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A CLE Presentation

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A. Introduction

The Rooker-Feldman doctrine arises from two Supreme Court decisions separated by sixty years, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The gist of the Rooker-Feldman doctrine is that lower federal courts do not have subject matter jurisdiction to review state court judgments. *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995). Review of state court judgments in the federal court system lies only with the United States Supreme Court. “*Rooker-Feldman*, in essence, bars ‘a party losing in state court . . . from seeking what . . . would be appellate review of the state judgment in a United States district court.’” *In re Federated Dept. Stores, Inc.*, 226 B.R. 191, 193 (Bankr. S.D. Ohio 1998) (citing *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)).

The Rooker-Feldman doctrine can be confusing as applied generally, and is especially troublesome in the field of bankruptcy. Some courts will state a general adherence to the doctrine but will not apply it in the areas of the automatic stay or the dischargeability of a debt. These courts reason that these areas (the automatic stay and dischargeability) are in the sole purview of the bankruptcy courts. Other courts utilize a different rationale and have concluded that state courts can determine the scope of the automatic stay.

The Rooker-Feldman doctrine is being discussed more frequently in the bankruptcy courts. At this time, however, it has not been mentioned in any of the published opinions from the bankruptcy courts in Indiana. Regardless, the doctrine has the potential to be:

an important weapon in the arsenal of a bankruptcy court practitioner. A creditor’s attorney should utilize the doctrine as a shield for his/her client’s interest in the defense of objections to a claim, in attempts to estimate a claim at a low amount, and in an attempt to determine that the debt underlying the claim has been discharged. The doctrine also can be used as a sword by an attorney in his/her attempt to enforce a state court judgment in his/her client’s favor and in efforts to seek an injunction. Andrew J. Apfelberg, *Rooker-Feldman: The “New” Abstention Doctrine for Practitioners in the Ninth Circuit*, 17 APR Am. Bankr. Inst. J. 1 (April 1998).

B. The Subtle Difference Between Rooker-Feldman and Res Judicata (Claim Preclusion)

The Rooker-Feldman doctrine and the doctrine of Res Judicata are indeed similar—they are both procedural preclusion doctrines that prevent a federal court from considering a claim already litigated in a state court. However, there are important, but somewhat subtle, distinctions between the two doctrines.

One such distinction between these doctrines is their *source of law*. Res Judicata is based on the Full Faith and Credit statute, 28 U.S.C. § 1738, requiring federal courts to give a state court’s judgment the same effect that an appellate court of that state would. The Rooker-Feldman doctrine is based upon 28 U.S.C. § 1257(a), which states the rule that “district courts have only *original jurisdiction*; the full appellate jurisdiction over judgments of state courts in civil cases lies in the Supreme Court of the United States.” *GASH Assoc. v. Village of Rosemont, IL*, 995 F.2d 726, 728 (7th Cir. 1993) (emphasis added). Federal courts must first decide the applicability of Rooker-Feldman and *only then* decide the applicability of res judicata. *Garry v. Geils*, 82 F.3d 1362 (7th Cir. 1996).

The tautology is this: a lower federal court applies Rooker-Feldman to determine if it has subject matter jurisdiction. If the court determines that it has subject matter jurisdiction (that Rooker-Feldman does not apply) it may then proceed to address res judicata issues. *Id.* Alternatively, if the court determines that Rooker-Feldman is applicable, then the court lacks subject matter jurisdiction. The court may *not* proceed, including any analysis of res judicata issues.

Another distinction between the two doctrines is their reference to state law. Under Rooker-Feldman, no reference is made to state law—it is entirely federal. By way of contrast, in applying res judicata, the lower federal court looks to the law of the rendering state to determine whether that state would give the judgment preclusive effect. *In re Ferren*, 227 B.R. 279, 282 n. 7 (8th Cir. BAP 1998) (citing *Pirela v.*

Village of North America, 935 F.2d 909, 911 (7th Cir. 1991) (citations omitted), *cert. denied*, 502 U.S. 983 (1991)).

The Rooker-Feldman Doctrine is further distinct from *res judicata* in that it does not need to be pled in order to be effective. As Rooker-Feldman deals with a jurisdictional question, the court can raise the issue *sua sponte*. Moreover, "Rooker-Feldman is broader than claim and issue preclusion because it does not depend upon a final judgment of the merits." *In re Goetzman*, 91 F.3d 1173, 1177 (8th Cir. 1996). It "applies even where a state court judgment may be in error." *In re Audre*, 216 B.R. 19, 29 (B.A.P. 9th Cir. 1997).

