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No. 12-1200

IN THE
Supreme Court of the United States

EXECUTIVE BENEFITS INSURANCE AGENCY,

Petitioner,

v.

PETER H. ARKISON, AS CHAPTER 7 TRUSTEE OF THE ESTATE OF BELLINGHAM INSURANCE AGENCY, INC.,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF OF NVIDIA CORPORATION AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES iii

INTEREST OF THE *AMICUS CURIAE* 1

CONSTITUTIONAL AND STATUTORY BACKGROUND 5

SUMMARY OF ARGUMENT................................... 7

ARGUMENT 9

I. BANKRUPTCY COURTS MAY RESOLVE ANY CAUSE OF ACTION THAT MUST BE DECIDED AS PART OF THE CLAIMS ALLOWANCE PROCESS 10

A. This Court Has Repeatedly Explained That Bankruptcy Courts May Resolve Causes Of Actions That Are A Necessary Part Of The Claims Allowance Process.......... 10

B. Historical Practice Confirms That Bankruptcy Courts May Resolve Causes Of Actions That Are A Necessary Part Of The Claims Allowance Process 17

C. The Ninth Circuit Should Not Have Vacated The *Brandt v. NVIDIA* Hearings 20

TABLE OF CONTENTS
(continued)

Page

II. THE SCOPE OF ANY BANKRUPTCY COURT AUTHORITY THAT IS BASED ON LITIGANT CONSENT IS DISTINCT FROM AUTHORITY THAT IS NECESSARY TO RESOLVE THE CLAIMS ALLOWANCE PROCESS 20

CONCLUSION 23

TABLE OF AUTHORITIES

Page(s)

Cases

Brandt v. NVIDIA Corp., et al. (In re 3dfx Interactive, Inc.),
389 B.R. 842 (Bankr. N.D. Cal. 2008)........*passim*

Brandt v. NVIDIA Corp., et al. (In re 3dfx Interactive, Inc.), Slip. Op.
Case No. 08-cv-04634-RMW (N.D.Cal. Dec. 20, 2010)...2

Executive Benefits Inc. Agency v. Arkison (In re Bellingham),
702 F.3d 553 (9th Cir. 2012).....................7, 15, 21

Executive Benefits Ins. Agency, Inc. v. Arkison (In re Bellingham),
No. 11-35162 (9th Cir.) 2, 3

Granfinanciera, S.A. v. Nordberg,
492 U.S. 33 (1989)................................6, 8, 13, 14

Katchen v. Landy,
382 U.S. 323 (1966)....................................*passim*

Langenkamp v. Culp,
498 U.S. 42 (1990)...............................8, 14, 15, 20

Lingan v. Bayley,
1 D.C. 112 (1 Cranch D.C. 1802)........................19

TABLE OF AUTHORITIES (continued)

Page(s)

Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.,
458 U.S. 50 (1982)......................................*passim*

Onkyo Europe Elecs. GMBH v. Global Technovations Inc. (In re Global Technovations Inc.),
694 F.3d 705 (6th Cir. 2012)...................11, 16, 20

Ortiz v. Aurora Health Care, Inc. (In re Ortiz),
665 F.3d 906 (7th Cir. 2011)...............................16

Pirie v. Chicago Title & Trust Co.,
182 U.S. 438 (1901)..11

Stern v. Marshall,
131 S. Ct. 2594 (2011)................................*passim*

Waldman v. Stone,
698 F.3d 910 (6th Cir. 2012)...................15, 16, 21

Wellness Int'l Netword Ltd. v. Sharif,
__ F.3d __, No. 12-1349, 2013 WL 4441926 (7th Cir. Aug. 21, 2012)..21

Wood v. Owings,
5 U.S. 239 (1803)..17

Constitutional Provisions

U.S. Const. art. III ....*passim*

TABLE OF AUTHORITIES (continued)

Page(s)

Statutes & Regulations

Bankruptcy Act of 1800, 2 Stat. 19 (repealed 1803)....................18

Bankruptcy Act of 1841, 5 Stat, 440 (repealed 1843)....................19

Bankruptcy Act of 1867, 14 Stat. 517, *et seq*..........19

Bankruptcy Act of 1898, 30 Stat. 544 *et seq*. 19

Bankruptcy Act of 1938, 52 Stat. 840 (repealed 1978)....................20

11 U.S.C. § 501....................6

11 U.S.C. § 502....................6

11 U.S.C. § 541....................6

11 U.S.C. § 547....................11

28 U.S.C. § 151....................5

28 U.S.C. § 152(a)(1)....................5

28 U.S.C. § 157(a)....................5

28 U.S.C. § 157(b)....................3

28 U.S.C. § 157(b)(1)....................6, 7

TABLE OF AUTHORITIES
(continued)

