***Wellness Int'l Network, Ltd. v. Sharif*, 727 F.3d 751 (7th Cir. 2013), cert. granted July 1, 2014**

**Oral argument: January 14, 2015**

**Background:**

Sharif entered into distributorship contracts with Wellness International Network, Ltd. ("WIN") for the sale of health and wellness products. In 2003, Sharif and others sued WIN in the Northern District of Illinois alleging that WIN was running a pyramid scheme. Some of the claims were dismissed due to forum-selection clauses in the contracts requiring suit to be filed in the Northern District of Texas.

Sharif refilled suit in the Northern District of Texas. He ignored WIN's discovery requests, resulting in material facts being deemed admitted against him. The district court granted WIN's motion for summary judgment and ultimately awarded WIN $655,596.13 in attorney's fees.

Sharif ignored WIN's post-judgment discovery, and after being held in contempt, filed bankruptcy in the Northern District of Illinois. WIN initiated an adver­sary proceeding asserting an alter-ego claim, as well as nondischargeability causes of action, primarily claiming that Sharif made false statements in connection with his case. The bankruptcy court entered a default judgment against Sharif on all counts of the adversary proceeding and ordered Sharif to pay WIN’s attorney’s fees.

Sharif initially appealed but did not challenge the bankruptcy court’s authority to enter final judgment. However, four months after Sharif appealed, his sister filed a motion to with­draw the reference, arguing that the bankruptcy court lacked jurisdiction to enter final judgment on the adversary complaint under *Stern*. The district court denied the motion and affirmed the bankruptcy court's judgment, holding that objections based on the bankruptcy court’s authority to enter a final judgment are waivable because they do not implicate subject-matter jurisdiction. Sharif appealed to the Seventh Circuit.

**Analysis:**

The Seventh Circuit held that a constitutional objection to a bankruptcy court’s entry of final judgment is not waivable because it implicates separation-of-powers principles. The court noted that *Stern v. Marshall* addressed only a bankruptcy court’s statutory authority, but Sharif's argument addressed the bankruptcy court’s constitutional authority. The Seventh Circuit further noted that other por­tions of *Stern v. Marshall* cast doubt on whether waiver and consent have a role in bankruptcy due to the fact that creditors are required to go to bankruptcy court to pursue claims.

The Seventh Circuit noted that WIN's alter-ego claim was a state-law claim between private parties wholly independent of federal bankruptcy law and not resolved through the claims-allowance process. The bankruptcy court lacked constitutional authority to enter final judgment on the alter-ego claim.

The court then grappled with the question of the proper remedy. The court said that the district court shall first determine whether the alter ego claim is core or noncore. If it is noncore, then the district court can treat the bankruptcy court order as proposed findings of fact and conclusions of law to be reviewed de novo. If it is core, then it shall order that the reference be withdrawn and conduct fresh discovery proceedings in district court.

**Issues Currently Before the Supreme Court**

On July 1, 2014, the Supreme Court granted certiorari to address the following issues:

(1) Whether the presence of a subsidiary state property law issue in an 11 U.S.C. § 541 action brought against a debtor to determine whether property in the debtor's possession is property of the bankruptcy estate means that such action does not "stem[] from the bankruptcy itself" and therefore, that a bankruptcy court does not have the constitutional authority to enter a final order deciding that action; and

(2) Whether Article III permits the exercise of the judicial powers of the U.S. by the bankruptcy courts on the basis of litigant consent, and if so, whether implied consent based on a litigant's conduct is sufficient to satisfy Article III.