There are exceptions to Rooker-Feldman. First, Rooker-Feldman does not apply when a statute vests exclusive jurisdiction in federal courts or a particular class of federal courts and when a state court has simply ignored or defied the statute. See *Kalb v. Feuerstein*, 308 U.S. 433 (1940). For example, a state court judgment purporting to lift, modify, or annul the stay would be void *ab initio*. Second, the Rooker-Feldman doctrine does not apply if a federal statute specifically grants lower federal courts the right to review state court judgments. For example, 28 U.S.C. § § 2241, 2254 authorize federal district courts to review state court decisions in habeas corpus proceedings. Thus, Rooker-Feldman would be irrelevant in such an instance.

Third, Rooker-Feldman does not prevent the review of a state court judgment that was procured by fraud, deception, accident, or mistake. For example, if a debtor or another party had actively concealed the existence of a bankruptcy case from a state court, and if the state court had then rendered judgment against the debtor post petition, a bankruptcy court could disregard the judgment. Fourth, Rooker-Feldman has been held inapplicable when the party seeking relief in a federal court did not have any reasonable opportunity to present his or her federal claim or defense in state court. In such a case, the federal issue could not be considered inextricably intertwined with the state court judgment. Fifth, Rooker-Feldman will not bar a federal action by someone who was not a party to the state court action or in privity with a party, and who thus could not have raised the federal issue or sought state court appellate review. See David B. Young, *Automatic Stay Issues: Selected Developments*, 838 PLI/Comm 9, 52-55.

C. The Rooker-Feldman Test

Application of the Rooker-Feldman doctrine will answer the question "Does a lower federal court (such as a district or bankruptcy court) have the subject matter jurisdiction regarding a challenge to a state court decision?" As noted above, any party (even the judge *sua sponte*) may raise Rooker-Feldman issues. "As a rule, the lower federal courts do not have the authority to review state court judgments, even where a federal question is presented." *In re Federated Dept. Stores, Inc.*, 226 B.R. 191, 193 (Bankr. S.D. Ohio 1998). Because application of the Rooker-Feldman Doctrine can prevent a federal district court from reviewing a state court's decision for lack of subject matter jurisdiction, the key issue is to decide if the district court is reviewing a state court decision at all. "[O]ne must ask whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or whether it is distinct from that judgment." *Matter of Pope*, 209 B.R. 1015, 1021 n.9 (N.D. Ga. 1997).

To determine if the federal court is reviewing a state court determination, the courts generally ask whether the claim now argued in federal court is different from the claim argued and decided in the previous state court judgment. Courts often ask whether the claim now being argued is "inextricably intertwined" with the claim argued in the previous state court action. *Wright v. Tackett*, 39 F.3d 155, 157 (7th Cir. 1994). In other words, "is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party?" *GASH*, 995 F.2d at 728.

The claim at the federal court must be *independent*. The meaning of "inextricably intertwined" has been addressed by a number of courts. A federal claim is "inextricably intertwined" with a state court decision if:

[t]he federal claim succeeds only to the extent that the state court wrongly decided the issue before it. Where federal relief can only be predicated upon a conviction that the state court was

wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment. *Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring).

Further, "Rooker-Feldman precludes a federal action if the relief requested in the federal action would effectively reverse the state court's decision or void its ruling." *Charchenko*, 47 F.3d at 983. If so, then "the issues are inextricably intertwined and the district court has no subject matter jurisdiction to hear the suit." *Id.* Courts have generally concluded the claims are inextricably intertwined when the district court must scrutinize both the challenged rule and the state court's application of that rule. *Dubinka v. Judges of Superior Court*, 23 F.3d 218, 222 (9th Cir. 1994).

Rooker-Feldman also applies even where there is no final judgment on the merits. In *In re Federated Dept. Stores, Inc.*, 226 B.R. 191 (Bankr. S.D. Ohio 1998), Chapter 11 debtors, Federated Department Stores (Federated), moved for the entry of an order to enforce a bankruptcy discharge injunction against a creditor who asserted a personal injury claim against the debtors in New York state court. Federated moved for summary judgment claiming that the plaintiff's personal injury claim was barred by the debtor's bankruptcy discharge because she failed to file a proof of claim in the bankruptcy case. After the state court denied the summary judgment motion, Federated went to bankruptcy court to try and enforce its discharge injunction against the state court plaintiffs. Unfortunately for Federated, the bankruptcy court denied its motion to enforce the discharge injunction because Rooker-Feldman prevented the court from obtaining subject matter jurisdiction. The bankruptcy court stated that Federated's claim was "inextricably intertwined" with the New York state court's decision to deny Federated's summary judgment motion. This was true even though the state court decision was not a final judgment on the merits. "[R]ooker-Feldman is broader than claim and issue preclusion because it does not depend on a final judgment on the merits." *Federated*, 226 B.R. at 194 (citing *Charenko v. City of Stillwater*, 47 F.3d 981, 983 n.1 (8th Cir. 1995)).

