DRAKE LAW REVIEW

Volume 44 | 1995 | Number 1

THE RELATED TO SUBJECT MATTER JURISDICTION OF BANKRUPTCY COURTS

*E. Scott Fruehwald**

TABLE OF CONTENTS

I. Introduction 2
II. The Related to Subject Matter Jurisdiction of District Courts and Bankruptcy Courts 3
  A. The Statutory Bankruptcy Jurisdiction of District and Bankruptcy Courts 3
  B. Case Law on Bankruptcy Subject Matter Jurisdiction 6
    1. *Pacor v. Higgins* 7
    2. Application of the *Pacor* Standard 8
    3. The Sixth Circuit Standard for Related to Jurisdiction and Other Broader Views of Bankruptcy Court Jurisdiction 14
    4. The Seventh Circuit Standard 18
    5. The Second Circuit Standard 22
  C. Summary of Subject Matter Jurisdiction 22
III. The Effect of Ancillary, Pendent, and Supplemental Jurisdiction on the Subject Matter Jurisdiction of Bankruptcy Courts 23
  A. The Common Law Doctrines 23
  B. Supplemental Jurisdiction Under 28 U.S.C. Section 1367 26
IV. Evaluation 29
  A. What Are the Boundaries of the Related to Jurisdiction of Bankruptcy Courts? 29
  B. Should Ancillary, Pendent, and Supplemental Jurisdiction Apply to Bankruptcy Courts? 33
V. The Effect of Due Process and Personal Jurisdiction on the Subject Matter Jurisdiction of Bankruptcy Courts 33

* Visiting Assistant Professor, Roger Williams University School of Law. Ph. D., City University of New York, 1984; J.D., University of Louisville, 1989; LL.M., University of Virginia, 1994.

VI. Conclusion 37

I. INTRODUCTION

Bankruptcy courts fulfill a unique role in our federal court system. They provide a forum in which debtors can be relieved of crushing debts and creditors can peacefully and fairly divide the assets of an insolvent debtor. Because of this unique role, normal court rules and procedures are often unsuitable for bankruptcy courts.

One area in which bankruptcy courts require novel rules and procedures is subject matter jurisdiction. A bankruptcy court must be able to adjudicate all claims by or against the debtor or involving the administration of the bankruptcy estate in a single forum. Moreover, bankruptcy courts must bring diverse parties living throughout the United States into court. Consequently, bankruptcy courts need broad jurisdiction that is defined by their functions.

Because of their broad jurisdiction, bankruptcy courts adjudicate claims over which other federal courts lack jurisdiction under their two main jurisdictional bases—federal question and diversity of citizenship. For example, a bankruptcy court can hear a state law contract claim between a Virginia debtor and a Virginia creditor under the proper circumstances. Other federal courts would lack jurisdiction over the matter because there is neither a federal question nor diversity of citizenship.

Courts have been expanding bankruptcy jurisdiction in recent years. While one may consider this sound in light of bankruptcy courts' role, this expansion affects other interests. Litigants have an interest in where their suits will be heard, and states have an interest in adjudicating claims that arose in their territory and involve their law. Thus, expanding bankruptcy jurisdiction too far may unnecessarily impair other interests.

The following scenario is illustrative: A California bank opens an account for a trust, managed by a Virginia trustee, operating out of his District of Columbia office. The bank does no business in Virginia and is unaware that the trust has any connection with Virginia. The trust files for bankruptcy in Virginia because of the trustee's mismanagement or theft. A party comes forward and claims he is the trust beneficiary. This person once lived in Virginia, but has recently retired to Maine. He sues the trust and the trustee in the bankruptcy court in Virginia. A year later, he sues the bank for negligence and conversion in the Virginia bankruptcy court because his lawyer is in Virginia, and he probably cannot sue the defendant outside of California, except in bankruptcy court. He does not consolidate the two suits because the first suit is ready for trial.

A state or federal district court in Virginia could not hear the matter. The state court would lack personal jurisdiction over the bank, because the bank lacks minimum contacts with Virginia. Not only would the federal court lack personal jurisdiction over the matter, there would be no venue in Virginia under federal venue statutes. If the matter satisfies bankruptcy subject matter jurisdiction, however, bankruptcy's nationwide service of process and venue statutes would permit the case to be heard in Virginia bankruptcy court. Should the Virginia bankruptcy court have subject matter jurisdiction over the claim against the bank?

This Article examines the "related to" subject matter jurisdiction of bankruptcy courts—the jurisdiction that forms the outer boundaries of bankruptcy jurisdiction. This Article suggests that many courts have extended "related to" jurisdiction too far, violating Article III, section 2 of the United States Constitution. Article III, section 2 allows jurisdiction only over proceedings that involve a bankruptcy function. Accordingly, for a bankruptcy court to have jurisdiction over a proceeding, the proceeding must be binding on a right, a liability, an option, or the freedom of choice of the bankruptcy estate or directly affect the administration of the estate. Moreover, because subject matter jurisdiction and personal jurisdiction are intertwined in bankruptcy, this Article argues that extending bankruptcy jurisdiction too far might infringe on a litigant's due process rights.

Part II of this Article discusses the subject matter jurisdiction of bankruptcy courts. It will examine the statutory basis of bankruptcy jurisdiction and the tests various courts have developed to analyze related to jurisdiction. It also shows how courts have applied these tests. Part III investigates the possible application of ancillary, pendent, and supplemental jurisdiction to bankruptcy courts. Part IV presents the author's views on the boundaries of related to jurisdiction. This Part also offers the opinion that courts should not apply ancillary, pendent, and supplemental jurisdiction to bankruptcy jurisdiction. Part V explores the effect of due process and personal jurisdiction on the extent of bankruptcy court subject matter jurisdiction. The Article suggests that due process concerns require more restricted limits of related to jurisdiction than many courts have adopted.

II. THE RELATED TO SUBJECT MATTER JURISDICTION OF DISTRICT COURTS AND BANKRUPTCY COURTS

A. *The Statutory Bankruptcy Jurisdiction of District and Bankruptcy Courts*

When Congress passed the Bankruptcy Act of 1978, it granted bankruptcy courts broad jurisdiction.[1] The Act gave bankruptcy courts jurisdiction over all civil proceedings arising under Title 11–the bankruptcy code.[2]

This broad jurisdictional grant was challenged in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*[3] The basis of this challenge was that Congress had unconstitutionally granted Article III powers to bankruptcy courts, which were Article I courts.[4] Under Article III, section 1,

> 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 supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive

---

1. 28 U.S.C. § 1471 (1976 & Supp. IV 1981).
2. *Id.*
3. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).
4. *Id.* at 56-57.

> for their Services, a Compensation, which shall not be diminished during their Continuance in Office.[5]

Bankruptcy judges do not meet the requirements for Article III judges. They serve for fourteen-year terms, they can be removed from office by the judicial counsel for the circuit in which they serve on grounds of "incompetency, misconduct, neglect of duty, or physical or mental disability," and their salaries are subject to diminution by Congress.[6]

Because bankruptcy judges are not Article III judges, *Northern Pipeline* analyzed bankruptcy court jurisdiction under the "public rights doctrine."[7] Under this doctrine, Congress may assign public rights to non-Article III courts.[8] The Court does not clearly define public rights. Public rights must at a minimum arise "between the government and others;" in contrast, "'the liability of one individual to another under the law as defined,' is a matter of private rights."[9] In other words, if Congress creates a new right as part of a regulatory scheme, that right might be a public right. On the other hand, common law rights, such as those arising from contract or tort, are private rights.

In bankruptcy, some rights are public rights, while others are private.[10] "But the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages. The former may well be a 'public right,' but the latter obviously is not."[11]

The complaint in *Northern Pipeline* alleged breach of contract, breach of warranty, misrepresentation, coercion, and duress.[12] Because these rights are private rights, Congress could not give bankruptcy courts, Article I courts,[13] the power to hear them.[14] Thus, the Court held that Congress' grant of broad jurisdiction to bankruptcy courts was impermissible.[15]

Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984 in response to *Northern Pipeline*.[16] It gave the district courts the same bankruptcy jurisdiction that Congress had previously bestowed on bankruptcy courts:

> § 1334. Bankruptcy cases and proceedings

---

5. U.S. CONST. art. III, § 1.
6. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. at 60-61.
7. *Id.* at 67-76.
8. *Id.*
9. *Id.* at 69-70 (quoting Crowell v. Benson, 285 U.S. 22, 50, 51 (1932)).
10. *Id.* at 67.
11. *Id.* at 70.
12. *Id.* at 56.
13. Congress can create Article I courts pursuant to its legislative powers in Article I. U.S. CONST. art. III, § 8.
14. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 57 (1982).
15. *Id.* at 87.
16. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 336 (1984) (current version at 28 U.S.C. § 151 (1988)).

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under Title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in or related to cases under Title 11.

All district courts have local rules that refer the above matters to the bankruptcy courts.[17]

Whether a bankruptcy judge can enter a final order or judgment in a case that has been referred by the district court depends on whether it is core or non-core.[18] 28 U.S.C. section 157(b)(2) lists fifteen categories of core proceedings, such as matters concerning the administration of the estate, proceedings to determine, avoid, or recover preferences, and proceedings to determine, avoid, or recover fraudulent conveyances.[19] One can summarize core proceedings, however, as actions "which have no existence outside bankruptcy."[20] On the other hand, "[a]ctions which do not depend on the bankruptcy laws for their existence and which could proceed in another court are not core proceedings."[21] Under this core or non-core distinction, state law causes of action would be non-core.[22]

Under section 157(b)(1), bankruptcy courts may enter appropriate orders and judgments in core proceedings.[23] On the other hand, while bankruptcy courts may hear non-core proceedings, they may not enter final orders and judgments without the parties' consent.[24] Rather, the bankruptcy judge submits proposed findings of fact and conclusions of law to the district court, which enters final orders and judgments.[25]

Vesting bankruptcy jurisdiction in district courts, which refer matters to bankruptcy courts, and distinguishing between core and non-core proceedings satisfy the Article III, section 1 problems raised in *Northern Pipeline*.[26]

---

17. *E.g.*, W.D. KY. LOCAL R. 21. *See also* E.D. KY. LOCAL R. 21 (identical).
18. 28 U.S.C. § 157(b)(1) (1988).
19. *Id.* § 157(b)(2) (1988).
20. Gardner v. United States, 913 F.2d 1515, 1518 (10th Cir. 1990).
21. *Id.*; *see also* Waire v. Baker, 145 B.R. 267, 269 (N.D. Ind. 1992).
22. *See* Gardner v. United States, 913 F.2d at 518.
23. 28 U.S.C. § 157(b)(1) (1988).
24. *Id.* §§ 157(c)(1)-(2).
25. *Id.* § 157(c)(1).
26. Some commentators have argued that the bankruptcy system may still be unconstitutional. *See* S. Elizabeth Gibson, *Jury Trials and Core Proceedings: The Bankruptcy Judge's Uncertain Authority*, 65 AM. BANKR. L.J. 143, 168-69 (1991); Anthony M. Sabino, *Jury Trials, Bankruptcy Judges, and Article III: The Constitutional Crisis of Bankruptcy Courts*, 21 SETON HALL L. REV. 258, 323-28 (1991); *see also* In re Davis, 899 F.2d 1136, 1140 n.9 (11th Cir.), *cert. denied sub nom.*, Gower v. Farmers Home Admin., 498 U.S. 981 (1990). This author has argued elsewhere that it is unlikely that the Supreme Court will again find the bankruptcy system unconstitutional. E. Scott Fruehwald, *Jury Trials in Bankruptcy Courts After Granfinanciera*, 24 CUMB. L. REV. 79, 108-09 (1993).