Page(s)

28 U.S.C. § 157(b)(2)(A) 7

28 U.S.C. § 157(b)(2)(B) 7

28 U.S.C. § 157(b)(2)(H) 7

28 U.S.C. § 157(b)(3) 6

28 U.S.C. §§ 157(c)(1), (2)...6

28 U.S.C. § 1334(a)..5

Other Authorities

William Blackstone, *The Student's Blackstone: Selections From the Commentaries on the Laws of England* 352 (Robert Malcolm Kerr, ed., London, Albemarle St. 1858) 18

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TABLE OF AUTHORITIES
(continued)

Page(s)

Thomas Davies, *The Laws Relating to Bankrupts* 165 (London, Henry Linton 1744) 18

Andrew J. Duncan, *From Dismemberment to Discharge: The Origins of Modern American Bankruptcy Law* 100 Comm. L. J. 202 (1995) 17, 18

Thomas E. Plank, *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, 72 Am. Bankr. L. J. 567 (1998) 17, 18

Clinton Rice, *Manual of The U.S Banktruptcy Act*, 1867 (Philp & Solomons, Washington, D.C., 1867) ... 19

INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae NVIDIA Corporation ("NVIDIA") is a public company based in Santa Clara, California, that designs and sells semiconductor products. NVIDIA has an interest in this petition because the U.S. Court of Appeals for the Ninth Circuit appears to believe that resolution of the question presented may have direct application to a pending Ninth Circuit appeal involving NVIDIA.

In December 2000, NVIDIA entered into an asset purchase agreement to buy substantially all of the assets of another Silicon Valley semiconductor company, 3dfx Interactive, Inc. ("3dfx"). Later, 3dfx filed a bankruptcy petition under chapter 11 of the Bankruptcy Code. NVIDIA timely filed a proof of claim in the chapter 11 case based on 3dfx's prepetition breach of the agreement. In response, William A. Brandt, Jr., the trustee for 3dfx's bankruptcy estate, commenced an adversary proceeding against NVIDIA in bankruptcy court, seeking to void the agreement as a fraudulent transfer and asserting successor liability claims. Following a bench trial, the bankruptcy court entered judgment entirely in NVIDIA's favor. *See Brandt v. NVIDIA Corp., et al. (In re 3dfx Interactive, Inc.)*, 389 B.R. 842 (Bankr. N.D. Cal. 2008). The district court affirmed the

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[1] The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

bankruptcy court's judgment, *see Brandt v. NVIDIA Corp. et. al. (In re 3dfx Interactive, Inc.)*, Slip Op., Case No. 08-cv-04634-RMW, (N.D. Cal. Dec. 20, 2010), and the trustee appealed to the Ninth Circuit, *see id.* at Docket No. 37 (Jan. 19, 2011). The Ninth Circuit set oral argument for May 15, 2012. *See* Ninth Circuit Case No. 11-15189, Docket No. 34.

Two weeks before the anticipated appellate argument, the Ninth Circuit *sua sponte* vacated the hearing pending resolution of *Executive Benefits Ins. Agency, Inc. v. Arkison (In re Bellingham)*, No. 11-35162 (9th Cir.). The order characterized the question in *Bellingham* as "whether, or in what circumstances, a bankruptcy court has jurisdiction to enter judgment on a fraudulent conveyance action." *See* Ninth Circuit Case No. 11-15189, Docket No. 37. Shortly after deciding *Bellingham*, the Ninth Circuit directed NVIDIA and the trustee to submit simultaneous supplemental briefs addressing the effect of that decision on the trustee's pending appeal in *Brandt v. NVIDIA*. *See* Ninth Circuit Case No. 11-15189, Docket No. 40. In response, the parties submitted a joint brief advising that "all parties agree that *Bellingham* has no effect on the appeal" in part because "[t]he Trustee's adversary proceeding sought to undo the [asset purchase agreement] as a fraudulent transfer, and so had to be resolved in the course of dealing with NVIDIA's [asset purchase agreement]-related claim against the estate." Ninth Circuit Case No. 11-15189, Docket No. 43 at 2. After receiving the parties' joint submission, the Ninth Circuit reset the matter for oral argument. *See* Ninth Circuit Case No. 11-15189, Docket No. 44.

Before the rescheduled hearing date, this Court granted the petition for a writ of certiorari in *Bellingham*. *See* 570 U.S. __ (2013). The questions presented in the petition are:

> 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).