To sum up: when a case comes to a lower federal court that has some history in state court, the court or any party may raise the question of subject matter jurisdiction. The Rooker-Feldman Doctrine will ask whether the claims now presented are "inextricably intertwined" with the state court action. If a claim is "inextricably intertwined" with a state court judgment then that claim must be dismissed for lack of subject matter jurisdiction. If that claim is independent then the federal court has subject matter jurisdiction to hear the claim.

Recent Seventh Circuit cases have tried to draw a distinction between federal plaintiffs who were defendants in the state court action seeking appeal in federal court and those who were plaintiffs in the state court action seeking in federal court. See *Garry*, *GASH*, and *Morton Nesses v. Randall T. Shepard*, No. 93-9328 (7th Cir. 1995). The difference is this: if the federal plaintiff was the *plaintiff* in state court action, then we know that party is coming to the lower federal court to try again (because he or she lost in state court). We know also that in this case the law of preclusion (*res judicata*) would apply because the plaintiff is merely seeking to ignore the state court judgment. While on the other hand, if the federal plaintiff was a *defendant* in state court, we know that party is coming to federal court complaining of a state court action and that that party must necessarily be asserting injury at the hands of the *court*, not injury at the hands of his or her *adversary*. That person seeks collateral review of the state court decision, and will not get it because the court lacks subject matter jurisdiction (Rooker-Feldman applies):

[a] plaintiff who loses and tries again encounters the law of preclusion. The second complaint shows that the plaintiff wants to ignore rather than upset the judgment of the state tribunal. A *defendant* who has lost in state court and sues in federal court does not assert injury at the hands of his adversary; he asserts injury at the hands of the court, and the second suit therefore is an effort to obtain collateral review. It must be dismissed not on the basis of preclusion but for lack of jurisdiction. *Garry*, 82 F.3d at 1367 (quoting *Homola v. McNamara*, 82 F.3d 647, 650 (7th Cir. 1995) (emphasis in original)).

D. The Rooker-Feldman Doctrine & Bankruptcy

1. In general

The Rooker-Feldman Doctrine applies to federal district/bankruptcy courts. "[A]s to civil proceedings arising under, arising in, or related to bankruptcy cases, the district court's subject matter jurisdiction is not exclusive. Therefore, state courts can have subject matter jurisdiction over civil proceedings arising under, arising in, and related to the bankruptcy case." *In re Beardslee*, 209 B.R. 1004, 1010, 1011 (Bankr. D. Kan. 1997). As a matter of policy, "[t]he Bankruptcy Code was not intended to give litigants a second chance to challenge a state court judgment nor did it intend for a bankruptcy court to serve as an appellate court for a divorce decree." *In re G&R Mfg. Co., Inc.*, 91 Bankr. 991, 994 (Bankr. M.D. Fla. 1998).

The Rooker-Feldman doctrine appears in a wide variety of cases in the bankruptcy courts. *In re Williams*, 280 B.R. 857 (B.A.P. 9th Cir. 2002), dealt with a state court's determination that the debtor "was not entitled to exempt funds in a particular account as a 'private retirement plan'". *Id.* at 859. The bankruptcy court disallowed an exemption for these funds based on the Rooker-Feldman doctrine, and the Bankruptcy Appellate Panel affirmed. *Id.*

A trio of cases from the Seventh Circuit further illustrates the wide variety of issues barred in bankruptcy courts because of Rooker-Feldman. *In re Heartland Food and Dairy Distributors*, 253 B.R. 32 (Bankr. S.D. Ill. 2000) involved a state court's prejudicial dismissal of a complaint because the company filed as Land-O-Suns Dairy, Inc. instead of Land-O-Suns Dairy, L.L.C. When the case was removed to bankruptcy court, the creditor attempted to have the court revisit the issue. The court refused because of Rooker-Feldman.

