

12-1200 EXECUTIVE BENEFITS INSURANCE AGENCY V. ARKISON

DECISION BELOW: 702 F.3d 553

LOWER COURT CASE NUMBER: 11-35162

QUESTION PRESENTED:

In *Stern v. Marshall*, 131 S. Ct. 2594 (2011), this Court held that Article III of the United States Constitution precludes Congress from assigning certain "core" bankruptcy proceedings involving private state law rights to adjudication by non-Article III bankruptcy judges. Applying *Stern*, the court of appeals for the Ninth Circuit held that a fraudulent conveyance action is subject to Article III. The court further held, in conflict with the Sixth Circuit, that the Article III problem had been waived by petitioner's litigation conduct, which the court of appeals construed as implied consent to entry of final judgment by the bankruptcy court. The court of appeals also held, in conflict with the Seventh Circuit, that a bankruptcy court may issue proposed findings of fact and conclusions of law, subject to a district court's de novo review, in "core" bankruptcy proceedings where Article III precludes the bankruptcy court from entering final judgment. The court of appeals' decision presents the following questions, about which there is considerable confusion in the lower courts in the wake of *Stern*:

1. Whether Article III permits the exercise of the judicial power of the United States by bankruptcy courts on the basis of litigant consent, and, if so, whether "implied consent" based on a litigant's conduct, where the statutory scheme provides the litigant no notice that its consent is required, is sufficient to satisfy Article III.

2. Whether a bankruptcy judge may submit proposed findings of fact and conclusions of law for de novo review by a district court in a "core" proceeding under 28 U.S.C. 157(b).

CERT. GRANTED 6/24/2013