. Feb. 13, 2013) (“Williams IV”)
- Williams v. Incalcaterra, No. 4:13-cv-00408 (S.D. Tex. Feb. 13, 2013) (“Williams III”)
- Williams v. Pollack, No. 4:13-cv-00416 (S.D. Tex. Feb. 13, 2013) (“Williams V”)
- Williams v. Salvato, No. 4:13-cv-00421 (S.D. Tex. Feb. 13, 2013) (“Williams VI”)
- Williams v. Salvato, No. 4:13-cv-00423 (S.D. Tex. Feb. 15, 2013) (“Williams VII”)
- Willson v. Union Pacific Railroad Co., No. 4:13-cv-01299 (E.D. Mo. Oct. 31, 2013) (“Willson”)
- Winkler v. Price, No. 8:13-cv-00052 (D. Neb. Feb. 14, 2013) (“Winkler”)
- In re* WL Homes LLC, No. 1:13-cv-01400 (D. Del. Aug. 8, 2013) (“WL Homes”)
- Yee-Smith v. Strebeck, No. 2:13-cv-00027 (D. Utah Jan. 10, 2013) (“Yee-Smith”)
- Yestramski v. Ostrander, No. 3:13-cv-30082 (D. Mass. Apr. 22, 2013) (“Yestramski”)
- Zazzali v. Ellison, No. 1:13-cv-00350 (D. Idaho Aug. 9, 2013) (“Zazzali”)
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