In re Hanno, 254 B.R. 732 (Bankr. N.D. Ill. 2000), involved a debtor that attempted to have a state court judgment confirming the foreclosure sale of his residence set aside. The court stated, "[U]nder Rooker-Feldman, authority does not lie here to do anything of the sort." *Id.* at 739. *In re Kewanee Boiler Corporation*, 270 B.R. 912 (Bankr. N.D. Ill. 2002), is illustrative of the reach of Rooker-Feldman. In dicta, the court explained, "[I]f there had been a state court judgment construing the scope of [debtor's] discharge, most authority holds that Rooker-Feldman would apply even if that judgment were erroneous. However, Rooker-Feldman does not appear to apply in this case since there has been no such judgment noted in the briefs filed here." *Id.* at 922.

2. The Automatic Stay and Rooker-Feldman

Bankruptcy courts clearly have exclusive original jurisdiction to grant or deny relief from the automatic stay - no other court may do so as an original matter. Distinct from the question of granting relief from the stay, however, is the question of determining whether the stay applies in the first instance. Because a judgment rendered in violation of the stay is void, the question comes down to whether non-bankruptcy tribunals have jurisdiction to determine their own jurisdiction when the stay is at issue.

Although bankruptcy courts have exclusive original jurisdiction to grant relief from the stay, it is universally conceded that other federal courts may decide whether the stay applies to a case before them. *N.L.R.B. v. Edward Cooper Painting, Inc.*, 804 F.2d 934 (6th Cir. 1985); *S.E.C. v. Bilzerian*, 131 F. Supp. 2d 10 (D.D.C. 2001) (federal district court had jurisdiction to decide whether stay applied to contempt proceeding against debtor); *N.L.R.B. v. Sawulski*, 185 B.R. 971 (E.D. Mich. 1993); see *In re Dolen*, 265 B.R. 471 (Bankr. M.D. Fla. 2001). If a lower federal court erroneously decides that the stay does not apply and proceeds to render a judgment, that judgment is not subject to collateral attack. The only remedy is by way of direct appeal. If the reviewing federal court decides that the stay did apply. The reviewing court should vacate the judgment on the ground that the stay deprived the lower court of jurisdiction to render any judgment at all. *Chao v. Hospital Staffing Servs., Inc.*, 270 F.3d 374 (6th Cir. 2001) (vacating judgment of the United States District Court for the Western District of Tennessee because action was subject to the stay of a bankruptcy case pending in Florida; cause remanded with instructions to dismiss for want of subject matter jurisdiction).

The area of dispute has been whether the same principles apply to state courts. The majority rule has been that state courts, like non-bankruptcy federal courts, have jurisdiction to decide whether the stay applies in a pending action. If a lower state court erroneously holds that the stay does not apply and proceeds to render a judgment, the proper course is not to attack the judgment collaterally. Rather, relief should be sought in a higher state court, and ultimately, if necessary, the United States Supreme Court. See, e.g., *In re Martinez*, 227 B.R. 442 (Bankr. D.N.H. 1998); Jeffrey H. Gallet & Robert Z. Dobrish, *The Bankruptcy Automatic Stay: It's Not the End of the World -- or of the Case*, 16 J. AM. ACAD. MATRIM. LAW. 149 (1999).

The automatic stay under 11 U.S.C. § 362 is one of the cornerstones of the Bankruptcy Code, and one of the debtor's most powerful weapons. The automatic stay in 11 U.S.C. § 362 provides a halt to a number of actions, including "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title," (§362(a)(2)), "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate," (§ 362(a)(3)), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title" (§ 362(a)(6)). However, there are certain exceptions from the automatic stay.

These exceptions from the automatic stay include (among others) "the commencement or continuation of a criminal action or proceeding against the debtor," (§362(b)(1)), "the commencement or continuation of an action or proceeding for . . . the establishment or modification of an order for alimony, maintenance, or support," (§362(b)(2)(ii)), and "the collection of alimony, maintenance, or support from property that is not property of the estate" (§362(b)(2)(B)). The question becomes, which courts have subject matter jurisdiction to decide whether an action brought against a debtor who has obtained an automatic stay fits within the exceptions to the stay; put simply, which courts can interpret the scope of the stay?