Petitioner and Respondent in their certiorari stage briefs do not question that bankruptcy judges may enter judgment in an action where the defendant has filed a claim in the bankruptcy that cannot be adjudicated without also adjudicating the debtor's action against that creditor.

Nevertheless, in the wake of this Court's decision to grant the petition, the Ninth Circuit again *sua sponte* vacated the hearing date in *Brandt v. NVIDIA* pending a decision in *Bellingham*. *See* Ninth Circuit Case No. 11-15189, Docket No. 47. NVIDIA promptly filed a motion to reinstate the hearing date. NVIDIA emphasized, among other things, that

(i) the petition does not question the power of bankruptcy courts to enter final judgments on claims that must necessarily be decided as part of the claims allowance process and (ii) this Court validated bankruptcy courts' power to enter judgments in those circumstances just two years ago in *Stern v. Marshall*, 131 S. Ct. 2594 (2011). *See id.*, Docket No. 48 at 4 (citing and quoting *Stern*, 131 S. Ct. at 2618). The Ninth Circuit declined to reinstate the hearing. *See id.*, Docket No. 50.

The Ninth Circuit's decisions to vacate the *Brandt v. NVIDIA* hearings suggest that it believes the outcome of this petition might have direct relevance to the power of bankruptcy courts to resolve fraudulent transfer claims against a creditor of the estate even where that claim must necessarily be decided as part of the claims allowance process. As explained below, however, there is no question that bankruptcy courts possess authority to rule on all causes of action that must necessarily be resolved as part of the claims allowance process.

Petitioner does not discuss the power of bankruptcy judges to resolve causes of action that must be decided as part of the claims allowance process. If the Court takes the same silent approach, however, there will be a heightened risk that lower courts might mistakenly interpret the Court's opinion to abrogate that well established power. Accordingly, the Court should state that bankruptcy courts may resolve actions that must necessarily be decided as part of the claims allowance process.

CONSTITUTIONAL AND STATUTORY BACKGROUND

Article III, Section 1 of the United States Constitution provides that:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, shall hold their offices during good Behavior, and shall, at stated Times, receive for their Services, a compensation, which shall not be diminished during their Continuance in Office.

U.S. Const. Art. III, § 1.

Generally, Article III district courts have original and exclusive jurisdiction over cases under the Bankruptcy Code. 28 U.S.C. § 1334(a). In 1984, Congress passed the Bankruptcy Amendments and Federal Judgeship Act, authorizing federal district courts to refer "any or all" bankruptcy cases and proceedings to the district's bankruptcy courts. 28 U.S.C. § 157(a). Bankruptcy courts are units of the district courts, 28 U.S.C. § 151, and bankruptcy judges are appointed for limited terms by the courts of appeals to serve as officers of the district courts, § 152(a)(1). As a result, bankruptcy judges are not Article III judges. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line*, 458 U.S. 50, 61 (1982) ("there is no doubt that the bankruptcy judges created by the Act are not Art. III judges."); *see also*

Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 50 (1989) (describing bankruptcy court as "a non-Article III tribunal").

Among other things, the Bankruptcy Code contemplates proceedings that resolve creditors' claims against the debtor, to be paid from the estate created under 11 U.S.C. § 541, when the debtor enters bankruptcy. The Code permits a creditor to file a "proof of claim" articulating that creditor's claim against the estate. *See* 11 U.S.C. § 501. "A claim or interest, proof of which is filed … is deemed allowed, unless a party in interest … objects." 11 U.S.C. § 502.

The Bankruptcy Amendments and Federal Judgeship Act distinguishes between "core" and "non-core" proceedings in bankruptcy court. *See* 28 U.S.C. § 157(b)(3) (requiring bankruptcy judges to determine whether a proceeding is "core."). In making that distinction, Congress empowered bankruptcy judges to "enter appropriate orders and judgments" in "core proceedings arising under" the Bankruptcy Code. *See* 28 U.S.C. § 157(b)(1). Conversely, only district court judges may enter final judgments in "non-core" proceedings related to a bankruptcy case, absent the consent of all the parties. *See* 28 U.S.C. §§ 157(c)(1) and (2).

The "core proceedings" taxonomy stems from *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). In holding that Article III prohibited a bankruptcy court from deciding a state-law contract claim against an entity that was not otherwise part of the bankruptcy proceeding, the Court in *Northern Pipeline* differentiated between

the private contract dispute at issue and "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power." *Id.* at 71-72.

