

# Zack A. Clement, PLLC

---

FINANCIAL RESTRUCTURE FOR BUSINESSES AND GOVERNMENTS

## *The Power of the Bankruptcy Court*

Beginning with *Katchen v. Landy*, 382 U. S. 323 (1965), the Supreme Court has repeatedly said that bankruptcy courts cannot enter a final order adjudicating a bankruptcy estate's claim to bring assets into the estate (previously referred to as plenary jurisdiction). These opinions have reaffirmed, however, that the bankruptcy court can adjudicate claims against assets already in the bankruptcy estate, and adjudicate fundamental functions arising under federal bankruptcy law such as financing the debtor, assuming and rejecting contracts, and confirming a plan of reorganization (previously referred to as summary jurisdiction). See *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982); *Granfinanciera, S. A. v. Nordberg*, 492 U.S. 109 (1989); *Stern v. Marshall*, 564 U.S.462 (2011) and *Wellness International Network Ltd. v. Shariff*, 575 U.S.\_\_\_\_, 135 S. Ct. 1932 (2015).

*Stern*, the most recent Supreme opinion addressing this, says that bankruptcy courts can adjudicate state law issues that are closely related to decision of core bankruptcy issues.

Later in *Wellness*, the Supreme Court held that a bankruptcy trustee's lawsuit to find that property was part of the bankruptcy estate under section 541 of the Bankruptcy Code could be adjudicated by the bankruptcy court by consent of the parties. Chief Justice Roberts, who wrote the majority opinion in *Stern*, filed a strong dissent saying that the Court could have affirmed such action under *Stern's* reasoning because decision of state law issues was necessarily related to decision of what is property of the estate under the Bankruptcy Code.

I would be happy to discuss what kind of issues you might ask a bankruptcy court to decide in connection with (1) ordering financing for a debtor, (2) ordering assumption, assignment or rejection of executory contracts, (3) ordering sale of estate assets free and clear of liens and claims, and (4) confirming a plan of reorganization.

These issues are discussed in greater depth in *Using Stern v. Marshall* which is available here for free download, and I would be happy to provide you PDF copies of the cases cited here.

**Zack A. Clement, PLLC**  
3753 Drummond St.  
Houston Texas 77025  
[zack.clement@icloud.com](mailto:zack.clement@icloud.com)  
[www.zackclement.com](http://www.zackclement.com)  
832 274 7629

**Princeton University, Woodrow Wilson School for Public Affairs, A.B. 1970**

**University of Virginia School of Law, J.D. 1975**

**U.S. Navy Air Intelligence Officer 1970 to 1972**

**American College of Bankruptcy**

**International Insolvency Institute**

**Admitted to practice in Texas, Illinois, New York, District of Columbia,  
Virginia**