With the exception of the Ninth Circuit, the weight of the case law appears to be that state courts can determine if the automatic stay applies. The Ninth Circuit reached the opposite conclusion in a series of decision arising from a single case. *In re Gruntz*, 166 F.3d 1020 (9th Cir. 1999) (*Gruntz I*), opinion amended and superseded on reh'g, 177 F.3d 729 (9th Cir. 1999) (*Gruntz II*), reh'g en banc granted, opinion withdrawn 177 F.3d

In *Gruntz* the debtor had a child support payment provision under his Chapter 13 plan. However, when his Chapter 13 case was converted to a Chapter 11 case, the administration costs ate up the available money held by the Chapter 13 trustee and the child support payments were stopped. Not pleased with this, Gruntz's ex-wife sought recourse through the Los Angeles County D.A.

The D.A. filed a complaint in state court against Gruntz charging him with failure to make his child support payments. The case went to trial, and a jury decided against Gruntz, who was precluded from presenting a defense based on his payment of child support to the bankruptcy trustee. Before sentencing, Gruntz filed an adversary complaint against the County in bankruptcy court seeking a temporary restraining order to prevent the County from proceeding with the sentencing.¹

The bankruptcy court dismissed the complaint on a motion from the County on the basis of collateral estoppel, and the district court affirmed on the basis of Rooker-Feldman. In its first two opinions, the Ninth Circuit reversed the lower courts. The majority in both panel opinions held that the state court's determination that the stay did not apply was in no way binding on federal courts, and that the bankruptcy court could disregard the state court judgment if the state court had erred and the stay did apply. The majority held that neither the Rooker-Feldman doctrine nor preclusion applies when the rendering forum has acted in the absence of all jurisdiction, and, according to the panel majorities, only the bankruptcy court has initial jurisdiction to decide whether the stay applies at all. The state courts

¹ After the Bankruptcy Reform Act of 1994, actions to enforce or collect support payments from property that is not property of the estate are not subject to the stay; 11 U.S.C. § 362(b)(2). However, this statute is not retroactive and was not in force at the time of Gruntz's conviction.

lacked jurisdiction to determine whether the automatic stay barred the criminal prosecution before them -- i.e., the state courts lacked jurisdiction to determine their own jurisdiction. *Gruntz I*, 166 F.3d at 1020; *Gruntz II*, 177 F.3d at 728.

In its final opinion the Ninth Circuit Court of Appeals held that the automatic stay did not void the state criminal judgments. The court reasoned:

bankruptcy courts have the ultimate authority to determine the scope of the automatic stay imposed by 11 U.S.C. § 362(a), subject to federal appellate review. A state court does not have the power to modify or dissolve the automatic stay. Accordingly, the Rooker-Feldman doctrine does not render a state court judgment modifying the automatic stay binding on a bankruptcy court. Thus, if it proceeds without obtaining bankruptcy court permission, a state court risks having its final judgment declared void. In this case, the state court proceeded properly because the automatic stay does not apply to enjoin state criminal actions, even if the prosecution is motivated by the complaining witness's desire to collect a debt.

David B. Young, in his article *Automatic Stay Issues: Selected Developments*, 838 PLI/Comm 9, 30, criticizes this decision. He notes that the California courts "had not purported to grant relief from the stay; they had determined that the stay did not apply in the first place." The *Gruntz III* court, however, framed the issue not as whether a state court has jurisdiction to determine whether the stay applies, but rather as whether a state court has jurisdiction to grant relief from the stay. The Ninth Circuit in *Gruntz III* reiterated the earlier holding of the panel majorities that federal courts are not bound in any fashion by a state court ruling when the state court has acted in the absence of all jurisdiction. In such a case, the state court judgment is a nullity from its inception, and the Rooker-Feldman doctrine does not apply. The *Gruntz III* court pointed out that granting relief from the stay is a core matter, 28 U. S.C. § 157(b)(2)(G), and the court then came to the unremarkable conclusion that only the bankruptcy court in which the bankruptcy case is pending has jurisdiction as an initial matter to vacate, annul, modify, or lift the stay. Nothing would bar a collateral attack on a state court order that purported to do anything of the sort. But as mentioned above, California did not lift or amend the stay; rather, it found the stay not to be applicable in this instance.

The Ninth Circuit reiterated its position in *In re Dunbar*, 245 F.3d 1074 (2000) (en banc). *Dunbar* involved a California state administrative law judge's determination that the actions of a California regulatory agency fell within the regulatory or police power exception to the stay established by 11 U.S.C. § 362(b)(4). The bankruptcy court refused to entertain the debtor's contention that the actions of the regulatory agency violated the stay as a state court had already addressed it. The Bankruptcy Appellate Panel reversed, and the court of appeals affirmed that decision. The court of appeals remanded with instructions for the bankruptcy court to undertake a collateral and de novo review of the question whether the stay had deprived the ALJ of jurisdiction. The Ninth Circuit held squarely that no state tribunal has jurisdiction to decide whether the stay applies. Original jurisdiction over that question is vested exclusively in the bankruptcy court where the case is pending. The Ninth Circuit grounded its holding on 28 U.S.C. § 1334(a), which gives bankruptcy courts exclusive jurisdiction over bankruptcy cases.