After *Northern Pipeline*, Congress incorporated the "core" terminology into the statutory framework governing bankruptcy judges. *See Executive Benefits Inc. Agency v. Arkison (In re Bellingham)*, 702 F.3d 553, 559 (9th Cir. 2012). In doing so, Congress enumerated sixteen nonexclusive examples of "core proceedings," including "matters concerning the administration of the estate," 28 U.S.C. § 157(b)(2)(A), and "allowance or disallowance of claims against the estate," *id.*, § 157(b)(2)(B). Of particular relevance here, Congress declared that "proceedings to determine, avoid, or recover fraudulent conveyances[,]" *id.* § 157(b)(2)(H) are "core proceedings arising under title 11" and thus suitable for resolution by bankruptcy judges. 28 U.S.C. § 157(b)(1).

SUMMARY OF ARGUMENT

I. This Court has repeatedly acknowledged that bankruptcy courts have the power to adjudicate an action against a creditor who filed a proof of claim against the bankruptcy estate where the action must necessarily be resolved as part of the claims allowance process. The bankruptcy courts' authority to enter judgments in those circumstances is well grounded in this Court's precedent and historical practice.

The Court's recent decision in *Stern v. Marshall*, __ U.S. __, 131 S. Ct. 2594 (2011), caps a quintet of Supreme Court decisions—*Katchen v. Landy*, 382 U.S. 323 (1966), *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), *Langenkamp v. Culp*, 498 U.S. 42 (1990), and *Stern* itself—that educe the power of bankruptcy courts to enter final judgment in an action against a creditor, where resolution of that action is a necessary part of the claims allowance process. The rule originates from *Katchen v. Landy*, which first enunciated the Court's view of the power of a bankruptcy court "to allow, disallow and reconsider claims[.]" 382 U.S. at 329 (internal quotations omitted). *Stern* explains the bankruptcy court's power to enter judgment in actions that must necessarily be resolved in the claims allowance process by reference to the debtor's action being, as a practical matter, subsumed in the claims-allowance process. The Court's precedents delineating the scope of bankruptcy court authority uniformly support that principle.

The Court's precedent is consistent with historical practice as well. In 1789 England, bankruptcy was an extrajudicial proceeding assigned to a panel of commissioners who would determine all of the issues arising out of the proceeding, including receiving "proofs of creditors' claims" and "acts of bankruptcy," such as fraudulent transfers, in resolving a creditor's claim. The United States bankruptcy statutes adopted that structure in the first national bankruptcy law in 1800, and have permitted non-

Article III tribunals to enter judgments as part of the claims allowance process ever since.

II. The chief question presented in this petition is whether bankruptcy courts have authority to enter judgments based solely on litigant consent. Neither Petitioner nor Respondent, in their briefs requesting or opposed to certiorari, nor any of the decisions they rely upon to demonstrate a circuit split, contests that bankruptcy judges may enter judgment in an action where the defendant *has* filed a claim in the bankruptcy that cannot be adjudicated without also adjudicating the debtor's action against that creditor. The Court's precedents—culminating with *Stern*—have long established that bankruptcy courts may enter final judgments in those circumstances.

In its underlying opinion, the Ninth Circuit explicitly acknowledged that the bankruptcy court lacked authority to adjudicate Respondent's fraudulent transfer claim because Petitioner had *not* filed a proof of claim. Since the Ninth Circuit applied *Stern* correctly, and no one contests the *Stern* rule on this petition, the resolution of this petition does not implicate the bankruptcy courts' power to enter judgments in actions that must necessarily be decided as part of the claims allowance process.

ARGUMENT

A bankruptcy court enjoys constitutional and statutory authority to adjudicate any action that stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process.

Bankruptcy judges are not Article III judges, and so generally may not exercise the power conferred upon federal courts by the Constitution. But this Court has always acknowledged the bankruptcy courts' power to adjudicate any action that must necessarily be resolved as part of the claims allowance process.

I. BANKRUPTCY COURTS MAY RESOLVE ANY CAUSE OF ACTION THAT MUST BE DECIDED AS PART OF THE CLAIMS ALLOWANCE PROCESS

This Court has long held, consistent with historical practice, that a bankruptcy judge has authority to adjudicate claims against the bankrupt's estate as well as any other actions that must necessarily be decided as part of that claims allowance process.

