FALLOUT

After the Supreme Court's Bankruptcy Decisions of 2015

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In summer 2015, the U.S. Supreme Court handed down five opinions in six bankruptcy cases. These cases, which the Court considered for more than a year, resolved various bankruptcy issues ranging from technical to fundamental. The Court deliberated over whether a Chapter 13 trustee should distribute funds already collected under the Chapter 13 plan to creditors after the case converted to Chapter 7, mulled over the scope of one of its previous decisions on lien stripping, analyzed whether the denial of confirmation of a plan of reorganization should be considered a final order eligible for appeal, determined whether attorneys can collect fees for defending their fees against challenges, and decided whether parties can waive their personal constitutional rights to adjudication by a federal district judge so that their matters may be handled by the bankruptcy judge instead.

Shortly after the Court's opinions were entered, bankruptcy courts across America set out to determine the practical applications of the new holdings. This article briefly reviews the Supreme Court decisions and their impact on more recent cases in the lower courts. The review also notes any new issues that have developed during the course of their recent application.

Waiver and Consent After *Wellness Int'l Network Ltd. v. Sharif*

After the years of tumult and uncertainty for bankruptcy bars across America created by the Supreme Court's decision in *Stern v. Marshall*,[1] the most significant holding of the last term is likely the decision in *Wellness Int'l Network Ltd. v. Sharif*.[2] In the *Sharif* case, the Court determined that Article III, § 1, of the U.S. Constitution permits bankruptcy judges to adjudicate *Stern* claims with the parties' knowing and voluntary consent, which may be either express or implied.[3] The 6–3 decision, handed down on May 26, 2015, resolved a dispute over whether a bankruptcy court could determine that assets held by a trust for the benefit of a debtor were in fact property of the estate.[4]

The debtor had argued to the Seventh Circuit that, despite the language in § 541 of the Bankruptcy Code[5], the bankruptcy court presiding over his case lacked constitutional authority to declare that assets held in a trust within the debtor's control were property of his estate. The Seventh Circuit agreed that the bankruptcy court did not have constitutional authority, as property determinations rely upon applicable state law.[6] The Seventh Circuit held that the debtor could not have waived his constitutional objection to the court's judicial power, since the ability of bankruptcy courts to wield judicial power implicates nonwaivable separation of powers principles.[7] In doing so, the Seventh Circuit relied on the Supreme Court's holding in *Stern*,[8] which had found 28 U.S.C. § 157(b)(2)(C) to be unconstitutional inasmuch as it permitted a bankruptcy court to enter final judgment on a state counterclaim.

The Supreme Court disagreed with the Seventh Circuit's reliance, and held that litigants may waive their right to an Article III court if they knowingly and voluntarily consent to adjudication by a bankruptcy judge; further, that such a waiver may be implied by the actions of a litigant, so long as consent is knowing and voluntary.[9] The Court highlighted the necessary work performed by non-Article III courts, noting that, but for bankruptcy and magistrate judges handling the volume of cases that would otherwise need to be resolved by district courts, the federal judicial process would "grind to a halt."[10] The Court determined that, just as Congress has the authority to place the full share of the judiciary's labor on Article III judges and increase the number of district judgeships, it may also supplement "the capacity of district

courts through the able assistance of bankruptcy judges."[11] Because bankruptcy judges are subject to control by the Article III courts, and because their authority stems from Article III courts, the Supreme Court found that they "[pose] no threat to the separation of powers."[12]

The Court looked to other cases where parties consented to have non-Article III judges enter final decisions in order to resolve disputes.[13] The Court examinded its prior holding in *Commodity Futures Trading Comm'n v. Schor*, where it upheld statutory and constitutional challenges to a regulation by a federal agency allowing it to hear state law counterclaims.[14] The Supreme Court in *Schor* had noted: "As a personal right, Article III's guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights that dictate the procedures by which civil and criminal matters must be tried."[15] In that case, the Court concluded that a litigant could waive his personal right to an Article III court to the extent that the structural principle of checks and balances was not compromised. However, the Court had also warned at the time: "[T]o the extent that this structural principle is implicated in a given case … the parties cannot by consent cure the constitutional difficulty."[16]