In stark contrast, the Sixth Circuit Bankruptcy Appellate Panel in *Singleton v. Fifth Third Bank (In re Singleton)*, 230 B.R. 533 (Bankr. 6th Cir. 1999), held that state courts *do* have subject matter jurisdiction to decide the scope of the automatic stay (i.e., whether a particular action is governed by the stay). In *Singleton*, Fifth Third Bank obtained a judgment against the debtor's company, Porta-Wash (of which debtor was the sole shareholder), founded on a note, and the court ordered the property sold. The debtor then filed individual Chapter 13 two days before the property was to be sold and on the same day, filed a request for a stay in state court. Fifth Third opposed the request for a stay, claiming the property was Porta-Wash property and not subject to the debtor's individual bankruptcy. The court agreed and denied the debtor's request for a stay. The debtor then proceeded to bankruptcy court and filed an adversary proceeding against Fifth-Third claiming violation of the stay. Fifth Third filed a motion to dismiss for failure to state a claim, and the bankruptcy court granted the motion. The debtor then appealed to the Sixth Circuit Bankruptcy Appellate Panel. The BAP affirmed the dismissal of debtor's

complaint on the alternative ground that the bankruptcy court lacked subject matter jurisdiction under the Rooker-Feldman Doctrine.

The court stated that the bankruptcy court did not have subject matter jurisdiction to hear the debtor's complaint because the matter had already been decided by the Ohio Court, and under a Rooker-Feldman analysis, the claim was "inextricably intertwined" with the state court decision.

The weight of decisional law agrees with *Singleton*, not *Gruntz*. The overwhelming majority of lower federal courts that have considered the issue have held that state courts have jurisdiction to determine whether the automatic stay applies. *In re Baldwin-United Corporation Litigation*, 765 F.2d at 343, binds lower courts in the Second Circuit. Although *Baldwin* dealt with a federal district court's determination of the applicability of the stay, its reasoning should apply to a state court's examination also. The *Baldwin* court stated "[t]he court in which the litigation claimed to be stayed is pending has jurisdiction to determine not only its own jurisdiction but also the more precise question whether the proceeding before it is subject to the automatic stay." *In re Baldwin-United Corp. Litig.*, 765 F.2d 343 (2d Cir. 1985). Lower courts within the circuit have taken the position that state courts can determine the applicability of the stay. See *In re Newman*, 71 B.R. 567 (S.D.N.Y. 1987); *In re Taylor*, 216 B.R. 366 (Bankr. S.D.N.Y. 1998), rev'd on other grounds, 233 B.R. 639 (S.D.N.Y. 1999). Indeed, in *In re Bona*, 124 B.R. 11 (S.D.N.Y. 1991), the court expressly rejected the notion that the *Baldwin-United* holding was limited to federal courts. The court in *In re Siskin*, 258 B.R. 554 (Bankr. E.D.N.Y. 2001), made the same point even more forcefully. Similarly, in the Sixth Circuit, where *N.L.R.B v. Edward Cooper Painting*, 804 F.2d 934 (6th Cir. 1985), is controlling, state courts are deemed to have concurrent jurisdiction. *In re Singleton*, 230 B.R. 233 (6th Cir. B.A.P. 1999). *Edward Cooper Painting*, like *Baldwin-United*, determined that federal district courts have jurisdiction to determine the applicability of the automatic stay.

In the Eleventh Circuit, the bankruptcy court's position in *In re Rainwater*, 233 B.R. 126 (Bankr. N.D. Ala. 1999), vacated, 254 B.R. 273 (N.D. Ala. 2000), that state courts may not determine the applicability of the stay is contrary to the holdings of other lower courts in that jurisdiction. Other bankruptcy courts in the Eleventh Circuit have consistently maintained that they are bound by state court determinations as to whether the stay applied to state court proceedings. *In re Pope*, 209 B.R. 105 (Bankr. N.D. Ga. 1997); *In re Cummings*, 201 B.R. 586 (Bankr. S.D. Fla. 1996); *In re Mann*, 88 B.R. 427 (Bankr. S.D. Fla. 1988). This position was reiterated vigorously in *In re Glass*, 240 B.R. 782 (Bankr. M.D. Fla. 1999), which explicitly rejected the reasoning of the bankruptcy court in *Rainwater*.