Bankruptcy courts can enter final orders and judgments in core cases, which probably concern public rights, but they cannot in non-core proceedings, which involve private rights.[27]

Despite *Northern Pipeline*, the district court's jurisdiction under sections 1334(a) and 1334(b) is broad. Many cases have argued that *Northern Pipeline* did not affect the scope of bankruptcy jurisdiction, but its placement.[28] Due to the paucity of legislative history for section 1334, courts often look to the legislative history of section 1471 to determine the extent of section 1334.[29] "In enacting § 1471(b) Congress intended to grant comprehensive jurisdiction to the bankruptcy courts to allow for efficient disposition of all matters connected with the debtor's estate."[30] "Congress was concerned with the inefficiencies of piecemeal adjudication of matters affecting the administration of bankruptcies and intended to give federal courts the power to adjudicate all matters having an effect on the bankruptcy."[31]

Despite the broad grant of jurisdiction to both district and bankruptcy courts, there are statutory and constitutional limitations to bankruptcy jurisdiction.[32] Like all federal courts, bankruptcy courts are courts of limited jurisdiction.[33] Article III, section 2 of the United States Constitution limits the grant of jurisdictional power, and one must not construe sections 1334 and 157 to exceed this constitutional limitation. Moreover, although Congress granted broad jurisdiction under section 1334, one must not read this jurisdictional grant broader than Congress intended. As the next section will show, courts have disagreed on the boundaries of Congress' jurisdictional grant.

B. *Case Law on Bankruptcy Subject Matter Jurisdiction*

Determining whether a bankruptcy court has properly exercised its jurisdiction is a two-step inquiry.[34] First, did subject matter jurisdiction exist in the

---

27. Diamond Mortgage Corp. v. Sugar, 913 F.2d 1233, 1237 n.3 (7th Cir. 1990), *cert. denied, sub nom.* Sugar v. Diamond Mortgage Corp., 498 U.S. 1089 (1991).

28. *E.g.*, Miller v. Kemiro, Inc., 910 F.2d 784, 787 (11th Cir. 1990); Wood v. Wood (*In re* Wood), 825 F.2d 90, 93 (5th Cir. 1987).

29. Wood v. Wood (*In re* Wood), 825 F.2d at 92-93; Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984).

30. Miller v. Kemiro, Inc., 910 F.2d at 786; *see also* H. REP. NO. 598, 95th Cong., 2d Sess. 43-48 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6004-08 (expressing dissatisfaction with unnecessary jurisdictional limitations and enumerating reasons for the expansion of the jurisdiction of bankruptcy courts).

31. Wood v. Wood (*In re* Wood), 825 F.2d at 92; *see also* Miller v. Kemiro, Inc., 910 F.2d at 787 (stating "the interpretation of § 1334(b) must . . . avoid the inefficiencies of piecemeal adjudication and promote judicial economy by aiding in the efficient and expenditures resolution of all matters connected to the debtor's estate"); Salem Mortgage Co. v. Nodine (*In re* Nodine), 783 F.2d 626, 633 (6th Cir. 1986) (suggesting Congress intended to grant broad and complete jurisdiction over all matters and proceedings that arise in connection with bankruptcy cases).

32. Miller v. Kemiro, Inc., 910 F.2d at 787; Pacor, Inc. v. Higgins, 743 F.2d at 994.

33. Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe, 818 F.2d 643, 645 (7th Cir. 1987).

34. Fietz v. Great W. Sav. (*In re* Fietz), 852 F.2d 455, 457 (9th Cir. 1988).

district court? Second, did the bankruptcy court exercise its powers consistently with *Northern Pipeline*; *i.e.*, did it enter final orders and judgments only in core cases? This Article primarily discusses the first question.

There are four bases of subject matter jurisdiction under sections 1334(a) and 1334(b): (1) cases under Title 11; (2) proceedings arising under Title 11; (3) proceedings arising under a case under Title 11; and (4) proceedings related to a case under Title 11.[35] The first basis concerns the bankruptcy petition.[36] Because the other three categories operate conjunctively to define bankruptcy jurisdiction, courts often state that they only need to decide whether the case is related to the bankruptcy in order to determine whether the district court has jurisdiction.[37] In other words, "related to" jurisdiction is the minimum for bankruptcy jurisdiction. Of course, courts must still distinguish between core and non-core proceedings to determine whether a bankruptcy court can enter final orders and judgments.

1. Pacor, Inc. v. Higgins[38]

In *Pacor, Inc. v. Higgins*, the Third Circuit established the standard for related to jurisdiction that most courts follow.[39] In this case, Higgins sued Pacor in Pennsylvania state court, seeking damages for work-related exposure to asbestos supplied by Pacor.[40] Pacor filed a third party complaint against Johns-Manville Corporation (Johns-Manville), the alleged manufacturer of the asbestos.[41]

In August 1982, Johns-Manville filed a bankruptcy petition in the Southern District of New York.[42] Subsequently, the Pennsylvania court severed the third party claim from the main action.[43] Pacor filed, however, a motion to remove the entire action to the bankruptcy court for the Eastern District of Pennsylvania and moved that the action be transferred to the Southern District of New York, where it could be consolidated with the Johns-Manville bankruptcy.[44] The Pennsylvania bankruptcy court ruled that the removal was not timely, and Pacor appealed.[45] The district court (sitting as an appellate court) found that the removal was timely because the Johns-Manville court had extended the time limit for removal.[46] The district court held, however, that the suit by Higgins against Pacor was not related

35. Wood v. Wood (*In re* Wood), 825 F.2d 90, 92 (5th Cir. 1987).

36. *Id.*

37. *In re* Marcus Hook Dev. Park, Inc., 943 F.2d 261, 264 (3d Cir. 1991); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (*In re* Wolverine Radio Co.), 930 F.2d 1132, 1141 (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992); Wood v. Wood (*In re* Wood), 825 F.2d at 93.

38. Pacor, Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984).

39. *Id.* at 994.

40. *Id.* at 986.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

to the Johns-Manville bankruptcy, and it ordered that the bankruptcy court remand the case to state court.[47]

After dealing with preliminary matters, the Third Circuit considered whether the Johns-Manville bankruptcy court had jurisdiction over the Higgins-Pacor suit.[48] After pointing out that bankruptcy court jurisdiction is limited, the court stated that "[f]or subject matter jurisdiction to exist, therefore, there must be some nexus between the 'related' civil proceeding and the [T]itle 11 case."[49] "[T]he test for determining whether the civil proceeding is related to the bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*."[50] It is not necessary that the proceeding be against the debtor or the debtor's property. Rather, "[a]n 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 bankruptcy estate."[51]

Common issues of fact between a civil proceeding and a bankruptcy proceeding do not bestow jurisdiction on a bankruptcy court. "Judicial economy does not justify federal jurisdiction."[52] Bankruptcy courts lack jurisdiction over third party disputes that do not affect an interest of the estate.[53]

In discussing the above standards, the court stressed that there is no jurisdiction when the bankruptcy estate is not bound—where the suit "could not determine any right, liability, or course of action of the debtor."[54] In other words, there must generally be some claim preclusion—res judicata—or issue preclusion—collateral estoppel—effect on the bankruptcy estate before jurisdiction exists.

The court found that there was not "related to" jurisdiction in this case because the suit between Higgins and Pacor would have no effect on the bankruptcy estate.[55] The court believed that the Higgins-Pacor suit might be followed by a claim for indemnification by Pacor against Johns-Manville.[56] The Higgins-Pacor suit, however, would not bind Johns-Manville because it was not a party to that suit.[57]

The court rejected Pacor's argument that the Higgins-Pacor suit might conceivably have an effect on Johns-Manville because if Pacor successfully defended the suit, there would never be an indemnification claim against Johns-

---

47. *Id.*
48. *Id.* at 994.
49. *Id.*
50. *Id.* (emphasis in original).
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.* at 995.
55. *Id.*
56. *Id.*
57. *Id.*

Manville.[58] "The fact remains that any judgment received by the Plaintiff Higgins could not result in even a contingent claim against Manville, since Pacor would be obligated to bring an entirely separate proceeding to receive indemnification."[59]

The court conceded that there might be a conceivable effect when indemnification is automatic, such as where an indemnity agreement is involved.[60] There was, however, no indemnity agreement against Johns-Manville.

The court realized that its ruling might create a hardship for distributors like Pacor in recovering from bankrupt manufacturers.[61] Nevertheless, Congress did not confer bankruptcy jurisdiction for the convenience of those not in bankruptcy.[62]

In sum, *Pacor*'s "conceivable effects" test seems broad, and some courts have applied it very broadly. One must read the test in context with the rest of the case. "Conceivable effects" under *Pacor* concern whether the proceeding can bind the estate. Thus, the possibility of an indemnity suit against the bankrupt estate resulting from the other action is not related to the bankruptcy, as long as the estate can relitigate the issues.

2. *Application of the* Pacor *Standard*

The *Pacor* standard has been adopted without modification by the Fourth, Fifth, Eighth, Ninth, Tenth, and Eleventh Circuits, as well as several district courts.[63]

The first group of cases following *Pacor* involves claims for indemnity or contribution. As in *Pacor*, a suit that might create a claim for indemnity or contribution against a bankruptcy estate does not have a conceivable effect on the

---

58. *Id.*

59. *Id.*

60. *Id.; see also* Kossman v. TJX Co., 136 B.R. 640, 642 (W.D. Pa. 1991) (holding because the acquisition agreement provided for indemnification, the action was related to the bankruptcy and could be heard in the bankruptcy proceeding).

61. Pacor, Inc. v. Higgins, 743 F.2d 984, 996 (3d Cir. 1984).

62. *Id.*

63. Gardner v. United States, 913 F.2d 1515, 1518 (10th Cir. 1990); Miller v. Kermiro, Inc., 910 F.2d 784, 788 (11th Cir. 1990); Fietz v. Great W. Sav. (*In re* Fietz), 852 F.2d 455, 457 (9th Cir. 1988); National City Bank v. Coopers & Lybrand, 802 F.2d 990, 994 (8th Cir. 1986); A.H. Robbins Co. v. Piccinin, 788 F.2d 994, 1002 n.11 (4th Cir.), *cert. denied*, 479 U.S. 876 (1986); *see also* Querner v. Querner, 7 F.3d 1199, 1201 (5th Cir. 1993) (holding that dismissal or closing of a bankruptcy case should mandate related proceedings also be dismissed). *But see* National Union Fire Ins. Co. v. Titan Energy, Inc. (*In re* Titan Energy, Inc.), 837 F.2d 325, 330 (8th Cir. 1988) (holding that while the related claim could "conceivably have an impact" on Titan's estate which granted the bankruptcy court jurisdiction, the lower court judge was correct in exercising discretion not to hear the claims); Dogpatch Properties, Inc. v. Dogpatch U.S.A., Inc. (*In re* Dogpatch U.S.A., Inc.), 810 F.2d 782, 786 (8th Cir. 1987) (holding the third party claims were related under Chapter 11 and were within the bankruptcy court's jurisdiction).

estate.[64] Similarly, the fact that a party being sued by the estate might have a right of indemnity against a non-debtor third party does not have a conceivable effect on the estate.[65] For example, in *Pinegar Chevrolet v. Boatmen's First National Bank*,[66] the debtor purchased a pickup truck from Pinegar Chevrolet, Inc. (Pinegar).[67] The debtor executed a promissory note and security agreement in favor of Pinegar, who assigned its interest to Boatmen's National Bank (Boatmen's).[68] Because Boatmen's failed to forward the title and other materials to the Missouri Department of Revenue, no title was issued that named the debtor as the vehicle's owner or listed the bank's lien.[69]

Approximately three months after the sale, the debtor informed Pinegar that he intended to file bankruptcy.[70] The debtor returned the vehicle to Pinegar, who subsequently reacquired the note and security interest from Boatmen's, and Pinegar released the debt.[71] After the debtor filed bankruptcy, the Chapter 7 trustee sued Pinegar, claiming a preference, invoking the strong arm powers of the trustee, and asserting that the trustee was entitled to the vehicle.[72] Pinegar impleaded Boatmen's, claiming that its unperfected lien on the vehicle was due to Boatmen's negligence in failing to obtain title and record the lien.[73] Boatmen's filed a motion to dismiss based on lack of subject matter jurisdiction over the third party claim.[74]

The court found the third party complaint would have no effect on the estate.[75] The trustee had not sued Boatmen's and had no claim against it.[76] If the trustee succeeded against Pinegar and Pinegar paid the estate or turned over the car to the trustee, Pinegar would have had an unsecured claim against the estate for the unpaid cost of the car and the amount returned to the estate. Then Pinegar could have sued Boatmen's, and, if Pinegar was victorious and collected the judgment against Boatmen's, Boatmen's would have succeeded to Pinegar's claim as an unsecured creditor of the estate. In other words, Pinegar's claim

---

64. Tartar v. Raybuck, 742 F.2d 977, 984 (6th Cir. 1984), *cert. denied*, 470 U.S. 1051 (1985); Nickum v. Brakegate, Ltd., 128 B.R. 648 (C.D. Ill. 1991).

