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**KEEPING THE CATCH —
POST-CONFIRMATION JURISDICTION**

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I. INTRODUCTION

In an attempt to accelerate the confirmation process,¹ Chapter 11 plans increasingly retain the debtor's pre-petition causes of action for enforcement by various post-confirmation entities, including liquidation and litigation trusts. Many courts, however, have simultaneously curtailed the reach of bankruptcy jurisdiction over such claims in the post-confirmation context. In doing so, these courts have adopted rather amorphous standards for determining whether the bankruptcy court has subject-matter jurisdiction over any particular matter.² This paper discusses the limitations on post-confirmation jurisdiction and analyzes several specific factors that generally support the exercise of such jurisdiction.

II. OVERVIEW OF BANKRUPTCY JURISDICTION

Before addressing issues related to post-confirmation jurisdiction, it is necessary to review the structure of bankruptcy jurisdiction in general. The analysis of bankruptcy jurisdiction involves a two-step inquiry: (1) whether bankruptcy jurisdiction exists under 28 U.S.C. § 1334; and (2) if jurisdiction exists, whether a bankruptcy court, as opposed to a district court, can fully adjudicate the matter.³

¹ Acceleration of the confirmation process appears to be one of the goals of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which for the first time, has limited a debtor's exclusivity period to file a plan of reorganization to 18 months after the petition date. 11 U.S.C. § 1121(d)(2)(A).

² See Robert J. Keach, *Afterlife, Reincarnation or Purgatory? Post-Confirmation Jurisdiction in the First Circuit*, AM. BANKR. INST. J., Oct. 2005, at 24 ("Few areas of bankruptcy law are murkier and less-defined than the scope of the post-confirmation subject-matter jurisdiction of the bankruptcy court.").

³ See *FDIC v. Majestic Energy Corp. (In re Majestic Energy Corp.)*, 835 F.2d 87, 90 (5th Cir. 1988).

A. Jurisdiction Under 28 U.S.C. § 1334

Federal bankruptcy jurisdiction is “grounded in, and limited by,” 28 U.S.C. § 1334.⁴ Section 1334(a) confers upon the federal district courts original and exclusive jurisdiction over all cases under the Bankruptcy Code.⁵ Section 1334(b) grants the district courts original, but not exclusive, jurisdiction over three types of civil proceedings: (1) proceedings “arising under” the Bankruptcy Code; (2) proceedings “arising in” a bankruptcy case; and (3) proceedings “related to” a bankruptcy case.⁶ It is not necessary, however, to distinguish between these three types of proceedings in order to determine whether a particular matter falls within bankruptcy jurisdiction.⁷ The references in Section 1334(b) operate conjunctively to define the scope of bankruptcy jurisdiction. It is, therefore, necessary only to determine whether a matter is at least “related to” the bankruptcy case.

Congress did not delineate the scope of “related to” jurisdiction. Nonetheless, according to the United States Supreme Court, it is clear that “Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.”⁸ Although “related to” jurisdiction encompasses “more than simple proceedings involving the property of the debtor or the estate,” the Supreme Court has cautioned that such jurisdiction “cannot be limitless.”⁹

⁴ *Celetex Corp. v. Edwards*, 514 U.S. 300, 307 (1995).

⁵ 28 U.S.C. § 1334(a). This refers merely to the bankruptcy petition itself. *See U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 303-04 (5th Cir. 2002).

⁶ *Id.* § 1334(b). The term “proceeding,” as used in Section 1334(b), refers “to the steps within the ‘case’ and to any subaction within the case that may raise a disputed or litigated matter.” *Michigan Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1141 n.14 (6th Cir. 1991).

⁷ *See Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987).

⁸ *Celetex*, 514 U.S. at 308 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984)).

⁹ *Id.* (citing *Pacor*, 743 F.2d at 994).