A. This Court Has Repeatedly Explained That Bankruptcy Courts May Resolve Causes Of Actions That Are A Necessary Part Of The Claims Allowance Process

In *Stern v. Marshall*, the Court detailed the power of bankruptcy courts. Chief Justice Roberts, writing for the Court, explained that a bankruptcy court's power turns on "*whether the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process*," 131 S. Ct. at 2618 (emphasis added). Where, as in *Stern*, the action did not stem from the bankruptcy itself or would not necessarily be resolved in the claims allowance process, a bankruptcy court is constitutionally prohibited by Article III from entering final judgment. *See id.* at 2620. Where, on the other

hand, an action does stem from the bankruptcy process or must necessarily be resolved in the claims allowance process, a bankruptcy court enjoys the power to enter a final judgment in any action. *See Onkyo Europe Elecs. GMBH v. Global Technovations Inc. (In re Global Technovations Inc.)*, 694 F.3d 705, 722 (6th Cir. 2012) ("It is crystal clear that the bankruptcy court had constitutional jurisdiction under *Stern* to adjudicate whether the sale [at issue] was a fraudulent transfer, because 'it was not possible to rule on [the] proof of claim without first resolving' the fraudulent transfer issue.") (citing and quoting *Stern*, 131 S. Ct. 2616).

Stern is the most recent in a line of Supreme Court cases that recognize the power of bankruptcy courts to enter final judgment in an action against a creditor where resolution of that action is a necessary part of the claims allowance process. In *Pirie v. Chicago Title & Trust Co.*, 182 U.S. 438 (1901), the Court interpreted the Bankruptcy Act of 1898, and concluded that a proceeding disallowing a creditor's claim against the estate unless he repaid a preference was not a "suit" triable only in an Article III court. *See id.* at 456.[2]

The Court applied that reasoning 65 years later in *Katchen*. *See Katchen*, 382 U.S. at 332 n.9 ("We

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[2] Preference actions allow a trustee in bankruptcy to avoid a transfer of an interest in the debtor's property to a creditor made within a certain time period before the debtor filed its bankruptcy petition if the transfer enables the creditor to receive more than it would have as part of its pro rata share of the bankruptcy estate. *See generally* 11 U.S.C. § 547.

apply that reasoning in our opinion today and hold that determination of objections to claims, whether or not affirmative relief is decreed, does not constitute adjudication of a suit by the trustee[.]") *Katchen* held that bankruptcy courts may enter judgment in preference actions asserted and proved by a bankruptcy trustee "in response to a claim filed by the creditor who received the preferences." 382 U.S. at 325. That conclusion rested on the Court's view of the *power* of a bankruptcy court "to allow, disallow and reconsider claims," which, it added, is "of basic importance in the administration of a bankruptcy estate." *Id.* at 329 (internal quotations omitted). The Court elaborated:

> This power to allow or disallow claims includes *full power to inquire into the validity of any alleged debt or obligation of the bankrupt* upon which a demand or a claim against the estate is based. This is essential to the performance of the duties imposed on it. The trustee is enjoined to examine all claims and to present his objections, and *[w]hen objections are made, [the court] is duty bound to pass on them*. The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a res, and thus falls within the principle … that bankruptcy courts have summary jurisdiction to adjudicate controversies relating to property within their possession.

Id. at 329-30 (emphases added; internal quotations omitted).

Katchen notes that if bankruptcy courts have the power to do anything, it is the power to enter judgments as part of the claims allowance process. The Court was entirely untroubled by Congress assigning power to the bankruptcy courts to pass on objections to a creditor's proof of claim, but took the analysis one important step further. Although the Bankruptcy Act in effect at the time did not expressly empower bankruptcy courts to order the surrender of a preference, *see Katchen*, 382 U.S. at 328, the Court nevertheless held that the bankruptcy court had authority to order affirmative relief on the debtor's preference counterclaim. The bankruptcy court enjoyed that power, the Court explained, because it "*must necessarily* determine the amount of [the] preference" in passing on the objection to the creditor's claim. *See id.* at 333-34 (emphasis added).

The Court reiterated this principle in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.* That decision squarely addressed Article III limitations on the power of bankruptcy courts after *Katchen*. The Court held that a bankruptcy court violated Article III by adjudicating a debtor's breach of contract action against a third party that "was not otherwise part of the bankruptcy proceedings." 458 U.S. at 53. The defendant's non-creditor status was dispositive. Absent a proof of claim, the debtor's contract claim could not involve the restructuring of creditor-debtor relations "at the core of the federal bankruptcy power." *Id*. at 71. The bankruptcy court therefore lacked authority to adjudicate the claim.