65. Feipar Indus. v. Merchants Bank, 141 B.R. 450, 452 (Bankr. N.D. Ga. 1991); Pinegar Chevrolet v. Boatmen's First Nat'l Bank, 125 B.R. 788, 793 (Bankr. W.D. Mo. 1991); Levovitz v. Verrazano Holding Corp. (*In re* Verrazano), 86 B.R. 755, 762 (Bankr. E.D.N.Y. 1988); Neill v. Peterson (*In re* Peterson), 56 B.R. 588, 591 (Bankr. D. Minn. 1986).

66. Pinegar Chevrolet v. Boatmen's First Nat'l Bank, 125 B.R. 788 (Bankr. W.D. Mo. 1991).

67. *Id.* at 790.

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* at 789.

74. *Id.*

75. *Id.* at 793.

76. *Id.*

against Boatmen's would have merely substituted one unsecured creditor for another; the estate would not have been affected.[77]

In *Feifer Industries v. Merchants Bank*,[78] the trustee sued Standard Chartered Bank (Standard), alleging Standard had an unperfected security interest in the debtor's assets.[79] Standard and First Georgia Bank (First Georgia) entered into a security agreement with the debtor and filed a UCC-1 financing statement.[80] Apparently, First Georgia's successor, First Union Bank (First Union) terminated the financing statement.[81] Standard filed a third party complaint against First Union, claiming it had intentionally or negligently terminated the financing statement.[82] The court held that Standard's indemnity claim would have no effect on the estate.[83]

Levovitz v. Verrazano Holding Corp.[84] involved an alleged claim for contribution or indemnity.[85] The plaintiff's assignor entered into a contract to purchase real estate from the defendant.[86] Claiming that the sale had been unauthorized, the defendant executed a second contract with the debtor.[87] When the debtor filed a bankruptcy petition, the plaintiff brought suit in the bankruptcy court.[88] The defendant moved to dismiss based on lack of subject matter jurisdiction.[89]

The court found no subject matter jurisdiction over the plaintiff's claims for breach of contract and fraudulent misrepresentation.[90] If the plaintiff succeeded, the plaintiff would receive compensatory damages against the defendants—non-debtor third parties. The plaintiff would obtain no right against the debtor, and the defendant would not have a claim for contribution or indemnity against the debtor. Should there be a claim for indemnity or contribution against the debtor, the plaintiff's ability to collect the judgment from the defendants would be unaffected by any action the defendants might take against the debtor.[91]

In *Levovitz*, the plaintiff had claims against the defendants for breach of contract and against the debtor for tortious interference with contract.[92] Although

---

77. *See* Neill v. Peterson (*In re* Peterson), 56 B.R. 588, 591 (Bankr. D. Minn. 1986).
78. Feifer Indus. v. Merchants Bank, 141 B.R. 450 (Bankr. N.D. Ga. 1991).
79. *Id.* at 451.
80. *Id.*
81. *Id.*
82. *Id.*
83. *Id.* at 452.
84. Levovitz v. Verrazano Holding Corp. (*In re* Verrazano), 86 B.R. 755 (Bankr. E.D.N.Y. 1988).
85. *Id.* at 758.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.* at 762.
91. The court lacked jurisdiction over the claim to obtain title to the property because it was no longer property of the estate; it had been sold by a § 363 sale. *Id.* at 763.
92. *Id.* at 758.

the court did not discuss the issue, arguably satisfaction of the judgment against the defendants would affect the bankruptcy estate because the plaintiff would not be entitled to double recovery. A court using the *Pacor* standard should reject this argument. Similarly, if a court determined the defendant did not breach the contract, the debtor could not have tortiously interfered with the contract, so the breach of contract suit has a conceivable effect on the estate. The *Pacor* court specifically rejected this argument.[93]

Another line of cases following the *Pacor* standard has held once property leaves the bankruptcy estate or is determined not to be estate property, the bankruptcy court lacks jurisdiction over disputes concerning the property.[94] In *Miller v. Vemira, Inc.*,[95] the bankruptcy court lacked jurisdiction over a dispute between a landlord and a party who had bought estate property concerning when the buyer had to remove the property from the landlord's land.[96] Similarly, once a court determines Employee Retirement Income Security Act (ERISA)[97] funds are exempt from the bankruptcy estate, the court lacks jurisdiction to determine whether the debtor or the IRS has priority over the funds.[98]

Finally, in *In re Ennis*,[99] a court ruled it had no jurisdiction to issue an injunction against credit bureaus that had failed to report the dismissal of the debtor's bankruptcy.[100] Once a case is dismissed, the property revests in the debtor, so there is no effect on the estate.[101]

Other cases involve even more tenuous claims to jurisdiction. In one case, the court found no jurisdiction over a claim for loss of personal funds by a corporate debtor's principal owners against several creditors who had allegedly acted contrary to the Bankruptcy Code and Bankruptcy Rules.[102] The dispute involved non-debtors.[103]

In *Showalter v. Rinard*,[104] the debtor claimed jurisdiction over a defendant who had allegedly caused an automobile collision involving the debtor and his

---

93. Pacor, Inc. v. Higgins, 743 F.2d 984, 995 (3d Cir. 1984).

94. *E.g.*, Gardner v. United States, 913 F.2d at 1515, 1517-19 (10th Cir. 1990) (involving a debtor who held no interest in the property); Miller v. Vemira, Inc., 910 F.2d 784, 787 (11th Cir. 1990) (holding the property was no longer part of the estate); Fietz v. Great W. Sav. (*In re* Fietz), 852 F.2d 455, 458 (9th Cir. 1988) (holding once plan was confirmed, all property vests in debtor, so it no longer had any effect on the estate); WMR Enter., Inc., v. Kinjite Motors, Inc., 163 B.R. 887, 889 (Bankr. N.D. Fla. 1994); United States v. Lewis, 142 B.R. 952, 956 (D. Colo. 1992) (holding the property exempt from the estate).

95. Miller v. Vemira, Inc., 910 F.2d 784 (11th Cir. 1990).

96. *Id.* at 784.

97. 29 U.S.C. §§ 1001-1461 (1988).

98. United States v. Lewis, 142 B.R. at 952.

99. *In re* Ennis, 50 B.R. 119 (Bankr. D. Nev. 1985).

100. *Id.* at 120.

101. *Id.* at 121-22.

102. *In re* C.A.C. Jewelry Inc., 124 B.R. 419, 421 (Bankr. D.R.I. 1991).

103. *Id.*

104. Showalter v. Rinard, 126 B.R. 596 (D. Ore. 1991).

wife.[105] The debtor claimed $7830.89 for his wife's unpaid medical bills, for which he was responsible under Oregon law, and non-economic damages for spousal loss of consortium.[106]

The court rejected both causes of action on jurisdictional grounds.[107] On the claim for his wife's medical bills, Oregon law provides a $7500 exemption from execution for personal injury awards.[108] Accordingly, the estate could only gain about $300, which the court determined insufficient to confer jurisdiction.[109] On the loss of consortium claim, the Chapter 13 plan provided the debtor would only pay the trustee $50 per month, and there would be no distribution to creditors.[110] The plan also provided that all estate property would vest in the debtor on confirmation.[111] The consortium claim, therefore, was not estate property, and the bankruptcy court lacked subject matter jurisdiction over the case.[112] In reaching these conclusions, the court declared "[a] controversy that has only a vague or incidental connection with a pending case in bankruptcy, or the resolution of which may have only a speculative, indirect or incidental effect on the bankruptcy estate, is unrelated to the bankruptcy estate within the meaning of section 1334."[113]

The above discussion of when jurisdiction does not exist is not meant to imply bankruptcy courts do not have broad jurisdiction under the *Pacor* standard. Generally, only the cases on the edge of jurisdiction are litigated. The easy cases in which jurisdiction is obvious usually are not litigated. Still, there are several cases in which courts held jurisdiction proper under the *Pacor* standard.

In *Wood v. Wood*,[114] the plaintiff, a shareholder and a director in a medical clinic, filed an adversary proceeding in a bankruptcy, claiming the debtor and another party wrongfully issued additional stock in the medical clinic after the bankruptcy filing.[115] The debtor argued the bankruptcy court lacked jurisdiction because the claims were post petition.[116] Applying the *Pacor* standard, the court disagreed.[117] First, the complaint alleged a dispute over the clinic's ownership, and because the dispute is part of the bankruptcy estate, there is a conceivable

---

105. *Id.* at 598. Personal jurisdiction presented the real problem in the case. The defendant could not be forced to defend the suit in Oregon under usual rules of personal jurisdiction. *Id.* at 599. Bankruptcy, however, provides nationwide service of process. Thus, if the bankruptcy court had subject matter jurisdiction, the debtor could be forced to defend in Oregon.

106. *Id.* at 598.

107. *Id.* at 600.

108. *Id.* at 599.

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 600.

113. *Id.* at 599; *accord* Inn on the Bay, Ltd. v. Florida Dep't of Revenue, 154 B.R. 364, 367 (Bankr. S.D. Fla. 1993).

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

115. *Id.* at 93.

116. *Id.*

117. *Id.* at 94.

effect on the estate.[118] Second, even if the stock was issued post-petition, it might be income from prepetition property.[119]

In *Medina-Figueroa v. Heylinger*,[120] a court found it had "related to" jurisdiction over a debtor's malpractice claim against a doctor and related parties, despite the fact that the court would not otherwise have subject matter jurisdiction over the matter under federal question or diversity jurisdiction.[121] Key to the resolution of *Medina-Figueroa* was that the claim was estate property, having arisen pre-petition.[122]

3. *The Sixth Circuit Standard for Related to Jurisdiction and Other Broader Views of Bankruptcy Court Jurisdiction*

Not all courts have adopted the *Pacor* standard, or, if they have adopted it, they have read it broadly. The Sixth Circuit ostensibly accepted a narrow version of the *Pacor* standard: "We have accepted the *Pacor* articulation, albeit with the caveat that situations may arise where an extremely tenuous connection to the estate would not satisfy the jurisdictional requirement."[123] A closer reading of Sixth Circuit cases demonstrates, however, that the Sixth Circuit has adopted a much broader concept of related to jurisdiction than *Pacor*.

In *In re Salem Mortgage Co.*,[124] Salem Mortgage Company (Salem) and related entities acted as mortgage brokers prior to filing bankruptcy.[125] These mortgages were for borrowers who were unable to obtain credit elsewhere, and Salem charged substantial broker's fees for these loans.[126] Salem assigned the loans to various entities for investment.[127] Wrongdoing was alleged in connection with the loans; in particular, the mortgagors were subject to liability for fraud, deceit, usury, breach of fiduciary duty, and violation of consumer protection laws.[128]

After Salem filed bankruptcy, the Michigan Attorney General filed suit in the bankruptcy court against Salem and eight other defendants.[129] The parties proposed a consent judgment that would reform the mortgages and allow the mortgagors to retain claims against the bankruptcy estate, if they suffered certain losses despite the reformation.[130] Otherwise, the reformation would constitute an

118. *Id.* at 93.
119. *Id.*
120. Medina-Figueroa v. Heylinger, 63 B.R. 572 (D.P.R. 1986).
121. *Id.* at 575.
122. *Id.* at 574.
123. Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (*In re* Wolverine Co.), 930 F.2d 1132, 1142 (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992); Robinson v. Michigan Consol. Gas Co., 918 F.2d 579, 584 (6th Cir. 1990).
124. *In re* Salem Mortgage Co., 783 F.2d 626 (6th Cir. 1986).
125. *Id.* at 629.
126. *Id.*
127. *Id.*
128. *Id.* at 629.
129. *Id.*
130. *Id.* at 630.

accord and satisfaction of the mortgagors' claims.[131] When the district court reviewed the proposed settlement, it dismissed the action because the compromise included claims of investors over which it had no jurisdiction.[132]

The Sixth Circuit adopted the modified *Pacor* test set forth above.[133] The Sixth Circuit, however, rejected the analysis in *Pacor*, especially the requirement that the debtor be bound by either claim or issue preclusion absent automatic liability.[134] Rather, the court distinguished *Pacor* on the ground that the parties in this case were more intertwined than in *Pacor*, and it found that assertion of jurisdiction over the settlement was proper.[135] The court emphasized that Congress's jurisdictional grant was broad. Congress chose a broad abstention doctrine to balance the grant "so that the district court could determine in each individual case whether hearing it would promote or impair efficient and fair adjudication of bankruptcy cases."[136]