Lower courts in other circuits have also held that state courts have concurrent jurisdiction to adjudicate the applicability of the stay, and that federal courts may not attack such determinations collaterally. *In re Martinez*, 227 B.R. 442 (Bankr. D.N.H. 1998); *In re Weller*, 189 B.R. 467 (Bankr. E.D. Wis. 1995); see *In re 1736 18th Street NW Ltd. Partnership*, 97 B.R. 121 (Bankr. D.D.C. 1989) (District of Columbia rent administrator had jurisdiction to determine whether stay applied to proceedings before him).

Prior to 1999, only a few lower federal courts had taken the view that a state court is without jurisdiction to determine whether the stay applies at all. *In re Weisberg*, 218 B.R. 740 (Bankr. E.D. Pa. 1998); *In re Raboin*, 135 B.R. 682 (Bankr. D. Kan. 1991); see also *In re Semersheim*, 97 B.R. 885 (Bankr. N.D. Ohio 1989). These decisions are highly suspect. The *Weisberg* court, for example, obviously confused a bankruptcy court's undisputed exclusive jurisdiction to lift or modify the stay with the question whether a bankruptcy court alone may construe 11 U.S.C. § 362 or determine the applicability of the stay in the first instance. Similarly, the *Raboin* court committed the same error as the *Gruntz* majority by confusing a bankruptcy court's exclusive jurisdiction over a bankruptcy case, 28 U.S.C. §§ 157(a), 1334(a), with nonexclusive jurisdiction over determinations as to whether the stay applies at all to an action pending in another forum. *Id.* § 1334(b).

Finally, it should be noted that state courts have consistently held that they have jurisdiction to decide whether the stay applies and, hence, to determine their own jurisdiction. *E.g.*, *Cooper v. State Bar of Cal.*, 741 P.2d 206 (Cal. 1987) (California Supreme Court could decide that automatic stay did not apply to bar discipline proceeding); *Schafer v. Wachovia Bank of Ga.*, 546 S.E.2d 846 (Ga. Ct. App.

2001) ("The Superior Court of Bartow County appropriately determined the reach of the automatic stay...."); *Janis v. Janis*, 684 N.Y.S.2d 179 (N.Y. Sup. Ct. 1998) (the rule that state courts may decide whether the stay applies "is so well supported ... that plaintiff, an attorney and Administrative Law Judge, may be presumed to be familiar with it."); *Commonwealth of Pa., Dept. of Env'tl. Resources v. Ingram*, 658 A.2d 435 (Pa. Cmwlth. Ct. 1995) (Pennsylvania Commonwealth Court had concurrent jurisdiction with the bankruptcy court to decide whether the stay applied); *Bamburg v. Townsend*, 35 S.W.3d 85 (Tex. App. -- Texarkana 2000, no pet.) (Texas Court of Appeals could decide whether automatic stay applied to a case before it); *Westlund v. State Dept. of Licensing*, 778 P.2d 40 (Wash. Ct. App.) (Washington Court of Appeals had jurisdiction to determine whether the stay applied to proceeding to revoke debtor real estate broker's license), review denied, 781 P.2d 1322 (Wash. 1989).

This overwhelming weight of state and federal decisional law shows that, at the very least, 28 U.S.C. § 1334(a) is not a statute that unequivocally deprives nonbankruptcy courts in general and state courts in particular of jurisdiction to consider whether the stay applies. It is doubtful, to find similar cases that hold that state courts have jurisdiction to grant relief from the stay or to entertain a bankruptcy petition. The distinction is important, but it appears to have escaped some courts.

3. Where will the Rooker-Feldman ride go next?

First, a review: Rooker-Feldman precludes a bankruptcy court from tampering with a state court's determination of the scope of the automatic stay under 11 U.S.C. § 362 because the bankruptcy courts do not have the power (subject matter jurisdiction) to sit in appeal of a state court judgment. However, *Gruntz* calls this rule into question (at least in the Ninth Circuit in cases dealing with the automatic stay; see *In re Dunbar* 245 F.3d 1058 (9th Cir. 2001) (stating that no state tribunal has jurisdiction to determine if the stay applies, making the Rooker-Feldman doctrine inapplicable in these cases), but see *In re Williams*, (BAP 9th Cir. 2002) (Rooker-Feldman binding if state court decision relates to non-core issue)) by holding that if a state court decides the scope of the stay issue *incorrectly*, then the bankruptcy court *can* tamper with the state court judgment.