Later, in *Granfinanciera, S.A. v. Nordberg*, the defendant's status as a non-claimant against the es-

tate was again dispositive of the Court's conclusion that the defendant retained his Seventh Amendment right to have a trustee's fraudulent transfer claim tried by jury. 492 U.S. at 58 ("a creditor's right to a jury trial . . . depends on whether the creditor has submitted a claim against the estate[.]"). The Court equated the Article III and Seventh Amendment analyses, and emphasized that *because* the petitioners had not filed claims against the estate, the trustee's claim was one "to augment the bankruptcy estate" rather than part of "creditors' hierarchically ordered claims to a pro rata share of the bankruptcy res." *Id.* at 56. The claim therefore "d[id] not arise as part of the process of allowance and disallowance of claims" and was not integral to the restructuring of the debtor-creditor relationship. *Id.* at 58. "As a consequence" of the distinction between debtors' claims that augment the estate and creditors' claims to a pro rata share of the res, the Court in *Stern* held that claims against noncreditors of the estate must be adjudicated in an Article III court, 131 S. Ct. at 2614, while claims that must necessarily be resolved as part of the claims allowance process may be adjudicated in bankruptcy courts, *id.* at 2618.

Last, *Langenkamp v. Culp*, 496 U.S. 42 (1990), simply applied the rule of *Katchen* to conclude that a defendant in a preference action were not entitled to a jury trial where they had submitted claims against the estate.

The Court's precedents, culminating two years ago in *Stern*, therefore establish a settled rule authorizing bankruptcy courts to enter final judgments in actions by a debtor against a creditor that must

necessarily be decided as part of the claims allowance process. *Stern* explains *Katchen* and its progeny in part by reference to the debtor's action being, as a practical matter, subsumed in the claims-allowance process. *See Waldman v. Stone*, 698 F.3d 910, 920-21 (6th Cir. 2012). Where it is "not possible for the [court] to rule on the creditor's proof of claim without first resolving the voidable [transfer] issue," *Stern*, 131 S. Ct. 2616, the transfer issue becomes part of the process of allowing or disallowing claims, and there is "no basis for the creditor to insist that the issue be resolved in an Article III court," *id.* Put differently, bankruptcy courts have the power to adjudicate a debtor's action where that action "become[s] integral to the restructuring of the debtor-creditor relationship," *Langenkamp*, 498 U.S. at 44, "which is at the core of the federal bankruptcy power," *Northern Pipeline*, 458 U.S. at 71. Once the bankruptcy court resolves the claim, there is nothing left to be decided on the debtor's claim. The bankruptcy court's resolution of the contested claim against the estate is res judicata, and so subsumes and disposes of the debtor's claim as well. *Katchen*, 382 U.S. at 333-35; *see also Stern*, 131 S. Ct. at 2617. Under those circumstances, bankruptcy courts may adjudicate a debtor's affirmative claim against a creditor without offending Article III by virtue of their power to enter judgments as part of the claims allowance process.

Reflecting the clarity of this Court's opinions, the lower courts are united in their view that bankruptcy courts may resolve actions that must necessarily be decided as part of the claims allowance process. *See, e.g.*, *Bellingham*, 702 F.3d at 564 (observing

that the "dispositive distinction" between cases affirming bankruptcy court authority and cases rejecting such authority is whether the claim necessarily has to be resolved in deciding whether to allow a defendant's claim on the estate); *Waldman v. Stone*, 698 F.3d 910, 921 (6th Cir. 2012) ("for a bankruptcy court to enter final judgment as to claims that seek an award of money damages to the estate, there must have been, at the outset of the claims-disallowance process, 'reason to believe that the process of adjudicating [the] proof of claim would necessarily resolve' the damages claim.") (citing *Stern*, 131 S. Ct. at 2617); *Onkyo Europe Elecs. GMBH v. Global Technications Inc. (In re Global Technovations Inc.)*, 694 F.3d 705, 722 (6th Cir. 2012) (holding that it was "crystal clear that the bankruptcy court had constitutional jurisdiction under *Stern* to adjudicate whether the sale of [an asset] was a fraudulent transfer" because "it was not possible … to rule on [the creditor's] proof of claim without first resolving the fraudulent transfer issue.") (quoting *Stern*, 131 S. Ct. at 2616); *Ortiz v. Aurora Health Care, Inc. (In re Ortiz)*, 665 F.3d 906, 914 (7th Cir. 2011) ("Non-Article III judges may hear cases when the claim arises 'as part of the process of allowance and disallowance of claims'") (quoting *Stern*, 131 S. Ct. at 2616).

B. Historical Practice Confirms That Bankruptcy Courts May Resolve Causes Of Actions That Are A Necessary Part Of The Claims Allowance Process

The Court's precedent delineating the power of the bankruptcy courts is consistent with historical practice.