In *Sharif*, the Court reiterated the importance of a litigant's consent to the constitutional analysis.[17] It follows that the entitlement to an Article III adjudicator is a "personal right" and thus "subject to waiver."[18] Article III serves the structural purpose of preventing congressional attempts to transfer jurisdiction to non-Article III courts and thereby weaken those courts whose authority is vested in the Constitution.[19] But the separation of powers is not offended so long as Article III courts retain supervisory authority over the process.[20]

The ruling by the Court also suggests that valid consent to adjudication by a bankruptcy court need not be express. The Court in *Sharif* pointed out that there is no such constitutional requirement and that the relevant statute, 28 U.S.C. § 157, states that a bankruptcy court must only obtain "the consent" of all parties before hearing and determining a noncore claim.[21] Moreover, a requirement of express consent contradicts the Court's decision in *Roell v. Withrow*,[22] which found that "the Article III right is substantially honored" by permitting waiver based on "actions rather than words."[23] The majority in *Sharif* determined that the implied consent standard in *Roell* supplied the appropriate rule for adjudication by bankruptcy courts under 28 U.S.C. § 157. However, a litigant's consent must still be knowing and voluntary, and thus the key inquiry is whether the litigant voluntarily appears to try the case before a non-Article III adjudicator after being made aware of both the need for consent and the right to refuse it.[24]

The *Sharif* decision, along with last year's decision in *Executive Benefits Ins. Agency v. Arkison*,[25] reaffirms the role of bankruptcy judges and their authority to decide a broad array of matters common in bankruptcy. However, some courts have given significance to the fact that—despite the language of *Sharif*—the Supreme Court remanded the case back to the Seventh Circuit to determine whether the debtor gave implied consent and whether the debtor forfeited his *Stern* objection by failing to present the argument in the lower courts.[26]

The Ninth Circuit recently took up the issue of forfeiture after *Sharif*[27] in the case of *Bastidas v. Chappell.* The Ninth Circuit found it necessary to require non-Article III judges to issue a warning to the litigants on the record that they have the right to object to such adjudication. As this illustrates, courts are questioning how exactly to determine the bounds of whether, how, and when a party forfeits the right to object to adjudication by a non-Article III judge.

Just 17 days after the *Sharif* decision was entered, the District of Columbia Circuit issued an opinion in the case of *Al Bahlul v. U.S.* that thoroughly analyzed the Supreme Court's reasoning as to whether Congress had encroached upon Article III's judicial power by authorizing military commissions to try purely domestic crimes of indicted terrorists.[28] In that case, the defendant was found guilty of charges related to terrorism, including conspiracy to commit war crimes.[29] The defendant argued that the jurisdiction of military commissions is limited to offenses under the international law of war and thus Congress encroached upon the Article III judicial power by authorizing executive branch tribunals to try purely domestic crimes such as inchoate conspiracy.[30] The government maintained that the Article III challenge was forfeited because the argument was not raised at trial before the military commission.[31] The District of Columbia Circuit found that the Supreme Court in *Sharif* had addressed the distinction between the waivability of the individual right to Article III adjudication and the structural component of Article III, § 1, and had concluded that only the former was waivable.[32]

While this may be an important distinction, the *Sharif* opinion has

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found more straightforward applications. For instance, in the case of *In re TPG Troy LLC*, the Second Circuit used the opinion to simply foreclose an argument that creditors were entitled to a jury trial on the issue of awarding attorneys' fees and costs.[33] The creditors had argued that the bankruptcy court lacked the constitutional authority to deem their jury demand waived, but the court of appeals easily concluded that the creditors knowingly and voluntarily consented based on their testimony in open court.[34] This holding has likewise been duplicated in several other circuits applying *Sharif* to resolve matters of consent.[35]

Fees for Defending Fees After *Baker Botts LLP v. ASARCO LLC*

On June 15, 2015, the Supreme Court handed down its long awaited decision in *Baker Botts LLP v. ASARCO LLC*.[36] The Court resolved whether 11 U.S.C. § 330(a) grants a bankruptcy judge discretion to award compensation for the costs professionals bear to defend their fee applications in bankruptcy.[37] The Fifth Circuit had previously held that a bankruptcy court is prohibited by the "American Rule" from awarding fees to a prevailing party absent statutory authority, contractual authorization, or special circumstances.[38] On appeal, appellants argued that the Bankruptcy Code grants bankruptcy courts broad discretion to award professional compensation, displacing the American Rule.[39]