Michigan Employment Security Commission v. Wolverine Radio Co.[137] also demonstrates how the Sixth Circuit reads "conceivably effect" more broadly than the court in *Pacor*.[138] The case involved the issue of whether a bankruptcy court had the power to adjudicate the tax liability of a purchaser of property from the bankruptcy estate.[139] The debtor operated a radio station.[140] JOSI Broadcasting Company's predecessor acquired the debtor's broadcasting equipment and tower free of all liens and encumbrances, and the FCC assigned them the debtor's radio license.[141] The purchase agreement indemnified the purchaser for all liability

---

131. *Id.*
132. *Id.* at 631.
133. *Id.* at 634-35.
134. *Id.*
135. *Id.*
136. *Id.* at 635; ***see also*** Robinson v. Michigan Employment Sec. Comm'n, 918 F.2d 579, 584 (6th Cir. 1990) (finding the abstention provisions of 28 U.S.C. § 1334(c) apply even though a case has been removed pursuant to 28 U.S.C. § 1452). The abstention doctrine contained in § 1334 states:

> (c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.
> (2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which a case could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(1)-(2) (1988).
137. Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (*In re* Wolverine Radio Co.), 930 F.2d 1132, (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992).
138. *Id.* at 1132.
139. *Id.* at 1134.
140. *Id.* at 1135.
141. *Id.*

incurred as a result of the radio station's operation prior to the closing.[142] Subsequently, the Michigan Employment Security Commission (MESC) assigned the debtor's contribution rate to the purchaser for purposes of calculating unemployment insurance contributions.[143]

After deciding that 11 U.S.C. section 505(c), which allows bankruptcy courts to hear certain controversies concerning unemployment compensation taxes, did not apply, the court considered whether section 1334(b) provided subject matter jurisdiction.[144] The debtor argued that although no estate property was involved, the suit's outcome could conceivably affect the estate because of the indemnity agreement.[145] A similar case from the Third Circuit found no subject matter jurisdiction because there was no binding effect on the estate.[146] Nonetheless, the Sixth Circuit rejected the Third Circuit's reasoning based on the language set forth by *In re Salem v. Mortgage Co*.[147] The court declared that "[a]lthough we acknowledge the possibility that the MESC-JOSI dispute may ultimately have no effect on the debtor, we cannot conclude that it will have no *conceivable* effect. Accordingly, we find that subject matter jurisdiction exists in the bankruptcy court over the MESC-JOSI dispute."[148]

It is possible that a court employing the *Pacor* standard would also find subject matter jurisdiction based on the facts of *Wolverine* because *Pacor* left open the possibility of subject matter jurisdiction where automatic indemnity existed.[149] These cases elucidate, however, that the Sixth Circuit adopted a broader view of "related to" jurisdiction than the Third Circuit in *Pacor*.

Under a broad reading of "conceivable effect," a conceivable effect on the bankruptcy estate exists if the outcome of a third-party dispute might result in an indemnity claim against the estate.[150] Similarly, there is a conceivable effect on the estate if collection of a judgment against the defendant in the third-party action would preclude a claim against the estate because it results in a double recovery.[151] For example, in *In re Dogpatch U.S.A., Inc.*,[152] the debtor had five loans with savings and loans guaranteed by two individuals.[153] The court found

---

142. *Id.*
143. *Id.* at 1137.
144. *Id.* at 1140.
145. *Id.* at 1145.
146. Quattrone Accountants, Inc. v. IRS, 895 F.2d 921 (3d Cir. 1990).
147. Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (*In re* Wolverine Radio Co.), 930 F.2d at 1143 .
148. *Id.*
149. Pacor, Inc. v. Higgins, 743 F.2d 984, 995 (3d Cir. 1984).
150. *In re* G.S.F. Corp., 938 F.2d 1467, 1476 (1st Cir. 1991).
151. National Union Fire Ins. Co. v. Titan Energy, Inc. (*In re* Titan Energy, Inc.), 837 F.2d 325, 329-30 (8th Cir. 1988); Dogpatch Properties, Inc. v. Dogpatch U.S.A., Inc. (*In re* Dogpatch U.S.A., Inc.), 810 F.2d 782, 786 (8th Cir. 1987); Christensen v. St. Paul Bank Coops., 130 B.R. 967, 975 (Bankr. D. Minn. 1991); Ameritrust Co. v. Opti-Gage, Inc. (*In re* Opti-Gage, Inc.), 128 B.R. 189, 195, 197 (Bankr. S.D. Ohio 1991); First Nat'l Bank v. United States Wall Corp., 113 B.R. 212, 217 (D. Md. 1990).
152. Dogpatch Properties, Inc. v. Dogpatch U.S.A., Inc., 810 F.2d 783 (8th Cir. 1987).
153. *Id.* at 783.

"related to" jurisdiction over the claim against the buyer and guarantors by the savings and loans because in the event of insolvency, the debtor's estate would be responsible for payment.[154] In an analogous situation, a court held it had jurisdiction over a claim by the debtor's subsidiary because if the subsidiary recovered monies in excess of its debts, the excess would be distributed to the estate.[155]

Even the Third Circuit occasionally adopts a broader standard. In *In re Marcus Hook Development Park, Inc.*,[156] the Third Circuit declared that "[a] key word in this test is 'conceivable.' Certainty, or even likelihood, is not a requirement."[157]

Marcus Hook involved conflicting orders of the bankruptcy court–one court approved a sale free and clear of all liens and another reinstated a lien after the sale.[158] The lienholder filed a motion for final decree to close the bankruptcy case three years after the second order, and the purchaser raised the issue of the conflicting orders.[159] Despite the late stage of the case and the fact that the dispute was between non-debtors, the court found it had subject matter jurisdiction because the bankruptcy court was best suited to reconcile its conflicting orders.[160]

In conclusion, the Sixth Circuit standard is broader than the *Pacor* standard. One can sum up this standard by a statement from *Titan Energy, Inc. v. National Union Fire Insurance Co.*[161]: "Yet, even a proceeding which portends a mere contingent or tangential effect on the debtor's estate meets the broad jurisdictional test articulated in *Pacor*."[162]

The Sixth Circuit standard and the *Pacor* standard result in different outcomes in two main factual situations. First, the Sixth Circuit standard finds jurisdiction over a claim that might result in an indemnity suit against the estate, while the *Pacor* standard does not.[163] Second, the Sixth Circuit standard permits jurisdiction over a claim if collection on that claim reduces claims against the estate, while *Pacor*, again, does not.[164] In sum, while *Pacor* requires a claim bind

---

154. *Id.* at 786.

155. Providers Fidelity Life Ins. Co. v. Tidewater Group, Inc. (*In re* Tidewater Group, Inc.), 63 B.R. 670, 674 (Bankr. N.D. Ga. 1986).

156. *In re* Marcus Hook Dev. Park, Inc., 943 F.2d 261 (3d Cir. 1991).

157. *Id.* at 264 (citing Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (*In re* Wolverine Radio Co.), 930 F.2d 1132, 1143 (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992)).

158. *Id.* at 262-63.

159. *Id.*

160. *Id.* at 268.

161. National Union Fire Ins. Co. v. Titan Energy, Inc. (*In re* Titan Energy, Inc.), 837 F.2d 325 (8th Cir. 1988)

162. *Id.* at 330. Of course, this statement misstates the *Pacor* test, but it is an accurate reflection of the Sixth Circuit standard.

163. *See, e.g.*, Michigan Employment Sec. Comm'n v. Wolverine Radio (*In re* Wolverine Radio Co.), 930 F.2d 1132, 1143 (6th Cir. 1991), *cert. dismissed*, 503 U.S. 978 (1992) (holding an indemnification claim was related to the bankruptcy proceeding and distinguishing *Pacor*).

164. *See, e.g.*, *In re* Salem Mortgage v. Nadine, 783 F.2d 626, 634-35 (6th Cir. 1986) (finding the claim was sufficiently related as the claim would reduce claims against the estate and

the estate for jurisdiction, the broader standard does not require the application as a claim preclusion or issue preclusion as a prerequisite to jurisdiction.

4. *The Seventh Circuit Standard*

The Seventh Circuit has adopted a seemingly narrower standard than *Pacor* for bankruptcy court jurisdiction.[165] Under the Seventh Circuit standard, a controversy is not related to a bankruptcy "unless its resolution 'affects the amount of property available for distribution or the allocation of property among creditors.'"[166] The Seventh Circuit reads bankruptcy court jurisdiction "narrowly not only out of respect for Article III, but also to preserve the jurisdiction of state courts over questions of state law involving persons not party to the bankruptcy."[167] "Overlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of its assets among creditors."[168]

In re Pettibone Corp.,[169] illustrates the Seventh Circuit's standard. Here, International Insurance Company (International) filed two crossclaims against Granite State Insurance Company (Granite) alleging Granite had breached the debtor's plan of reorganization by giving three million dollars to certain personal injury claimants rather than making the payment available to all creditors in the plan's sub-class of personal injury claimants.[170] The court applied the Seventh Circuit's standard for "related to" jurisdiction.[171]

The court found no jurisdiction because the crossclaim had no effect on the amount of potential property available to creditors.[172] International argued that Granite was liable to the extent that International was liable to the estate or creditors.[173] The crossclaim's only effect was to change the ultimate source of damages.[174]

---

distinguishing *Pacor* because the parties in *Salem Mortagage* were more intertwined than the parties in *Pacor*).

165. Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989); Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe, 818 F.2d 643 (7th Cir. 1987); Elscint, Inc. v. First Wis. Fin. Corp., 813 F.2d 127 (7th Cir. 1987); *In re* Chicago, Rock Island & Pacific R.R., 794 F.2d 1182 (7th Cir. 1986); *see also* Official Creditors Comm. v. International Ins. Co. (*In re* Pettibone, Corp.), 135 B.R. 847 (Bankr. N.D. Ill. 1992) (holding bankruptcy court did not have jurisdiction over a cross-claim).

166. Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d at 749; *see also* Elscint, Inc. v. First Wis. Fin. Corp., 813 F.2d at 131 (concluding the bankruptcy court's jurisdiction does not include the resolution of all disputes among creditors of a bankrupt); Baxter Healthcare Corp. v. Hemex Liquidation Trust, 132 B.R. 863, 866 (N.D. Ill. 1991) (holding remand to state court was appropriate because the proceeding involved only questions of state law tangentially related to the bankruptcy action).

167. Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d at 749.

168. *Id.*

169. *In re* Pettibone Corp., 135 B.R. 847 (N.D. Ill. 1992).

170. *Id.* at 848-49.

171. *Id.* at 850.

172. *Id.*

173. *Id.*

174. *Id.* at 850-51.