More than twenty years ago, the Third Circuit Court of Appeals devised the following test for determining the existence of “related to” jurisdiction in *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984):

The usual articulation of the test for determining whether a civil proceeding is related to a bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. Thus, the proceeding need not necessarily be against the debtor or against the debtor’s property. An action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.¹⁰

Most courts — including the Courts of Appeals for the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuit — have adopted this broad test with little or no variation.¹¹ The Second and Seventh Circuits, on the other hand, have each adopted a slightly different test.¹² Regardless of the test applied, bankruptcy courts clearly have no jurisdiction over proceedings that “have no effect on the debtor.”¹³

B. Bankruptcy Court vs. District Court

Section 1334 vests bankruptcy jurisdiction in the federal district courts.¹⁴ The district courts, in turn, may refer any or all bankruptcy cases or proceedings to the bankruptcy courts

¹⁰ 743 F.2d at 994.

¹¹ *Celotex*, 514 U.S. at 308 n.6 (citing multiple cases). The Fifth Circuit adopted the *Pacor* test in *Wood v. Wood (In re Wood)*, 825 F.2d 90, 93 (5th Cir. 1987), and *FDIC v. Majestic Energy Corp. (In re Majestic Energy Corp.)*, 835 F.2d 87, 90 (5th Cir. 1988).

¹² *Id.* (citing *Turner v. Ermiger (In re Turner)*, 724 F.2d 338, 341 (2d Cir. 1983); *Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 749 (7th Cir. 1989)). The Second Circuit holds that “related to” jurisdiction exists if the action poses a “significant connection” to the bankruptcy case. *Turner*, 724 F.2d at 341. The Seventh Circuit holds that a case is related to a bankruptcy case only when the dispute “affects the amount of property for distribution or the allocation of property among creditors.” *In re Memorial Estates, Inc.*, 950 F.2d 1364, 1368 (7th Cir. 1992).

¹³ *Celotex*, 514 U.S. at 308 n.6.

¹⁴ Congress, of course, enacted this jurisdictional scheme in response to the Supreme Court’s plurality decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

within the district.¹⁵ In fact, every district court has adopted a local rule or standing order that provides for automatic referral of such cases or proceedings. Bankruptcy courts, however, do not possess full adjudicative power in all of these referred matters. Rather, bankruptcy courts may enter final orders and judgments only in bankruptcy cases and other “core proceedings,” pursuant to 28 U.S.C. § 157(b)(1).¹⁶ Section 157 equates core proceedings with the categories of “arising under” and “arising in” matters under 28 U.S.C. § 1334(b).¹⁷ Thus, a core proceeding, therefore, either: (1) involves a substantive right provided by the Bankruptcy Code; or (2) is a proceeding that, by its nature, could arise only in the context of a bankruptcy case.¹⁸

In contrast to their full adjudicative power in core proceedings, bankruptcy courts possess more limited authority in non-core proceedings that are otherwise “related to” a bankruptcy case under 28 U.S.C. § 1334(b). Bankruptcy courts may not, without the consent of the parties, enter a final order or judgment.¹⁹ Instead, bankruptcy courts may only hear the matter and submit proposed findings of fact and conclusions of law to the district courts for *de novo* review.²⁰

¹⁵ 28 U.S.C. § 157(a).

¹⁶ *Id.* § 157(b)(1) (stating that the bankruptcy court may “enter appropriate orders and judgments” in such matters, subject to appellate review by the district court).

¹⁷ *Id.* (referring to “all core proceedings arising under title 11, or arising in a case under title 11”); *see also U.S. Brass*, 301 F.3d at 304 (“[W]e have held that § 157 equates core proceedings with the categories of “arising under” and “arising in” proceedings . . .”).

¹⁸ *See U.S. Brass*, 301 F.3d at 304 (citing *Wood*, 825 F.2d at 92); *Torkelsen v. Maggio (In re The Guild and Gallery Plus, Inc.)*, 72 F.3d 1171, 1178 (3d Cir. 1996). Section 157(b)(2) contains a non-exclusive list of core proceedings. 28 U.S.C. § 157(b)(2).