However, the Supreme Court affirmed the Fifth Circuit's decision, emphasizing that Congress had not expressly departed from the American Rule[40] to permit compensation for fee defense litigation by professionals hired to assist trustees in bankruptcy proceedings.[41] The Court pointed out that the bankruptcy court was perfectly within the bounds of 11 U.S.C. § 330(a)(1) when it ordered the debtor to pay roughly $120 million in attorneys' fees during the bankruptcy, but not when it shifted the costs of adversary litigation during the fee dispute.[42] The Bankruptcy Code only provides "reasonable compensation" for "actual, necessary services rendered" in service of the estate administrator.[43] Time spent litigating a fee application against the administrator of a bankruptcy estate, the Court decided, cannot be fairly described as labor performed for that administrator.

In the course of this interpretation, the Court decided that the legislative intent was to limit compensation to "services rendered" in light of other provisions of the Bankruptcy Code that are explicitly cost shifting in nature. The Court pointed to 11 U.S.C. § 110(i) as one example, beacuse the provision requires bankruptcy petition preparers to pay the debtor reasonable attorneys' fees and costs in damages.[44] The Court, therefore, refused to find that Congress departed from the American Rule in § 330(a)(1) with respect to fee-defense litigation.

After the *Baker Botts* decision, a major question remains whether judges can still make an award of attorneys' fees pursuant to their discretionary powers, so long as it does not conflict directly with a provision of the Bankruptcy Code. Just prior to the *Baker Botts* decision, in the case of *In re Saldana*,[45] a bankruptcy court in the Northern District of Texas awarded reasonable and necessary attorneys' fees as a form of sanction, relying upon the Supreme Court's language in *Law v. Siegel*.[46] Reading the *Siegel* decision in accordance with the *Baker Botts* decision would seem to still allow for that result, but the issue remains to be tried.

A bankruptcy court for the Western District of Michigan in the Chapter 12 case of *In re Huepenbecker* expressed a dour interpretation of the *Baker Botts* decision.[47] An attorney employed in the case was forced to defend his $6,625 fee application at the cost of around $2,000.[48] The attorney prevailed but the bankruptcy court, believing itself constrained by the *Baker Botts* opinion, declined to reimburse the attorney for the defense of his fee application.[49] The court expressed disdain as it did, saying it could not "turn a blind eye to the impact that *Baker Botts* will have on the members of the bar whose livelihood depends on the approval of fees under § 330."[50] The court suggested that this case portended of worse hardship to come for estate professionals and debtors' counsel in Chapter 12 and 13 cases.[51]

Appealing the Denial of a Chapter 13 Plan After *Bullard v. Blue Hills Bank*

On May 4, 2015, the Supreme Court issued its opinion in *Bullard v. Blue Hills Bank*.[52] The Court considered whether a bankruptcy court's order denying confirmation of a debtor's proposed Chapter 13 bankruptcy plan is a final order that a debtor may immediately appeal pursuant to 28 U.S.C. §§ 158(a)(2) and (d)(1). It held that denial of a Chapter 13 plan is not a final order for purposes of an immediate appeal.

The Supreme Court's decision was unanimous, relying heavily upon the language in the prior decision of *Howard Delivery Services Inc. v. Zurich American Ins. Co.*[53] which states that "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they *finally* dispose of discrete disputes within the larger case."[54] Chief Justice John Roberts wrote that the Court's task was one of defining the scope of such discrete disputes or "proceedings." The Court disagreed with the notion that a bankruptcy court conducts a *separate* proceeding each time it reviews a bankruptcy plan proposal, and that an order denying a plan thus concludes the proceeding. Rather, the Court accepted the view that plan confirmation involves a *full* process of considering plans that concludes only upon the confirmation of a plan or upon the dismissal of the case, both of which change the rights and obligations of the parties.[55]

The debtor in the case had argued that failure to find the denial of a plan to be a final order subject to appeal would not only "insulate a host of potential legal errors from review and harm debtors," but also saddle debtors with unappealing alternatives to review.[56] These options would be unnecessarily detrimental to a debtor who is already short on funds. The Chief Justice conceded that these were "good points," and agreed that debtors would surely find their options "unappealing."[57] Nevertheless, the Court asserted that in the litigation system certain incorrect rulings were, as suggested in *Digital Equipment Corp*[58], "only imperfectly reparable" by the appellate process.[59] The Court found that prospect tolerable due to its own confidence "that bankruptcy courts, like trial courts in ordinary litigation, rule correctly most of the time."[60] Concluding the opinion, the Court opined that a debtor's rights to review would still be adequately protected following the Court's ruling, because a denied plan might be appealed through an interlocutory appeal under circumstances set forth in 28 U.S.C. §§ 158(a)(3), 158(d)(2), and 1292.[61]