Zerand-Bernal Group, Inc. v. Cox[175] involved a dispute over language in sales documents for property that had left the estate.[176] The bankruptcy court approved the sale of part of the debtor's assets to the Zerand-Bernal Group (Zerand).[177] Subsequently, Zerand asked the bankruptcy court to enjoin a products liability action in federal district court instituted by the Coxes for alleged injuries.[178] Rockwell International Corporation (Rockwell) and a related entity, the immediate sellers of the equipment that allegedly injured the Coxes, sought indemnity from Zerand for attendant liability, as successor to the debtor.[179] Rockwell challenged the court's jurisdiction over the Zerand adversary proceeding.[180]

The sales agreement and plan of reorganization provided that the bankruptcy court would retain jurisdiction to enjoin any products liability claim that existed prior to the closing or that arose afterwards, but was related to sales made by the debtor prior to the closing.[181] The court, however, rejected jurisdiction because the property left the estate and the plan was completed, leaving no property to be administered.[182]

The court also rejected an argument that Zerand might claim indemnity against the estate or move to rescind the sale, if the court did not enjoin the other action.[183] The court stated that a mere allegation of a claim against the estate does not create jurisdiction.[184] At the very least, the creditor would have to file a proof of claim against the estate.[185] Filing a proof of claim would not, however, affect the estate because the estate had been completely administered.[186]

Ziglin v. Peterson[187] demonstrates that the parties' roles must be evaluated carefully in analyzing "related to" jurisdiction.[188] In this nondischargeability proceeding, the plaintiffs had taken a 1954 Jaguar to Autosports/Autowerkes, owned by the defendants, the Petersons, for restoration.[189] The plaintiffs paid the Petersons $26,409 for the restoration.[190] A portion of the restoration was subcon-

---

175. Zerand-Bernal Group, Inc., v. Cox, 152 B.R. 927 (Bankr. N.D. Ill. 1993), *aff'd*, 23 F.3d 159 (7th Cir. 1994). For a similar case involving the enforcement of a settlement agreement, see *In re* Urban Health Servs., Ltd., 154 B.R. 486 (Bankr. N.D. Ill. 1993).
176. Zerand-Bernal Group, Inc., v. Cox, 152 B.R. at 929-30.
177. *Id.* at 929.
178. *Id.* at 930.
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.* at 934.
183. *Id.*
184. *Id.* at 934-35.
185. *Id.* at 934.
186. *Id.* at 935.
187. Ziglin v. Peterson (*In re* Peterson), 104 B.R. 94 (Bankr. E.D. Wis. 1989); *see* Mutual Sav. & Loan Ass'n v. Coulthard (*In re* Coulthard), 98 B.R. 940 (Bankr. E.D. Wis. 1989).
188. Ziglin v. Peterson (*In re* Peterson), 104 B.R. at 95.
189. *Id.*
190. *Id.*

tracted to Pfaffle.[191] The Petersons alleged that Pfaffle never performed the work or performed it negligently.[192]

Autosports/Autowerkes filed for Chapter 11 reorganization, and a few months later the Petersons filed under Chapter 7.[193] When the plaintiffs attempted to recover the Jaguar, they found only a few unassembled parts.[194] Subsequently, they filed a nondischargeability claim against the Petersons for $33,109, and the Petersons moved the court to file a third-party complaint against Pfaffle for indemnity and contribution.[195]

The bankruptcy court held that it lacked jurisdiction over the third-party complaint because the case did not satisfy the Seventh Circuit test.[196] Although the court's reasoning is unclear, one can explain the outcome. If the plaintiffs prevailed on their nondischargeability complaint, the only result would be that the debtor would not be discharged from the debt. If the Petersons then recovered on their third-party complaint, they, rather than the bankruptcy estate, would benefit. In other words, the Petersons were suing for themselves, not for the estate; the trustee would have to sue on behalf of the estate. Under the Sixth Circuit test, jurisdiction might be satisfied if the Petersons recovered from Pfaffle and paid the plaintiffs' claim in full, leaving the plaintiffs with no claim against the estate. This indirect effect, however, was insufficient to satisfy the Seventh Circuit test.[197]

The effect of the Peterson's other claim is similar. The Petersons asserted that by his intentional or negligent conduct, Pfaffle hurt their business reputation and forced them into Chapter 7 bankruptcy.[198] Unless the trustee abandoned this claim, however, the Petersons had no standing to sue. If the trustee abandoned the claim to the Petersons, they were suing for themselves, not for the estate.

The Seventh Circuit test appears to have the same result as *Pacor* and the Sixth Circuit standard when a suit against a non-debtor defendant results in automatic indemnity against the estate. In *Apex Investment Ass'n v. TJX Cos.*,[199] the defendant agreed to guarantee a shopping center lease.[200] When the debtor bought the shopping center, it agreed to assume all liabilities of the shopping center and indemnify the defendant for the assumed liabilities.[201] When the debtor declared bankruptcy, the plaintiff sued the defendant on the guarantee.[202] The court found "related to" jurisdiction because a judgment would result in automatic indemnity against the debtor.[203]

---

191. *Id.*
192. *Id.*
193. *Id.*
194. *Id.*
195. *Id.*
196. *Id.* at 97-98.
197. *Id.*
198. *Id.*
199. Apex Inv. Ass'n, Inc. v. TJX Cos., Inc., 121 B.R. 522 (N.D. Ill. 1990).
200. *Id.* at 524.
201. *Id.*
202. *Id.*
203. *Id.* at 524-25.

An earlier case left open the possibility that the Seventh Circuit standard is broader than the previous cases suggest.[204] In *Elscint, Inc. v. First Wisconsin Finance Corp.*,[205] the debtor escrowed funds to pay off two secured creditors, relinquishing any interest in the funds.[206] When the secured creditors could not agree on the distribution of the funds, one of them asked the bankruptcy court to do so.[207]

The bankruptcy judge concluded the escrow account was no longer subject to the bankruptcy court's jurisdiction.[208] The court pointed out that bankruptcy courts generally do not have jurisdiction over property that has left the estate, stating that

> [t]he bankruptcy jurisdiction is designed to provide a single forum for dealing with all claims to the bankrupt's assets. It extends no further than its purpose. That two creditors have an intercine conflict is of no moment, once all disputes about their stake in the bankrupt's property have been settled.[209]

The court also rejected the Sixth Circuit standard.[210]

The court, however, declared that the situation is different if the allocation between creditors affects the amount available to other creditors.[211] For example, if a creditor has a claim against the estate, that creditor's recovery from another party would reduce that creditor's claim and allow greater distribution to other creditors.[212] The court remanded the case to the bankruptcy court to determine whether the allocation between the two creditors would affect the distribution to other creditors.[213]

In sum, one might conclude that the Seventh Circuit standard is more narrow than that of the Sixth Circuit and may be even narrower than *Pacor*. Certain inconsistencies in the outcome of Seventh Circuit cases, however, leave the standard unclear. For example, *Elscint* found the possibility of jurisdiction because the outcome of the third-party dispute might allow more property to be distributed to other creditors, a standard for jurisdiction that resembles the Sixth Circuit and is inconsistent with *Peterson*, another case from the Seventh Circuit.[214] In addition, one court has stated that the Seventh Circuit standard is substantially the same as *Pacor*.[215]

---

204. Elscint, Inc. v. First Wis. Fin. Corp., 813 F.2d 127 (7th Cir. 1987); *see also* Home Ins. Co. v. Cooper & Cooper, Ltd., 889 F.2d 746 (7th Cir. 1989).
205. Elscint, Inc. v. First Wis. Fin. Corp., 813 F.2d 127 (7th Cir. 1987).
206. *Id.* at 128-29.
207. *Id.* at 129.
208. *Id.*
209. *Id.* at 131.
210. *Id.* at 131 n.2.
211. *Id.* at 132.
212. *Id.*
213. *Id.* at 132-33.
214. *Id.* at 132; Ziglin v. Peterson (*In re* Peterson), 104 B.R. 94 (Bankr. E.D. Wis. 1989).
215. Nickum v. Brakegate, Ltd., 128 B.R. 648, 650-51 (C.D. Ill. 1991).

5. *The Second Circuit Standard*

Turner v. Ermiger[216] established a seemingly narrow standard for "related to" jurisdiction in the Second Circuit, requiring a "significant connection" between the proceeding and the bankruptcy.[217] In *Turner*, the debtor filed suit in bankruptcy against her former landlord for conversion of personal property.[218] Turner claimed the property was exempt, but because any proceeds Turner recovered would go to her, rather than the estate, there was no significant connection to the bankruptcy.[219]

While the significant connection standard seems narrower than the other standards, later cases have stated that the Second Circuit standard resembles the *Pacor* "conceivable effects" test.[220] In fact, some Second Circuit cases approach the Sixth Circuit standard. For instance, *Mihnlong Enters, Inc. v. New York International Hostel, Inc.*[221] found subject matter jurisdiction over a claim because, had the defendants lost, they might have brought suit against the debtor.[222]

C. *Summary of Subject Matter Jurisdiction*

Courts have adopted three different standards to evaluate whether a bankruptcy court has "related to" subject matter jurisdiction over a proceeding. Although all three standards give broad jurisdiction to bankruptcy courts, they differ in their applications to certain situations in significant ways. The two most notable of these are: (1) Does the proceeding have to be binding on the bankruptcy estate or can a potential claim against the estate bestow jurisdiction over the proceeding; and (2) Is the fact that the outcome of the proceeding might produce more or less property for the estate enough to create related to jurisdiction?

---

216. Turner v. Ermiger, 724 F.2d 338 (2d Cir. 1983).
217. *Id.* at 341.
218. *Id.* at 339.
219. *Id.* at 341.
220. *In re* Cuyahoga Equip. Co., 980 F.2d 110, 114 (2d Cir. 1992); Neuman v. Goldberg, 159 B.R. 681, 687 (S.D.N.Y. 1993); Mihnlong Enters., Inc. v. New York Int'l Hostel, Inc., 157 B.R. 748, 751 (S.D.N.Y. 1993); *see also In re* LaFayette Radio Elec. Corp., 761 F.2d 84, 92 n.6 (2d Cir. 1985) (holding the bankruptcy court has jurisdiction to enforce its own orders); Trager v. IRS (*In re* North Star Contracting Corp.), 146 B.R. 514, 519-20 (Bankr. S.D.N.Y. 1992) (adopting the "significant connection" test and reciting actions which would satisfy the test, such as: "the outcome would affect the amount of property available for distribution to the creditors. . . ."). A California district court has also adopted the significant connection standard, but it is not clear how the court applies this standard. Sedlachek v. National Bank, 158 B.R. 175 (C.D. Cal. 1993).
221. Mihnlong Enters., Inc. v. New York Int'l Hostel, Inc., 157 B.R. 748 (S.D.N.Y. 1993).
222. *Id.* at 751.

III. THE EFFECT OF ANCILLARY, PENDENT, AND SUPPLEMENTAL JURISDICTION ON THE SUBJECT MATTER JURISDICTION OF BANKRUPTCY COURTS

Part I of this paper examined bankruptcy court jurisdiction as if every claim needed an independent jurisdictional basis. In cases involving multiple claims or multiple parties, jurisdiction over one claim or one party might allow jurisdiction over another claim or another party under the common law doctrines of ancillary and pendent jurisdiction, or statutory supplemental jurisdiction. This Part will examine the effect of these doctrines on the subject matter jurisdiction of bankruptcy courts.

A. *The Common Law Doctrines*

Under a strict reading of Article III and congressional grants of jurisdiction, a federal court might have jurisdiction over some claims, but not over other closely-related claims. For example, a federal court would have subject matter jurisdiction over a claim alleging violations of federal securities laws brought by a Virginia citizen against another Virginia citizen, because this claim involves a federal question. The same court, however, would lack jurisdiction over state law fraud claims based on identical facts, because no federal question is involved and because there is no diversity of citizenship. Because such a result leads to piecemeal and inefficient litigation, federal courts developed the doctrines of ancillary and pendent jurisdiction.

Ancillary jurisdiction is the "[p]ower of court to adjudicate and determine matters incidental to the exercise of its primary jurisdiction of an action."[223] "Ancillary jurisdiction commonly arises when 'the same aggregate of operative facts' serves as the basis for both the subject matter properly in federal court and a claim over which a court would have no independent jurisdiction, such as with a compulsory counterclaim or cross-claim."[224] Under proper circumstances, ancillary jurisdiction applies to impleader, cross-claims, and counterclaims.[225]

Pendent jurisdiction is "a principle applied in federal courts that allows state created causes of action arising out of the same transaction to be joined with a federal cause of action even if diversity of citizenship is not present."[226] The test for pendent jurisdiction is whether the state and federal claims "derive from a common nucleus of operative facts."[227] "But if, considered without regard to their federal and state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming

---

223. BLACK'S LAW DICTIONARY 86 (6th ed. 1990).

224. *In re* Alpha Steel Co., 142 B.R. 465, 470 (M.D. Ala. 1992) (quoting Eagerton v. Valuations, Inc., 698 F.2d 1115, 1118 (11th Cir. 1983)).