¹⁹ *Id.* § 157(c)(1), (2).

²⁰ *Id.* § 157(c)(1).

III. LIMITED SCOPE OF POST-CONFIRMATION JURISDICTION

A. Statutory Basis for Post-Confirmation Jurisdiction

Section 1334 remains the exclusive source of bankruptcy jurisdiction after plan confirmation.²¹ The Bankruptcy Code itself makes no specific provision for continuing jurisdiction, though several sections seem to presume it.²² Section 1142, for example, provides bankruptcy courts with broad power to enforce the terms of a confirmed plan.²³ Several bankruptcy rules similarly presume post-confirmation jurisdiction.²⁴ That authority, however, is limited by the jurisdictional grant of Section 1334.²⁵

B. Judicial Limitations on Post-Confirmation Jurisdiction

Section 1334 does not distinguish between pre-confirmation and post-confirmation jurisdiction. Nonetheless, some courts — including the Fifth Circuit in *Bank of La. v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388 (5th Cir. 2001) — have recently curtailed the reach of “related to” jurisdiction in the post-confirmation context.²⁶ The rationale behind these decisions starts with the premise that the reorganized debtor must

²¹ See, e.g., *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.)*, 372 F.3d 154, 165 (3d Cir. 2004); *U.S. Brass*, 301 F.3d at 306.

²² See 11 U.S.C. §§ 350, 1141(a), 1142.

²³ See *id.* § 1142.

²⁴ See FED. R. BANKR. P. 3020(d) (“Notwithstanding the entry of the order of confirmation, the court may issue any other order necessary to administer the estate.”); FED. R. BANKR. P. 3022 (“After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.”).

²⁵ See *U.S. Brass*, 301 F.3d at 306 (“[T]he source of the bankruptcy court’s subject matter jurisdiction is neither the Bankruptcy Code nor the express terms of the Plan. The source of the bankruptcy court’s jurisdiction is 28 U.S.C. §§ 1334 and 157.”).

²⁶ See *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005); *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.)*, 372 F.3d 154, 168-69 (3d Cir. 2004); *Bank of La. v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex., Inc.)*, 266 F.3d 388, 390-91 (5th Cir. 2001).

eventually emerge from bankruptcy without the ongoing protection of the bankruptcy court.²⁷

The Seventh Circuit Court of Appeals has explained this premise as follows:

Once the bankruptcy court confirms a plan of reorganization, the debtor may go about its business without further supervision or approval. The firm is also without the *protection* of the bankruptcy court. It may not come running to the bankruptcy judge every time something unpleasant happens.²⁸

Without some limitation on the broad sweep of “related to” jurisdiction, a reorganized debtor could invoke bankruptcy jurisdiction for many years after plan confirmation. This prospect not only would result in an unwarranted expansion of federal court jurisdiction, but also would unfairly advantage reorganized debtors by allowing them to funnel virtually all of their litigation into a single federal forum.²⁹ Courts, therefore, have increasingly limited the scope of “related to” jurisdiction in the post-confirmation context.³⁰

Some courts and commentators, in contrast, have questioned the authority to impose any limitations on post-confirmation jurisdiction under Section 1334.³¹ The Fifth Circuit, for example, raised that precise question in *U.S. Brass Corp. v. Travelers Ins. Group (In re U.S. Brass Corp.)*, 301 F.3d 296 (5th Cir. 2002). The court initially noted that the plain language of “Section 1334 does not expressly limit bankruptcy jurisdiction upon plan confirmation.”³² The

²⁷ See, e.g., *Craig's Stores*, 266 F.3d at 390-91.

²⁸ *Pettibone Corp. v. Easley*, 935 F.2d 120, 122 (7th Cir. 1991) (Easterbrook, J.).

²⁹ See *id.*

³⁰ See *Pegasus Gold*, 394 F.3d at 1194; *Resorts Int'l*, 372 F.3d at 168-69; *Craig's Stores*, 266 F.3d at 390-91.