Following *Bullard,* the denial of confirmation of a Chapter 13 plan is not a final one for purposes of appeal. Debtors may now find themselves in a "heads I win, tails you lose" situation in cases where approval of the debtor's plan comes down to the court's interpretation of a contested area of the law. While the creditor can still appeal immediately should it find the approval of a debtor's confirmation plan objectionable, the debtor cannot do the same when a plan is denied. That gives creditors significant negotiating leverage in plan confirma-

tion proceedings.[62] The scenario likely applies to Chapter 11 cases as well, and Chief Justice Roberts suggested as much in the opinion.[63]

Where Undistributed Plan Money Goes Post-Conversion After *Harris v. Viegelahn*

The Supreme Court in *Harris v. Viegelahn*[64] settled a circuit split over the disposition of accumulated post-petition wages upon a debtor's conversion from Chapter 13 to Chapter 7. The 30-year-old division centered around whether, when a debtor's post-petition earnings remain in the hands of a Chapter 13 trustee at the time of a debtor's conversion, the trustee must either return the undistributed wages to the debtor or disburse the funds to creditors.[65] A unanimous Supreme Court held that post-petition wages not yet distributed by a Chapter 13 trustee must be returned to the debtor upon a good faith conversion to Chapter 7.

The debtor in the case had successfully converted from Chapter 13 to Chapter 7.[66] He then sought to have the Chapter 13 trustee turn over post-petition wages in her possession that had yet to be distributed to creditors as of the date of the conversion.[67] Notwithstanding conversion, the Chapter 13 trustee went ahead and distributed the wages to creditors. When the bankruptcy court ordered the trustee to refund the money to the debtor, the trustee appealed.[68]

The district court affirmed the bankruptcy court, but the Fifth Circuit reversed both lower courts and remanded the case to the district court.[69] The Fifth Circuit pointed out that there is no provision requiring that undistributed payments made pursuant to a confirmed Chapter 13 plan be returned to the debtor upon conversion.[70] The court allowed the trustee to distribute the cash she had received pursuant to the plan up until the time of conversion. The Fifth Circuit acknowledged that its decision was in conflict with the Third Circuit, which had held that "undistributed plan payments held by a Chapter 13 trustee at the time of conversion must be returned to the debtor absent bad faith."[71]

The Supreme Court reversed the Fifth Circuit and clarified that "post-petition wages held by a Chapter 13 trustee at the time the case is converted to Chapter 7 ... must be returned to the debtor."[72] The opinion discussed the distinctions between Chapter 7 and Chapter 13: "Chapter 7 estate does not include the wages a debtor earns or the assets he acquires *after* the bankruptcy filing," whereas the Chapter 13 estate from which creditors may be paid includes both the debtor's property at the time of his petition and any wages acquired after filing.[73] Justice Ruth Bader Ginsburg explained how this creates confusion during conversion, as the existing case continues, but without effecting a change in the filing date of the petition.[74]

The Court ruled that Chapter 13 provisions "cease to apply once the case was converted to Chapter 7."[75] In rejecting the claim that the confirmed plan gave creditors a vested right to the debtor's wages, the Court noted that there is simply no bankruptcy statute that designates debtors' wages or property as belonging to creditors. In sum, continuing payments pursuant to the defunct Chapter 13 plan is not authorized.[76]

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Few courts have applied the *Viegelahn* holding, with a couple of exceptions. The U.S. Bankruptcy Court for the District of New Mexico in the case of *In re Beauregard* took up whether the Chapter 13 trustee could pay administrative expense claimants after conversion to Chapter 7 or instead had to return all funds collected but not distributed back to the debtors.[77] This straightforward issue on four corners with the facts in *Viegelahn* was resolved with perhaps a predictable answer: "No." The Chapter 13 trustee had to return all the funds to the debtors.[78]