Historically, bankruptcy proceedings in England were assigned by the Lord Chancellor to a panel of commissioners to determine all of the issues arising out of the proceeding. *See* Thomas E. Plank, *Why Bankruptcy Judges Need Not and Should Not Be Article III Judges*, 72 Am. Bankr. L. J. 567, 575-82, 587 (1998) ("Bankruptcy Judges"). The commissioners received "proofs of creditors' claims" for the purpose of "deciding the creditors' eligibility to file a petition and for distributing the assets of the bankrupt to creditors," *id.* at 587, and also considered related administrative issues and "acts of bankruptcy," such as fraudulent transfer claims, in resolving a creditor's claim, *id.* at 581-82 ("One of the important acts of bankruptcy was fraudulently conveying one's property" and "the commissioners … decided whether the alleged bankrupt … had committed acts of bankruptcy."). *See also* Andrew M. Duncan, *From Dismemberment to Discharge: The Origins of Modern American Bankruptcy 100 Comm. L. J.* 191, 202 (citing Richard Burn, 1 *The Justice of the Peace, and Parish Officer* 192 (Richard Burn., 19th ed. 1800)). The bankruptcy commissioners therefore could adjudicate fraudulent transfer claims in the course of receiving proofs of claims and distributing the bankrupt's assets. *See, e.g.*, *Wood v. Owings*, 5 U.S.

239 (1803) (addressing fraudulent transfer claim that originated with a commission in bankruptcy).

By utilizing commissions, the bankruptcy claims allowance process differed from the adjudicatory structure of the law courts. The bankruptcy claims process was not a "suit" tried by the common law courts at Westminster in 1789. *See Stern*, 131 S. Ct. at 2609 ("When a suit is made of 'the stuff of the traditional actions at common law tried by the courts at Westminster in 1789,' and is brought within the bounds of federal jurisdiction, the responsibility for deciding that suit rests with Article III judges in Article III Courts.") (citing *Northern Pipeline Constr.,* 458 U.S. at 90.). Sir William Blackstone described the bankruptcy commissions as an "extrajudicial method of proceeding, which is allowed merely for the benefit of commerce."[3] William Blackstone, *The Student's Blackstone: Selections from the Commentaries on the Laws of England* 352 (Robert Malcom Kerr, ed., London, Albemarle St. 1858).

Section 2 of the Bankruptcy Act of 1800—the first federal bankruptcy statute enacted here—adopted the commissioner structure from England. *See* Act of Apr. 4, 1800, ch. 19, 2 Stat. 19 (repealed 1803); J. Adriance Bush, *The National Bankruptcy*

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[3] Commissioners were appointed on a case-by-case basis, were lawyers, not judges, were removable at will by the Lord Chancellor or by a vote of the creditors themselves, and did not have the judicial immunity of judges of the courts of record. *See* Plank, *Bankruptcy Judges*, *supra* at 576, 579-80 & n.57 (citing Thomas Davies, *The Laws Relating to Bankrupts* 165 (London, Henry Linton 1744)); Duncan, *Modern American Bankruptcy, supra* at 206.

Act of 1898, with Notes, Procedure and Forms 11 (The Banks Law Publishing Co., N.Y. 1899) (The 1800 Act "represent[ed] the exact stage that the legislation of the English Parliament on the subject had reached at the date of its passage[.]"). Commissioners were appointed as a matter of course during that time. *See* Vern Countryman, *A History of American Bankruptcy Law*, 81 Com. L. J. 226, 228-29 (1997) (describing bankruptcy proceedings under the Bankruptcy Act of 1800 as occurring before bankruptcy commissions); *see also Lingan v. Bayley*, 1. D.C. 112 (1 Cranch 1802) (Circuit court noting the matter originated in a bankruptcy commission).

The Bankruptcy Act of 1841 also provided for the appointment of commissioners to receive proof of debts and carry out other administrative duties related to bankruptcy cases. *See* Act of Aug. 19, 1841, ch. 9, 5 Stat, 440, § 7 (repealed 1843) ("all proof of debts or other claims, by creditors entitled to prove the same by this act … before such court *or commissioner appointed thereby* ….") (emphasis added). Similarly, the Bankruptcy Act of 1867, 14 Stat. 517, allowed non-Article III "registers in bankruptcy" to assist in a wide range of tasks related to bankruptcy, including "proof of debts." *See* Clinton Rice, *Manual of the U.S. Bankruptcy Act*, 1867, 35-36 (Philp & Solomons, Washington, D.C. 1867). Under the Bankruptcy Act of 1898, ch. 541, 30 Stat. 544, the "registers" were renamed "referees," and were included in the definition of "court." *Id*. at § 1(7) and § 2(2) (repealed 1978) (permitting referees to "[a]llow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates[.]"). The Bankruptcy Act of 1938,

52 Stat. 840, likewise provided for bankruptcy referees, who could adjudicate petitions referred to them. *See* Bankruptcy Act, ch. 575, 52 Stat. 840 §§ 1(9), 61(ff) (repealed 1978).