225. Owen Equip. & Erection Co. v Kroger, 437 U.S. 365, 375 & n.18 (1978).

226. BLACK'S LAW DICTIONARY 434 (6th ed. 1990).

227. United Mine Workers v. Gibbs, 383 U.S. 715, 725 (1966); *In re* Alpha Steel, 142 B.R. at 470.

substantiality of federal issues, there is *power* in the federal court to hear the whole."[228]

One can conclude that ancillary and pendent jurisdiction are similar. However, pendent jurisdiction "concerns the resolution of a plaintiff's federal and state law claims against a single defendant in one action," while ancillary jurisdiction usually involves "state law claims against two different defendants."[229]

There are, however, limits to ancillary and pendent jurisdiction. First, ancillary jurisdiction only establishes a constitutional minimum; it cannot be used to bypass jurisdictional limits created by Congress.[230] For instance, plaintiffs cannot use ancillary jurisdiction to overcome a lack of diversity of citizenship.[231] Congress has conferred jurisdiction on federal courts in civil actions where the amount in controversy exceeds $50,000 and where the action is between citizens of different states.[232] Thus, in a controversy involving a plaintiff from Virginia and two potential defendants-one from Virginia and the other from Maryland-the plaintiff could only sue the Maryland defendant in federal court based on diversity jurisdiction. The Maryland defendant could implead the Virginia defendant using diversity jurisdiction, assuming the amount in controversy meets the jurisdictional minimum. The Virginia plaintiff, however, could not then sue the Virginia third-party defendant under ancillary jurisdiction, because this would contravene the jurisdictional limit Congress created in the diversity statute.

Second, both ancillary and pendent jurisdiction are discretionary.[233]

> It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present, a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them. . . if it appears that state issues substantially predominate, whether in terms of proof, of the scope of the issues raised, or by the comprehensiveness of the remedy sought, the state claims may be dismissed without prejudice and left for resolution to state tribunals.[234]

Courts are split over whether ancillary and pendent jurisdiction are available to expand the subject matter jurisdiction of bankruptcy courts. Some courts reject or question the application of ancillary and pendent jurisdiction to

---

228. United Mine Workers v. Gibbs, 383 U.S. at 725.
229. Owen Equip. & Erection Co. v. Kroger, 437 U.S. at 370.
230. *Id.* at 371-72.
231. *Id.* at 377.
232. 28 U.S.C. § 1332(a)(1) (1988).
233. United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966); *In re* Alpha Steel, 142 B.R. 465, 470, 472 (M.D. Ala. 1992); *see* JACK H. FRIEDENTHAL ET AL., CIVIL PROCEDURE 67 (2d ed. 1993).
234. United Mine Workers v. Gibbs, 383 U.S. at 726-27.

bankruptcy courts.[235] First, one can argue that "arising in" and "related to" bankruptcy jurisdiction already permit courts to hear all supplemental claims that Congress intended them to hear.[236] Second, ancillary and pendent jurisdiction could subsume "arising in" and "related to" jurisdiction, making them superfluous.[237] Finally, if ancillary and pendent jurisdiction supplement "related to" jurisdiction, courts could hear claims that are related to claims that are related to the primary case.[238]

Despite the above reasons for rejecting ancillary and supplemental jurisdiction for bankruptcy courts, a number of courts have adopted these doctrines.[239]

> The absence of ancillary jurisdiction would make it virtually impossible for bankruptcy courts to implement a modern system of procedural rules. Absent ancillary jurisdiction, the court could not adjudicate compulsory counterclaims, cross-claims, third party claims, and other claims permitted to be asserted under the Federal Rules of Civil Procedure, unless each claim independently qualified for adjudication in federal court. The interest of judicial economy and principles of res judicata and collateral estoppel mandate that the bankruptcy and district courts have ancillary and pendent jurisdiction under 28 U.S.C. § 1334.[240]

Based on this reasoning, one court has even stated that ancillary jurisdiction allows a bankruptcy court to hear a claim in a complex case, even though the related claims on which primary jurisdiction was based have been dismissed or settled.[241]

In re Cary Metal Products, Inc.[242] adopted an intermediate position between the above extremes.[243] The court stated that "ancillary jurisdiction is applied only in unusual circumstances and is strictly limited to cases where the non-bankruptcy forum cannot provide adequate relief or where other equitable factors require the bankruptcy court to exercise ancillary jurisdiction."[244] In

---

235. *In re* Alpha Steel, 142 B.R. at 470-71; *In re* Pettibone Corp., 135 B.R. 847, 851-52 (Bankr. N.D. Ill. 1992).

236. *In re* Alpha Steel, 142 B.R. at 471.

237. *Id.*

238. *Id.*

239. *E.g.*, Wieboldt Stores, Inc. v. Schottenstein, 111 B.R. 162, 166-67 (N.D. Ill. 1990); *In re* Aerni, 86 B.R. 203, 207 (Bankr. D. Neb. 1988); *In re* Direct Satellite Communications, Inc., 91 B.R. 5, 6-7 (Bankr. E.D. Pa. 1988); *In re* Petrolia Corp., 79 B.R. 686, 689-93 (Bankr. E.D. Mich. 1987); *In re* Tidewater Group, 63 B.R. 670, 673 (Bankr. N.D. Ga. 1986); Ram Constr. Co. v. Port Auth., 49 B.R. 363, 366 (W.D. Pa. 1985).

240. *In re* Aerni, 86 B.R. at 207.

241. *In re* Tidewater, 63 B.R. at 673.

242. *In re* Cary Metal Products, Inc., 158 B.R. 459 (N.D. Ill. 1993), *aff'd*, 23 F.3d 159 (7th Cir. 1994).

243. *Id.* at 464-65.

244. *Id.*

particular, courts should refuse ancillary jurisdiction when the main case has been closed.[245]

B. *Supplemental Jurisdiction Under 28 U.S.C. Section 1367*

In 1990, Congress enacted a statute giving district courts supplemental jurisdiction:

> Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.[246]

This supplemental jurisdiction is discretionary under certain circumstances:

> The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—
>
> (1) the claim raises a novel or complex issue of state law,
>
> (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> (3) the district court has dismissed all claims over which it has original jurisdiction, or
>
> (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.[247]

Congress passed 28 U.S.C. section 1367 in response to *Finley v. United States*.[248] In this case, the Court refused to extend *Gibbs* to pendent party jurisdiction.[249] Petitioner's husband and two sons were killed in a plane crash.[250] She brought an action against the Federal Aviation Administration (FAA) under the Federal Tort Claims Act, alleging the FAA was negligent in operating the runway lights and controlling air traffic.[251] She also believed that two other parties, the City of San Diego, which owned the airport, and San Diego Gas and Electric Corporation, which maintained power lines near the airport, were liable for the

---

245. *Id.* at 465.

246. 28 U.S.C. § 1367(a) (Supp. V 1993). Subsection (b) restricts the application of supplemental jurisdiction under FED. R. CIV. P. 14, 19, 24, and 30 when assertion of such jurisdiction would be inconsistent with diversity jurisdiction under § 1332. *Id.* § 1367(b).

247. *Id.* § 1367(c).

248. *See* Finley v. United States, 490 U.S. 545 (1989).

249. *Id.* at 554.

250. *Id.* at 546.

251. *Id.*

crash.[252] Because there was no independent jurisdictional basis against the last two parties, she alleged pendent jurisdiction over them based on *Gibbs*.[253] The Court rejected pendent party jurisdiction because Congress had not authorized it.[254]

Supplemental jurisdiction significantly expands federal court jurisdiction, particularly when the jurisdictional basis is federal question. When the jurisdiction over the main claim is a federal question, a federal court can assert jurisdiction over any other claim that is "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."[255]

Supplemental jurisdiction is not limited to restatements of the same basic ground for recovery. Supplemental jurisdiction may arise from separate claims, or alternatively may rise from different 'counts' or 'grounds' or 'theories' in support of what is essentially a single claim. "The claims need only revolve around a central fact pattern."[256] "State and federal claims form one case or controversy when they derive from a common nucleus of operative facts or when both claims would normally be expected to be tried in a single judicial proceeding."[257]

Under supplemental jurisdiction in federal question cases, courts have jurisdiction over compulsory counterclaims, but not permissive claims.[258] Courts also have supplemental jurisdiction over cross-claims that meet the requirements of section 1367,[259] as well as third party claims.[260] Most importantly, plaintiffs may use supplemental jurisdiction to bring in parties over which the court otherwise lacks subject matter jurisdiction.[261] For example, in a case based on civil rights violations under section 1983 brought by a husband, a federal court had supplemental jurisdiction over his wife's claim for loss of consortium.[262]

As was true of common law ancillary and pendent jurisdiction, courts are split over whether statutory supplemental jurisdiction applies to bankruptcy

---

252. *Id.*
253. *Id.* at 546-47.
254. *Id.* at 556.
255. 28 U.S.C. § 1367(a) (Supp. V 1993).
256. White v. County of Newberry, 985 F.2d 168, 172 (4th Cir. 1993).
257. Estate of Bruce v. City of Middletown, 781 F. Supp. 1013, 1016 (S.D.N.Y. 1992); *see* Molina v. Mallah Org., Inc., 817 F. Supp. 419, 421 (S.D.N.Y. 1993).
258. Unique Concepts, Inc. v. Manuel, 930 F.2d 573, 574-75 (7th Cir. 1991); Shamblin v. City of Colchester, 793 F. Supp. 831, 833 (C.D. Ill. 1992).
259. Meritor Sav. Bank v. Camelback Canyon Investors, 783 F. Supp. 455, 457 (D. Ariz. 1991) (stating the cross-claim lacked an independent basis of jurisdiction because all the parties were from Arizona.).
260. Estate of Bruce v. City of Middletown, 781 F. Supp. at 1016-17; Molina v. Mallah Org. Inc., 817 F. Supp. at 421.
261. ITT Commercial Finance Corp. v. Unlimited Automotive Inc., 814 F. Supp. 664, 668-69 (N.D. Ill. 1992); Leith v. Lufthansa German Airlines, 793 F. Supp. 808, 812 (N.D. Ill. 1992); McCray v. Holt, 777 F. Supp. 945, 947-48 (S.D. Fla. 1991).
262. McCray v. Holt, 777 F. Supp. at 947-48.

courts.[263] The court's decision in *In re Alpha Steel*[264] rejected common law ancillary and pendent jurisdiction, stating that section 1367 expressly applies only to district courts.[265] The court in *Fisher v. Federal National Mortgage*[266] examines this phenomenon in more detail. The court reasoned that section 1367 should apply to bankruptcy courts because under 28 U.S.C. section 151, bankruptcy courts are units of district courts, entities capable of exercising supplemental jurisdiction.[267] The court points out, however, that section 151 also limits the exercise of a bankruptcy judge's authority to "*the authority conferred under this chapter . . . except as otherwise provided by law or by rule of the district court*."[268] The authority referred to in section 151 is section 157, not section 1367.

Moreover, bankruptcy jurisdiction "extends no further than its purpose."[269] The bankruptcy court's purpose "is to provide a single forum dealing with bankruptcy cases and the matters that arise in or directly affect those cases."[270] Supplemental jurisdiction exceeds this purpose: "[I]t could create 'related to—related to' jurisdiction."[271]

In re Eads,[272] a case employing supplemental jurisdiction, does not seem to have considered whether section 1367 applies to bankruptcy courts.[273] *Goger v. Merchants Bank*[274] rejected an argument that section 1367 does not apply to bankruptcy courts because they are courts of limited jurisdiction based on cases that applied common law ancillary or pendent jurisdiction in bankruptcy courts.[275] Finally, *James v. Woody*[276] held that supplemental jurisdiction applied to bankruptcy courts under 28 U.S.C. section 151, the argument rejected in *Fisher*.[277]

In sum, common law ancillary and pendent jurisdiction and statutory supplemental jurisdiction expand the jurisdiction of federal courts. Courts are split over whether these jurisdictional bases apply to bankruptcy courts.

---

263. Courts holding it does not apply: *In re* Walker, 51 F.3d 562, 570-73 (5th Cir. 1995); *In re* Houghton, 164 B.R. 146, 148 (Bankr. W.D. Wash. 1994); Fisher v. Federal Nat'l Mortgage, 151 B.R. 895, 898-99 (Bankr. N.D. Ill. 1993); *In re* Alpha Steel, 142 B.R. 465, 471 (M.D. Ala. 1992). Courts holding it does apply: Goger v. Merchants Bank, 141 B.R. 450, 452-53 (Bankr. N.D. Ga. 1991); Jones v. Woody, 139 B.R. 824, 826 (Bankr. S.D. Tex. 1992); *In re* Eads, 135 B.R. 387, 396-97 (Bankr. E.D. Cal. 1991).

264. *In re* Alpha Steel, 142 B.R. 465, 471 (M.D. Ala. 1992).

265. *Id.* at 471.