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A more interesting result was effected in the case of *In re Sowell*. There, the debtor's attorney agreed to accept the "no look" sum of $2,500 for his pre-confirmation services in the debtor's Chapter 13 case. As is customary, counsel agreed to have the entirety of the fees paid through the plan. However, no plan was confirmed and the case was converted to Chapter 7. At the time, the Chapter 13 trustee had funds on hand of $1,855.03, which the debtor's counsel wished to have turned over to him upon conversion. The bankruptcy court, applying *Viegelahn*, found that it would be "inappropriate for any order regarding this fee application to contain a provision that the funds remaining in the hands of the Chapter 13 trustee be paid to [the debtor's attorney]."[79]

Lien Stripping Second Liens After *Bank of America N.A. v. Caulkett*

On June 1, 2015, the Supreme Court decided *Bank of America N.A. v. Caulkett*,[80] holding unanimously that a Chapter 7 debtor could not void a junior mortgage lien under 11 U.S.C. § 506(d), where the outstanding debt on a senior mortgage lien on the same property is greater than the present value of the collateral. This resolved two consolidated cases involving lien stripping: *Bank of America N.A. v. Caulkett*[81] and *Bank of America N.A. v. Toledo-Cardona.*[82] Each of the debtors had two mortgage liens on their individual homes for which Bank of America (the bank, or petitioner) held the junior lien. For its part, the bank's liens were completely underwater, as the value of the senior liens on each of the properties was greater than the present market value of the homes. In both proceedings the debtors moved to "strip off," or void, the junior liens under 11 U.S.C. § 506(d), which states that, "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void."[83] The bankruptcy court, and in turn, the district court, granted the debtors' motions. The Eleventh Circuit affirmed.[84]

However, the Supreme Court previously ruled in *Dewsnup v. Timm* against a similar interpretation of § 506.[85] The Court had held that § 506(d) does not permit a debtor to void a lien securing an allowed claim, and required that the term "allowed secured claim" in § 506(d) should not be read as having the same meaning as that in § 506(a). Instead, for purposes of § 506(d), a claim is first evaluated by whether it is "allowed" and, second, whether it is "secured."[86] While *Dewsnup* addressed a situation where the debtor wanted a "strip down," most circuits ruled thereafter that the decision was also applicable to "strip offs." The Eleventh Circuit has stood as the lone dissenting view in this respect.[87]

The Supreme Court has now struck down the Eleventh Circuit's unique interpretation. While both sides had conceded that the bank's claims were "allowed" under § 502(a) and (b), they disagreed whether the claims were "secured" for purposes of § 506(d). Justice Clarence Thomas, delivering the opinion of the Court, decided that the plain language of the Code would lead one to believe that the bank's claims were *not* secured.[88] However, because of the *Dewsnup* construction of the term "secured claim" in § 506(d), the analysis was foreclosed.[89] The function of § 506(d) is thus reduced to "voiding a lien whenever a claim secured by the lien itself has not been allowed."[90] Because *Dewsnup* interprets "secured claim" in § 506(d) to encompass any claim "secured by a lien and ... fully allowed pursuant to § 502," the bank's junior liens in the *Caulkett* and *Toledo-Cardona* cases could not be voided under the *Dewsnup* definition of "allowed secured claim."[91]

On July 16, 2015, the Eleventh Circuit issued its opinion in *Bank of America N.A. v. Waits* (*In re Waits*)[92] using the guidelines set forth by the Supreme Court's decision in *Caulkett*. The *Waits* case featured almost identical facts to *Caulkett and Toledo-Cardona*, and so it is not surprising that Bank of America moved for summary reversal based on the Supreme Court's decision.[93] However, the Eleventh Circuit denied the motion. Perhaps out of compassion, the court of appeals remanded the case back to the lower courts for proceedings consistent with the Supreme Court's decision.

Other debtors have not been so fortunate. After *Caulkett*, the Court issued dozens of decisions in quick succession, vacating the judgments of the Eleventh Circuit not in line with the *Dewsnup* opinion.[94] Future debtors facing the same predicament can only hope that a case may soon land before the Supreme Court that challenges the *Dewsnup* definition of "secured claim."

Conclusion

While bankruptcy practitioners will likely cheer the Supreme Court's decision in *Sharif* for some time to come, there are many who will likely be less satisfied with the other bankruptcy rulings this term. For instance, estate professionals may feel more vulnerable to objections now, since mounting a defense may mean contentious litigation without reimbursement. Likewise, debtors who were once hopeful that they could strip a second lien unsupported by value, or to appeal a plan they feel was denied in error, are likely disappointed. Chapter 13 trustees may feel additional pressure to quickly distribute to creditors monies collected from debtors so as to avoid having to turn funds back over to the debtor upon conversion to Chapter 7.