C. The Ninth Circuit Should Not Have Vacated The *Brandt v. NVIDIA* Hearings

Brandt v. NVIDIA falls squarely within the rule drawn from *Katchen*, *Langenkamp*, and *Stern*. NVIDIA filed a proof of claim against the bankruptcy estate based on the debtor's breach of contract. The trustee responded by alleging that the same contract was voidable because it had effected a fraudulent transfer. The bankruptcy court could not rule on NVIDIA's proof of claim without first resolving whether the underlying contract constituted a voidable transfer. Because the trustee's fraudulent transfer claim necessarily had to be resolved as part of the process of allowing or disallowing NVIDIA's claim, it is "crystal clear" under *Stern* that the bankruptcy court enjoyed authority to enter judgment for NVIDIA. *Onkyo*, 694 F.3d at 722 (citing *Stern*, 131 S. Ct. at 2616).

II. THE SCOPE OF ANY BANKRUPTCY COURT AUTHORITY THAT IS BASED ON LITIGANT CONSENT IS DISTINCT FROM AUTHORITY THAT IS NECESSARY TO RESOLVE THE CLAIMS ALLOWANCE PROCESS

The Court has not previously opined whether litigants may consent to a bankruptcy courts' entry of a final judgment on claims otherwise reserved to Arti-

cle III courts. In the decision below, the Ninth Circuit explicitly acknowledged that the bankruptcy court lacked authority to adjudicate Respondent's fraudulent transfer claim because Petitioner had not filed a proof of claim:

> In this case, EBIA is a noncreditor to the BIA bankruptcy estate. Hence, it is not subject to the bankruptcy court's equitable jurisdiction; the trustee can recover monies fraudulently conveyed to it only by initiating a legal action. That legal action need not necessarily have been resolved in the course of allowing or disallowing the claims against the BIA estate. For that reason, the claim belonged in an Article III court.

Bellingham, 702 F.3d at 564-65 (citations omitted). The Ninth Circuit nevertheless held that the bankruptcy court enjoyed authority to adjudicate the trustee's fraudulent transfer claim because the litigants had consented. *See id.* at 568 ("EBIA impliedly consented to the bankruptcy judge's authority.").

Accordingly, the chief question presented in this petition is whether bankruptcy courts have authority to enter judgments based solely on litigant consent. Petitioner answers the question "no," and is supported by a decision of the United States Court of Appeals for the Sixth Circuit. *See Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012). *See also Wellness Int'l Network Ltd. v. Sharif*, __ F.3d __, No. 12-1349, 2013 WL 4441926, at *17-18 (7th Cir. Aug. 21, 2013). Re-

spondent argues for broader bankruptcy powers, supported by the decision below.

Neither Petitioner nor Respondent, in their briefs requesting or opposed to certiorari, nor any of the decisions they rely upon to demonstrate a circuit split, contests that bankruptcy judges may enter judgment in an action where the defendant *has* filed a claim in the bankruptcy that cannot be adjudicated without also adjudicating the debtor's action against that creditor. Petitioner does not contest that rule in its merits brief either, and nor will Respondent, who seeks *broader* bankruptcy court authority.

As discussed above, the Court's precedents—culminating with *Stern*—have long established that bankruptcy courts may enter final judgments in debtors' actions against creditors of the estate where those actions must necessarily be resolved as part of the claims allowance process. The Court in *Katchen* distinguished that power from the question of litigant consent presented here:

> We … hold that determination of objections to claims, whether or not affirmative relief is decreed, does not constitute adjudication of a suit by the trustee, and thus it is not necessary to ascertain whether the creditor has 'consented' to such determination …. Rather, our decision is governed by the traditional bankruptcy law that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that pro-

> cedure. As this is the basis of our decision, we obviously intimate no opinion concerning whether the referee has summary jurisdiction to adjudicate a demand by the trustee for affirmative relief, all of the substantial factual and legal bases for which have not been disposed of in passing on the objections to the claim.

Katchen, 382 U.S. at 332 n.9. (internal quotations omitted)

In sum, regardless of the resolution of the question presented by this petition, bankruptcy courts will have the power to enter judgments in actions that must necessarily be decided as part of the claims allowance process.

CONCLUSION

For the foregoing reasons, the Court should once again make clear that bankruptcy judges have the constitutional and statutory authority to resolve all causes of action that must be resolved as part of the claims allowance process.

Respectfully submitted,

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