266. Fisher v. Federal Nat'l Mortgage, 151 B.R. 895 (Bankr. N.D. Ill. 1993).

267. *Id.* at 899.

268. *Id.* (emphasis added).

269. *Id.*

270. *Id.*

271. *Id.*

272. *In re* Eads, 135 B.R. 387 (Bankr. E.D. Cal. 1991).

273. *Id.* at 393-97.

274. Goger v. Merchants Bank, 141 B.R. 450 (Bankr. N.D. Ga. 1991).

275. *Id.* at 452-53.

276. James v. Woody, 139 B.R. 824 (Bankr. S.D. Tex. 1992).

277. *Id.* at 826.

IV. EVALUATION

A. *What Are the Boundaries of the Related to Jurisdiction of Bankruptcy Courts?*

The boundaries of related to bankruptcy subject matter jurisdiction is a matter of dispute. Related to jurisdiction is narrower than many courts have thought because of the limitations of Article III, section 2 of the United States Constitution. Extending related to jurisdiction too far will infringe on other interests, in particular, those of non-debtor litigants and state courts. One should question the argument several courts have advanced that all disputes connected to a bankruptcy must be heard in bankruptcy court in order to avoid piecemeal litigation.

Federal courts and bankruptcy courts are courts of limited jurisdiction.[278] The Constitution and statutes circumscribe the subject matter jurisdiction of federal courts.[279] In particular, Congress cannot confer jurisdiction on federal courts beyond the limits prescribed in Article III, section 2 of the Constitution.[280]

Bankruptcy court jurisdiction derives from two sections of the Constitution:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties, made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State or the Citizens thereof, and foreign States, Citizens or Subjects.[281]

Article I, section 8 gives Congress the power "to establish . . . uniform Laws on the subject of Bankruptcy throughout the United States,"[282] and Congress has done so in Title 11 and related statutes.[283]

---

278. *See supra* note 33; CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3522, at 60 (1984).

279. *See supra* note 33; Insurance Corp. v. Compagnie Des Bauxites, 456 U.S. 694, 702 (1982).

280. International Bhd. of Teamsters v. W.L. Mead, Inc., 230 F.2d 576, 579 (1st Cir. 1956), *cert. dismissed*, 352 U.S. 802 (1956); *see* Crowell v. Benson, 285 U.S. 22, 55 (1932), *overruled on other grounds by*, Director of Office of Worker's Comp. Programs v. Perini N. River Assoc., 459 U.S. 297 (1983).

281. U.S. CONST. art III, § 2.

282. U.S. CONST. art I, § 8.

283. Judith Scheck Koffler, *The Bankruptcy Clause and Exemption Laws: A Re-examination of the Doctrine of Geographic Uniformity*, 58 N.Y.U. L. REV. 22, 23 (1983).

Thus, under Article III, section 2, Congress can give bankruptcy courts-through the district courts-jurisdiction over bankruptcy matters because such matters arise under the laws of the United States. In addition, Congress can give bankruptcy courts all jurisdiction necessary to perform bankruptcy functions, thus allowing bankruptcy courts to have related to jurisdiction.[284] Any jurisdiction beyond that necessary to perform a bankruptcy function, however, would be unconstitutional under Article III, section 2.

In determining the extent of related to jurisdiction, one must examine whether hearing a proceeding is necessary to a bankruptcy function. This author views bankruptcy courts as serving several broad functions: (1) to bring the property of the estate before the court; (2) to adjudicate claims by and against the estate; (3) to distribute the property of the estate to creditors; (4) to administer the estate during bankruptcy; (5) to provide the debtor a discharge (when appropriate); and (6) to allow for reorganization under Chapters 11, 12, and 13. Bankruptcy courts should have the jurisdiction necessary to bring all parties and claims before it to fully perform these functions. Some courts, however, have asserted bankruptcy jurisdiction over matters that do not involve bankruptcy functions, particularly in cases where the debtor is not a party to the adversary proceeding.

Areas that might not involve bankruptcy functions include: (1) adjudications concerning property that has left the estate; (2) adjudications between non-debtor parties that might result in a claim against the estate; (3) adjudications between non-debtor parties that might affect the amount of property available to creditors because of the rule against double recovery; and (4) adjudications concerning claims of the debtor-or a party related to the debtor-that are not property of the estate.

Litigants do not always choose the forum where their rights and liabilities are decided. Plaintiffs, by filling suit first, can force the defendant to litigate in a particular court. Defendants can sometimes change a plaintiff's choice of forum by removal or change of venue. Still, while a party may be forced to litigate in a particular forum, the number of forums that he might be forced to litigate in are limited by jurisdiction, venue, and other factors. For example, a Virginia domiciliary knows he cannot be forced to litigate a state law contract dispute with another Virginia domiciliary in federal court because no federal jurisdiction exists—there is no federal question or diversity. Similarly, a Virginia defendant in a state law contract dispute between herself and another party from Maryland that is only connected with Virginia and involves a sum greater than $50,000 knows that she can not be sued in federal court in Maryland under federal venue statutes.[285]

Expanding the number of courts in which a party could be forced to litigate should be done only for good reason. Diversity jurisdiction expanded the number of courts in which a party might be sued, but it was created so that a foreign party would not have to litigate in a state court. Bankruptcy jurisdiction similarly expands the places a party may have to litigate because a single forum is

284. *Cf.* Crowell v. Benson, 285 U.S. 22, 60 (1932).
285. 28 U.S.C. § 1391(a) (Supp. V 1993).

necessary to administer the estate. Allowing bankruptcy courts jurisdiction over disputes that do not involve a bankruptcy function does not justify interfering with an individual's rights concerning forum selection.

States have interests in litigating state-created causes of action. Under our federal system, some rights can only be litigated in federal court and some only in state court, while many rights can be litigated in either. Bankruptcy jurisdiction creates situations where state-created rights that under other circumstances could not be heard in federal court can be heard in bankruptcy court. Again, such an infringement on state interests can be justified when there is a significant federal interest, such as providing a single forum to administer the estate. If bankruptcy jurisdiction is stretched too far, however, it may unnecessarily infringe upon state court interests.

Some courts have overemphasized the importance of having all bankruptcy functions in a single forum; they have allowed overly expansive related to jurisdiction or wrongly applied ancillary or pendant jurisdiction to bankruptcy. First, because state court judges are "experts" in their state's laws, it may be preferable to have them decide state law claims. Second, in practice, not all bankruptcy functions are litigated in the home bankruptcy court. It is common for a creditor and debtor to litigate a state law contract dispute in state court simultaneously to the debtor's bankruptcy proceeding, even though the matter could be heard in bankruptcy court under related to jurisdiction and despite the fact that the contract dispute may be the estate's major asset or liability. Moreover, under certain circumstances, bankruptcy courts cannot hear some state-law disputes under the abstention statute.[286] Similarly, in most circuits, a bankruptcy court cannot hold a jury trial.[287] If a party demands a jury trial on a claim and the court finds that the party has a right to a jury trial, the claim will be heard by the district court, rather than the bankruptcy court. In sum, it is obvious that piecemeal litigation exists in bankruptcy, even involving proceedings central to the bankruptcy, despite a strong policy against it. Accordingly, the argument is questionable that a proceeding that is not central to the bankruptcy must be heard in bankruptcy court to avoid piecemeal litigation.

Realizing the interests of individuals and states and recognizing not all proceedings that have any connection to a bankruptcy must be heard in the home bankruptcy court, we can examine four situations that might constitute extensions beyond bankruptcy court jurisdiction.

First, when property has left the estate, there is little likelihood that any litigation concerning that property might involve a bankruptcy function. Such a dispute will not affect the amount of property to be distributed to creditors, concern the administration of the estate, or pertain to any other bankruptcy function. In such a situation, adjudicating the claim in bankruptcy court exceeds Article III, section 2, and infringes on the interests of the litigants and the states without a countervailing benefit.

---

286. 28 U.S.C. § 1334(c)(2) (Supp. V 1993).
287. Fruehwald, *supra* note 26, at 98-109.

Second, adjudication of claims in bankruptcy court between non-debtors that might result in a claim against the estate also exceeds Article III, section 2, unless the estate cannot relitigate the claim against it. This author believes that a bankruptcy function is not involved if a right, liability, or option of the estate is not directly affected—the estate is not bound—or the administration of the estate is not directly involved. Moreover, in disputes between non-debtors as opposed to those in which the estate is directly affected the litigants have a greater interest in choosing the forum.

Third, while amounts available to creditors might be affected by a suit between non-debtors because of the rule against double recovery, adjudicating disputes between non-debtor parties is not a bankruptcy function. Moreover, a fortuitous event that might result in more property being distributed to creditors is too indirect and speculative to satisfy Article III, section 2. Allowing such jurisdiction would be analogous to permitting a federal tax court to have jurisdiction over a state tort action because the outcome might result in a taxable event. Furthermore, litigating such a claim in bankruptcy court greatly infringes on the rights of the litigants and the state.

Finally, the debtor or a party related to the debtor may want to litigate claims in bankruptcy court that are not part of the estate, such as where there is an injury to exempt property. A bankruptcy court is not intended, however, to provide either a debtor or a related party a forum in which to pursue individual claims unconnected to the bankruptcy estate.

In sum, bankruptcy court jurisdiction should be limited to proceedings that involve bankruptcy functions. These proceedings bind the estate or directly affect the administration of the estate. Although this view is similar to the *Pacor* standard, it remains the author's opinion that *Pacor* has poorly articulated the standard because conceivable effect is ambiguous, as one can see from the way courts have applied it. The standard for bankruptcy court jurisdiction is better stated as follows: A bankruptcy court has related to jurisdiction over a proceeding if the outcome of that proceeding has a binding effect on a right, liability, option, or the freedom of choice of the bankruptcy estate, or directly impacts on the administration of the bankruptcy estate.

Under my standard, bankruptcy courts would not usually have jurisdiction over (1) disputes over property that has left the estate; (2) disputes between parties that might affect the estate, but that do not bind the estate; (3) disputes between non-debtor parties that might indirectly affect the estate by satisfying a claim that might be asserted against the estate; and (4) claims of the debtor or a related party that does not concern property of the estate.

Some courts have stated that concerns over the extent of bankruptcy court jurisdiction are cured by the discretionary abstention provisions of 28 U.S.C. section 1334(c).[288] Giving discretionary abstention to bankruptcy judges cannot, however, cure jurisdictional defects. If jurisdiction is improper in a specific case, the fact that a judge might have abstained, but did not, cannot confer jurisdiction on a court.

---

288. *See supra* note 136.

B. *Should Ancillary, Pendent, and Supplemental Jurisdiction Apply to Bankruptcy Courts?*

This author agrees with those courts that reject the application of ancillary, pendent, and supplemental jurisdiction to bankruptcy courts.[289] First, if such jurisdiction exceeds the boundaries of related to jurisdiction, it violates Article III, section 2. Second, if ancillary and pendent jurisdiction go beyond related to jurisdiction, Congress's jurisdictional grant in section 1334 is ignored. Third, bankruptcy jurisdiction is different from diversity jurisdiction and most federal question jurisdiction. The presence of related to jurisdiction is intended to allow bankruptcy courts to hear all claims that should be heard in bankruptcy court. Consequently, ancillary, pendent, and supplemental jurisdiction are unnecessary.

Finally, this author believes that in passing section 1367, Congress did not consider its application to bankruptcy courts. In passing this statute, Congress dealt with a specific problem—pendent party jurisdiction in federal question cases, which the Supreme Court had rejected in *Finley v. United States*.[290] While section 1367 does deal with other types of supplemental jurisdiction, there is no evidence in the statute or legislative history that Congress intended to affect bankruptcy jurisdiction.[291] Jurisdictional limits in diversity cases and most federal question cases are not present in bankruptcy cases. In addition, it is clear that section 1367 is not intended to encompass all federal jurisdiction; the legislative history states that it does not apply to diversity only class actions.[292]

V. THE EFFECT OF DUE PROCESS AND PERSONAL JURISDICTION ON THE SUBJECT MATTER JURISDICTION OF BANKRUPTCY COURTS

Subject matter jurisdiction is not generally concerned with due process.[293] Subject matter jurisdiction involves a court's power to adjudicate a controversy; personal jurisdiction protects a party's due process interests.[294] For example, regardless of a court's power to hear a case under diversity jurisdiction, a court cannot bind a defendant unless due process exists—the court has personal jurisdiction over the defendant.