How courts will apply the Supreme Court's holdings to the facts of the cases before them is still developing. Practitioners must consider and reconsider the implications contained in the language of these decisions. Already new issues are forming, arising from the new precedents, which may merit review by the highest court. The full extent of the fallout still remains to be seen. ⊙

Endnotes

1 *Stern v. Marshall*, 131 S. Ct. 2594, 2608 (2011).
2 *Wellness Int'l Network Ltd. v. Sharif*, 135 S. Ct. 1932 (2015).
3 *Id.* at 1937.
4 *Id.*
5 All references to the "Bankruptcy Code" refer to Title 11 of the U.S. Code.
6 *Sharif*, 727 F.3d 751, 762-63 (7th Cir. 2013).
7 *Id.* at 771.
8 131 S. Ct. at 2608.
9 *Sharif,* 135 S. Ct. at 1942 (2015).
10 *Id.* at 1939.
11 *Id.* at 1946.
12 *Id.*
13 *Id.* at 1942 (citing *Thornton v. Carson*, 7 Cranch 596, 597 (1813)).
14 *Id.* (citing *Commodity Futures Trading Commission v. Schor*, 478 U.S. 833 (1986)).
15 *Id.*
16 *Id.* (citing 478 U.S. at 850–51).
17 *Id.* at 1942 (also citing as illustration *Gomez v. United States*, 490 U.S. 858 (1989); *Peretz v. United States*, 501 U.S. 923 (1991)).