³¹ See, e.g., *Zahn v. Yucaipa Cap. Fund (In re Almac's, Inc.)*, 202 B.R. 648, 655 (D.R.I. 1996); 8 ALAN N. RESNICK & HENRY J. SOMMER, *COLLIER ON BANKRUPTCY* ¶ 1142.04[1], at 1142-7 (15th ed. rev. 2005); Frank R. Kennedy & Gerald K. Smith, *Postconfirmation Issues: The Effects of Confirmation and Postconfirmation Proceedings*, 44 S.C. L. REV. 1, 631-44 (1993). Kennedy and Smith have suggested that permissive abstention would better resolve any concerns about pervasive post-confirmation jurisdiction than distorting the statutory language of Section 1334. See Kennedy and Smith, *supra*, at 642.

³² *U.S. Brass*, 301 F.3d at 304.

court conceded that “[o]ur authority to engraft limitations on § 1334 is subject to debate,” but acknowledged that its *Craig’s Stores* decision had already adopted a “more exacting” standard for post-confirmation jurisdiction.³³ Ultimately, the Fifth Circuit avoided reaffirming that standard, concluding that jurisdiction existed “even under the narrower test” of *Craig’s Stores*.³⁴

Most courts have adopted one of two tests for limiting post-confirmation jurisdiction. Some courts — including the Fifth Circuit in *Craig’s Stores* — have held that post-confirmation jurisdiction extends only to matters pertaining to “implementation or execution” of the plan:

After a debtor’s reorganization plan has been confirmed, the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the *implementation or execution of the plan*.³⁵

Other courts have analyzed post-confirmation jurisdiction under a somewhat broader test, as recently articulated by the Third Circuit in *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int’l, Inc.)*, 372 F.3d 154, 167 (3d Cir. 2004):

At the post-confirmation stage, the claim must affect an integral aspect of the bankruptcy process — there must be *a close nexus to the bankruptcy plan or proceeding*. . . . The question is how close a connection warrants post-confirmation jurisdiction. Matters that affect the *interpretation, implementation, consummation, execution, or administration of the confirmed plan* will typically have the requisite close nexus.³⁶

³³ *Id.* at 304 & n.25. As discussed below, *Craig’s Stores* held that “the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist” after plan confirmation, with a few limited exceptions. *Craig’s Stores*, 266 F.3d at 390. Section 1334, however, speaks in terms of whether the proceeding is related to the *case*, not the *estate*.

³⁴ *Id.* at 305. The Fifth Circuit also found the matter to be a proceeding “arising in” a case under the Bankruptcy Code. *Id.* at 306. Thus, the *U.S. Brass* decision can hardly be viewed as a reaffirmation of the “narrower test” for post-confirmation jurisdiction in proceedings merely “related to” a bankruptcy case.

³⁵ *Craig’s Stores*, 266 F.3d at 390 (emphasis added); *see also Goodman v. Curtis Enters., Inc.*, 809 F.2d 228, 232 (4th Cir. 1987) (holding that post-confirmation jurisdiction extends to “implementation and execution” of plan).

³⁶ 372 F.3d at 167 (emphasis added); *see also Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1194 (9th Cir. 2005) (adopting the Third Circuit’s “close nexus” test); *Penthouse Media Group v. Guccione (In re General Media, Inc.)*, Adv. No. 05-2414, 2005 WL 3529148, at *7 (Bankr. S.D.N.Y. Dec. 27, 2005) (applying “close nexus” test); *Astropower Liquidating Trust v. Xantrex Tech., Inc. (In re Astropower Liquidating Trust)*, Adv. No. 05-50867, 2005 WL 3542893, at *9 (Bankr. D. Del. Dec. 22, 2005) (same); *Guttman v. Martin (In re Railworks Corp.)*, 325 B.R. 709, 723 (Bankr. D. Md. 2005) (same).