In bankruptcy, however, subject matter jurisdiction and personal jurisdiction are intertwined. If a court has bankruptcy jurisdiction over a matter, a special bankruptcy rule[295] allows nationwide service of process in an adversary proceed-

---

289. For another commentator who argues against the application of supplemental jurisdiction to bankruptcy, see Susan Block-Lieb, *The Case Against Supplemental Bankruptcy Jurisdiction: A Constitutional, Statutory, and Policy Analysis*, 62 FORDHAM L. REV. 721 (1994).

290. H.R. No. 101-734, 101st Cong., 2d Sess. 27-28 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6873-74.

291. *Id.*

292. *Id.* at 6875.

293. *See* Insurance Corp. v. Compagnie Des Bauxites, 456 U.S. 694, 701-03 (1982).

294. *Id.* at 702-03.

295. FED. R. BANKR. P. 7004(d).

ing in both core and noncore matters.[296] The reason for nationwide service of process is economical: "The purpose of the rule is to avoid the fragmentation of litigation that is often involved in bankruptcy matters."[297]

Because service of process is national, most courts hold that bankruptcy courts have personal jurisdiction over all persons within the United States.[298] This being true, most courts find that the usual test for personal jurisdiction—minimum contacts between the defendant and the forum state—is not necessary in a bankruptcy setting.[299] The minimum contacts may be with the United States as a whole, not just the forum state.[300]

Courts have generally upheld the assertion of personal jurisdiction under Rule 7004(d).[301] Courts have also allowed similar grants in other areas, such as securities and antitrust.[302] These cases have often upheld nationwide service of process based on an 1878 Supreme Court case, which stated:

> There is . . . nothing in the Constitution which forbids Congress to enact that, as to a class of cases or to a case of special character, a circuit court—any circuit court—in which the suit may be brought, shall, by process served anywhere in the United States, have the power to bring before it all the parties necessary to its decision.[303]

A few courts have conceded that nationwide service of process might be unfair to a few defendants: "This broad jurisdictional grant is tempered by venue and abstention considerations which may be brought to the court's attention by the defendant."[304] Courts have not considered, however, whether unfairness can invalidate personal jurisdiction in a bankruptcy case.

---

296. Diamond Mortgage Corp. v. Sugar, 913 F.2d 1233, 1243-44 (7th Cir. 1990), *cert. denied*, 498 U.S. 1089 (1991); *In re* GEX Kentucky, Inc., 85 B.R. 431, 434 (Bankr. N.D. Ohio 1987).

297. *In re* Bell & Beckwith, 41 B.R. 697, 699 (Bankr. N.D. Ohio 1984); *see In re* GEX Kentucky, 85 B.R. at 434.

298. *E.g.*, Diamond Mortgage Corp. v. Sugar, 913 F.2d at 1244; *In re* Colonial Realty Co., 163 B.R. 431, 432-33 (Bankr. D. Conn. 1994).

299. *E.g.*, *In re* Bell & Beckwith, 41 B.R. at 699; *In re* Brook Fashion Stores, Inc., 124 B.R. 436, 440 (Bankr. S.D.N.Y. 1991); Self v. W.L. Laws, 51 B.R. 683, 685 (Bankr. N.D. Miss. 1985); *In re* B.W. Dev. Co., 49 B.R. 129, 131 (Bankr. W.D. Ky. 1985).

300. *In re* Colonial Realty, 163 B.R. at 432-33; *In re* Prospect Hill Resources, Inc., 69 B.R. 79 (Bankr. N.D. Ga. 1986).

301. *E.g.*, *In re* Martin-Trigona, 763 F.2d 503, 505 (2d Cir. 1985); Wieboldt Stores, Inc. v. Schottenstein, 94 B.R. 488, 497 (N.D. Ill. 1988); *In re* Van Huffel Tube Corp., 71 B.R. 145, 146 (Bankr. N.D. Ohio 1987); *In re* Allegheny, Inc., 68 B.R. 183, 187 (Bankr. W.D. Pa. 1986).

302. Weiboldt Stores, Inc. v. Schottenstein, 94 B.R. at 497; Fitzsimmons v. Barton, 589 F.2d 330, 332-35 (7th Cir. 1988); Beaulieu v. Electronic Business Sys., 632 F. Supp. 701, 703 (D. Me. 1979).

303. Weiboldt Stores, Inc. v. Schottenstein, 94 B.R. at 497 (quoting United States v. Union Pacific R.R., 98 U.S. 569, 603-04 (1878)).

304. *In re* Brooks Fashion Stores, 124 B.R. 436, 440 (Bankr. S.D.N.Y. 1991).

This author believes that those courts which hold that due process inquiries are irrelevant in bankruptcy because no minimum contacts are required under nationwide service of process misunderstand personal jurisdiction and due process. Chief Justice Stone developed the modern standard for evaluating personal jurisdiction under the Due Process Clause of the Fourteenth Amendment in *International Shoe v. Washington.*[305] Prior to *International Shoe*, sovereignty was the basis of personal jurisdiction; a court could assert personal jurisdiction over a person within the territory of the state, but it could not assert jurisdiction over a party who was beyond a state's borders.[306] *International Shoe* replaced this sovereignty basis of jurisdiction with a fairness-liberty basis: Does the assertion of jurisdiction comport with "traditional notions of fair play and substantial justice?"[307] One way of satisfying this fairness-liberty standard is minimum contacts.[308] It does not follow, however, that because minimum contacts are not required in a particular situation that "traditional notions of fair play and substantial justice" are satisfied.

Later cases enforce the proposition that minimum contacts are not the only factor in considering due process. In *Burger King Corp. v. Rudzewicz,*[309] the Supreme Court stated:

> Once it has been decided that a defendant purposely established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice." Thus, courts in "appropriate case[s]" may evaluate "the burden on the defendant," "the forum State's interest in adjudicating the dispute," "the plaintiff's interest in obtaining convenient and effective relief," "the interstate judicial system's interest in obtaining the most effective resolution of controversies," and the "shared interest of the several States in furthering fundamental substantive social policies."[310]

The Court went on to declare that

> [M]inimum requirements inherent in the concept of "fair play and substantial justice" may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities. As we previously

305. International Shoe v. Washington, 326 U.S. 310 (1945). The validity of the assertion of personal jurisdiction by bankruptcy courts is governed by the Due Process Clause of the Fifth Amendment, rather than the Fourteenth Amendment, because the Fifth Amendment applies to the federal government, the Fourteenth Amendment to the states. Due process under both amendments, however, is the same for purposes of this Article.

306. Pennoyer v. Neff, 95 U.S. 714, 733 (1877).

307. International Shoe v. Washington, 326 U.S. at 316 (citations omitted).

308. *Id.*

309. Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985).

310. *Id.* at 476-77 (1985)(quoting World-Wide Volkswagon Corp. v. Woodson, 444 U.S. 286, 292 (1980)); *see* Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 113 (1987).

have noted, jurisdictional rules may not be employed in such a way as to make litigation "so gravely difficult and inconvenient" that a party unfairly is at a "severe disadvantage" in comparison to his opponent.[311]

Although these additional factors have rarely been considered separately from minimum contacts, Justice Brennan, in his *Asahi* concurrence, reflected the controversy was "one of those rare cases in which 'minimum requirements inherent in the concept of fair play and substantial justice . . . defeat the reasonableness of jurisdiction even [though] the defendant has purposefully engaged in forum activities.'"[312]

Elsewhere, the Court has written that "the personal jurisdiction requirement recognizes and protects an individual liberty interest. It represents a restriction on judicial power *not as a matter of sovereignty* but as a matter of individual liberty."[313]

The above analysis demonstrates that the presence or absence of minimum contacts is not the only consideration in evaluating personal jurisdiction.[314] Personal jurisdiction may be invalid despite minimum contacts. Consequently, personal jurisdiction does not automatically exist with nationwide service of process.

Although this author believes that personal jurisdiction will be valid over most bankruptcy defendants, one can imagine situations where the assertion of jurisdiction would not accord with traditional notions of fair play and substantial justice. Such situations would normally occur where related to jurisdiction is stretched to its boundaries, or beyond. Consider the scenario in the introduction. Does assertion of jurisdiction over a California defendant in an adversary proceeding brought by a Maine plaintiff in a Virginia bankruptcy court—where the bankrupt is not a party and in which personal jurisdiction and venue would not otherwise lie—comport with traditional notions of fair play and substantial justice? This author believes that it does not. The defendant is burdened by litigating the claim in a distant forum without proper justification. Meanwhile,

---

311. Burger King Corp. v. Rudzewicz, 471 U.S. at 477-78 (quoting Worldwide Volkswagon Corp. v. Woodson, 444 U.S. 286, 292 (1980); The Bremen v. Zapata Off-shore Co., 401 U.S. 1, 18 (1972); McGee v. International Life Ins. Co., 355 U.S. 220, 223-24 (1957)).

312. Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. at 116 (Brennan, J., concurring) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477-78 (1985)).

313. Insurance Corp. v. Compagnie Des Bauxites, 456 U.S. at 702 (emphasis added).

314. This discussion does not consider the effect of Burnham v. Superior Court of California, 495 U.S. 604 (1990), on personal jurisdiction. In this case, Justice Scalia's plurality decision resurrects the *Pennoyer* doctrine that a defendant's physical presence in a state allows the assertion of personal jurisdiction over that defendant, even if that defendant's presence is transitory. *Id.* at 611. Justice Scalia based his opinion on tradition and originalism, such jurisdiction existing at the framing of the Fourteenth Amendment. *Id.* at 609. Justice Scalia's opinion does not affect this Article's analysis for two reasons. First, *Burnham* concerned the assertion of jurisdiction over a party in a state, not the use of nationwide service to bring a defendant from one state to another. *Id.* at 607. Second, only three other justices concurred in Justice Scalia's opinion; four other justices wanted to analyze the facts under the *International Shoe* standard. *Id.* at 606-07.

California's interest in adjudicating claims against its banks is ignored in favor of litigating a dispute in a forum which has no connection to the dispute.

One might argue that the above problem does not concern the bankruptcy court's subject matter jurisdiction. One might analyze it as a situation where subject matter jurisdiction is proper, but personal jurisdiction is not. This author believes that with the intertwining of subject matter and personal jurisdiction in bankruptcy, one must consider due process limitations in evaluating bankruptcy subject matter jurisdiction. In doing so, one must conclude due process favors a more narrow related to jurisdiction than adopted by the Sixth Circuit and certain other courts because it avoids forcing a party to litigate her rights or liabilities in a forum that has only a secondary interest in the outcome.

VI. CONCLUSION

This Article has examined the related to subject matter jurisdiction of bankruptcy courts. It has surveyed the tests that courts have used to analyze such jurisdiction, shown how they have applied these tests, and has also discussed how courts have dealt with ancillary, pendent, and supplemental jurisdiction in bankruptcy.

This author believes that in order to satisfy Article III, section 2, bankruptcy jurisdiction should extend only to those proceedings that involve a bankruptcy function. A proceeding that does not have a binding effect on a right, liability, option, or the freedom of choice of the bankruptcy estate, or does not directly effect the administration of the bankruptcy estate does not involve a bankruptcy function. Moreover, assertion of jurisdiction over a proceeding that does not involve a bankruptcy function infringes on individual and state interests without a significant countervailing benefit.

This author thinks that ancillary, pendent, and supplemental jurisdiction do not apply to bankruptcy. First, related to jurisdiction extends bankruptcy court jurisdiction to the boundaries allowed by Article III, section 2 and section 1334(b). Second, courts developed ancillary and supplemental jurisdiction to deal with the limits of federal question and diversity jurisdiction; such limits do not exist in bankruptcy jurisdiction because of related to jurisdiction. Finally, this author does not think that Congress intended section 1367 to apply to bankruptcy courts. In fact, Congress probably did not consider whether supplementary jurisdiction affected bankruptcy jurisdiction when it passed the statute.

Finally, because subject matter jurisdiction and personal jurisdiction are intertwined in the bankruptcy scheme, one must consider the due process effects of related to jurisdiction. Extending related to jurisdiction too far can violate a litigant's due process interests. Limiting related to jurisdiction to the boundaries proposed in this paper can avoid due process problems.