[18] *Schor*, 478 U.S. at 848.
[19] *Id*. at 1944 (citing *Schor*, 478 U.S. at 850).
[20] *Id.*
[21] 28 U.S.C. § 157(c)(2).
[22] *Roell v. Withrow*, 538 U.S. 580 (2003).
[23] *Sharif,* 135 S. Ct. at 1948.
[24] *Id.* (citing *Roell*, 538 U.S. at 588, n. 5 ("notification of the right to refuse" adjudication by a non-Article III court "is a prerequisite to any inference of consent")).
[25] *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014).
[26] *Sharif,* 135 S. Ct. at 1949.
[27] *E.g., Bastidas v. Chappell*, 791 F.3d 1155, 1161 (9th Cir. 2015).
[28] *Al Bahlul v. United States*, 792 F.3d 1, 4 (D.C. Cir. 2015).
[29] *Id.* at 3.
[30] *Id.*
[31] *Id.*
[32] *Id*. at 5 (citing *Sharif*, 135 S. Ct. at 1942-44).
[33] *In re TPG Troy, LLC*, ___ F.3d ___, No. 14-1010-BK, 2015 WL 4220619, at *3 (2d Cir. July 14, 2015).
[34] *Id.* at *4.
[35] *E.g.*, *Marvin H. v. Morehead*, ___ F.3d ___, No. 14-2618, 2015 WL 4731360, at *2 (7th Cir. Aug. 11, 2015); *In re Gonzalez*, ___ F.3d ___, No. 14-1562, 2015 WL 4597594, at *3 (1st Cir. July 31, 2015)
[36] *Baker Botts LLP v. ASARCO LLC*, 135 S. Ct. 2158 (2015).
[37] *See Baker Botts LLP. v. ASARCO LLC*, 135 S. Ct. 44 (2014).
[38] *ASARCO LLC v. Baker Botts LLP* (*In re ASARCO, L.L.C.*), 751 F.3d 291, 302 (5th Cir.).
[39] *See* Brief for Petitioners, *ASARCO LLC v. Baker Botts LLP (In re ASARCO)*, No. 14-103, 2014 WL 6845689 at *15-41 (U.S. Appellate Brief Dec. 3, 2014).
[40] "The so-called American Rule governing the award of attorneys' fees in litigation in the federal courts is that attorneys' fees are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefore." *F.D. Rich Co. v. U. S. for Use of Indus. Lumber Co.*, 417 U.S. 116, 126 (1974).
[41] *ASARCO LLC,* No. 14-103, 2015 WL 2473336 at *5.
[42] *Id.*
[43] *Id.*
[44] *Id.* at *6.
[45] *In re Saldana*, 531 B.R. 141 (Bankr. N.D. Tex. 2015).
[46] 134 S. Ct. 1188, 1198 (2015) (noting that the court "may … possess … sanctioning authority under either § 105 or its inherent powers.").
[47] *In re Huepenbecker*, Case No. 12-02269, 2015 Bankr. LEXIS 2352 (Bankr. W.D. Mich. July 13, 2015).
[48] *Id.* at *2.
[49] *Id.* at *4.
[50] *Id.* at *8.
[51] *Id*.
[52] *Bullard v. Blue Hills Bank*, 135 S. Ct. 1686, 1692 (2015).
[53] *Howard Delivery Services Inc. v. Zurich American Insurance Co.* 547 U.S. 651, 657, n. 3 (2006).
[54] *Bullard*, 135 S. Ct. at 1692.
[55] *Id.* at 1693.
[56] Petition for Certiorari, Case No. 14-116, at 18 (U.S. July 30, 2014).
[57] 135 S. Ct. at 1695. Pun intended, apparently.
[58] *Digital Equipment Corp. v. Desktop Direct Inc.*, 511 U.S. 863, 872 (1994).
[59] 135 S. Ct. at 1695.
[60] *Id.*
[61] *Id.* at 1696.
[62] Charles J. Tabb, *"It Ain't Over Till It's Over": Supreme Court Holds That Denial of Confirmation of a Plan Is Not an Appealable Final Order* (http://s3.amazonaws.com/abi-org/Newsroom/Headlines/Tabb_Bullard_analysis.pdf, accessed June 19, 2015).
[63] 135 S. Ct. at 1693 (emphasis added).
[64] *Harris v. Viegelahn*, 135 S. Ct. 1829 (2015).
[65] *Viegelahn v. Harris* (*In re Harris*), 757 F.3d 468, 470 (5th Cir. 2014).
[66] *Id*. at 471.
[67] *Id.*
[68] *Id.* at 472.
[69] *Id.* at 481.
[70] *Id.* at 473.
[71] *In re Michael*, 699 F.3d 305 (3d Cir. 2012).
[72] *Viegelahn*, 135 S. Ct. at 1837.
[73] *Id.* at 1835 (citing 11 U.S.C. §§ 541(a)(1), 1306(a)).
[74] *Id.* at 1836.
[75] *Id.* at 1838 (citing §§ 1327(a), 1326(a)(2)).
[76] *Id.* at 1839. The Court noted that terminated Chapter 13 trustees have two post-conversion duties under F.R.B.P. 1019(4) & 1019(5): to turn over records and assets to the Chapter 7 trustee and to file a report with the U.S. trustee.
[77] *In re Beauregard*, 533 B.R. 826, 828 (Bankr. D. N.M. 2015).
[78] *Id.* at 831.
[79] *In re Sowell*, ___ B.R. ___, No. 14-44130, 2015 WL 4718588, at *3 (Bankr. D. Minn. Aug. 7, 2015).
[80] *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995 (2015).
[81] No. 13-1421, 2014 WL 2207208 (U.S. Nov. 17, 2014).
[82] No. 14-163, 2014 WL 3965212 (U.S. Nov. 17, 2014).
[83] 11 U.S.C. § 506(d).
[84] *Bank of Am. N.A. v. Caulkett* (*In re Caulkett*), 566 Fed. App'x. 879 (11th Cir, Mem. Op.); *Bank of Am. NA v. Toledo-Cardona* (*In re Toledo-Cardona*), 556 F. App'x 911 (11th Cir. 2014).
[85] *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).
[86] *Id.* at 415.
[87] *McNeal v. GMAC Mortgage LLC*, 735 F.3d 1263, 1265 (11th Cir. 2012).
[88] *Bullard,* 135 S. Ct. at 1998.
[89] *Id.* at 1999.
[90] *Id.* (quoting *Dewsnup* at 416).
[91] *Id.* (quoting *Dewsnup* at 417).
[92] *Bank of Am Bank N.A. v. Waits* (*In re Waits*), 793 F.3d 1267 (11th Cir. 2015) (mem).
[93] *See id.*
[94] *E.g.*, *Bank of Am. N.A. v. Glaspie*, 135 S. Ct. 2856 (2015); *Bank of Am. N.A. v. Madden*, 135 S. Ct. 2857 (2015); *Bank of Am. N.A. v. Brown*, 135 S. Ct. 2857 (2015).