All bankruptcy courts that have addressed the issue would agree that the Rooker-Feldman doctrine would prevent the court from rendering what would be an appellate review of a state court's ruling if the judgment related to non-core issues. Further, most bankruptcy courts would agree that determining the applicability of the automatic stay would be within the jurisdiction of a state court. However, no consensus has emerged regarding state courts' determinations about dischargeability. Some federal courts have ruled that Rooker-Feldman would preclude them from revisiting the issue, while others have determined that certain aspects of dischargeability are core proceedings within the sole jurisdiction of the bankruptcy court.

In re Toussaint, 259 B.R. 96 (Bankr. E.D.N.C. 2000), is an example where a bankruptcy court will not overrule a state court's erroneous determination about dischargeability. *Toussaint* involved a no-asset Chapter 7 bankruptcy. Creditors on a pre-petition unsecured debt, Mr. Southall and Ms. Boydston, each put up one half of the loan amount given to finance expansion of the debtors' restaurant. Mr. Southall was listed as a creditor, but Ms. Boydston was not. The court stated "[a]lbeit incorrectly, the state court seemingly relied upon § 523 to conclude that because the debtors failed to list Ms. Boydston in their petition she was not included in the bankruptcy discharge." *Id.* at 103. Because it was a no-asset case, there was no need to give Ms. Boydston notice to file a timely claim, as it would have been futile. Ordinarily the debt would have been discharged even though she was not listed specifically on the schedule of creditors. But because the state court made the opposite conclusion the bankruptcy court could not upset the state court's judgment because of the Rooker-Feldman doctrine. The *Toussaint* court noted "[i]t is well established that 'civil proceedings that arise under the Bankruptcy Code within the meaning of 28 U.S.C. § 1334 include the causes of action for dischargeability that are created by Bankruptcy Code § 523.' In this case, bankruptcy courts share concurrent jurisdiction with state courts." *Id.* at 101 (quoting *In re Franklin*, 179 B.R. 913, 919-20 (Bankr. E.D.Cal. 1995)). It went on to state, "[O]nce the state court has subject matter jurisdiction to adjudicate dischargeability under § 523, it cannot retroactively be stripped of that jurisdiction based on an incorrect application of federal law." *Id.* at 102.

In a per curiam opinion, *In re Ferren*, 203 F.3d 559 (8th Cir. 2000) seemed to follow a similar approach, although the court did not provide much analysis. The debtor in *Ferren* sought to recover the proceeds from a foreclosure sale, arguing that his bankruptcy had discharged his liens. The Arkansas Chancery Court disagreed. Both the BAP and the Court of Appeals for the Eighth agreed that the debtor's current proceedings in federal court were barred by Rooker-Feldman. The court of appeals stated, "[I]f the bankruptcy court were to entertain Ferren's adversary proceeding, it would necessarily be reviewing the lien-discharge argument already rejected by the Arkansas Chancery Court, and in order to grant Ferren the relief he seeks, the bankruptcy court would have to effectively void the Arkansas Chancery Court's decision. Under Rooker-Feldman, the bankruptcy court lacks jurisdiction to do so. "See *Fielder v. Credit Acceptance Corp.*, 188 F.3d 1031, 1034-35 (8th Cir.1999)." *In re Ferren*, 203 F.3d at 559-60.

In re Dabrowski, 257 B.R. 394 (Bankr. S.D.N.Y. 2001). At an administrative hearing, determined that the debtor lived in a rent-stabilized apartment and the landlord was due approximately \$42,000 in retroactive rent. After learning this, the debtor filed a Chapter 7 bankruptcy. The landlord prevailed in Housing Court, receiving an award for the unpaid retroactive rent over the objections of the debtor that the debt was discharged. The debtor filed an appeal in state court and also sought relief in the bankruptcy court while his case was on appeal.

The court stated:

The plain language of § 524(a)(1) provides that any judgment is void if it is a determination of the personal liability of the debtor with respect to a discharged debt. Nothing in § 524(a)(1) distinguishes the type of judgment subject to the provision. Nor does the section lead one to conclude that the level of participation by the debtor in a state court should be considered in the application of the section.

The court concluded that it did not have to give full faith and credit to the housing court's decision, and that the housing court decision was subject to collateral attack in the bankruptcy court. The *Ferren* court did not feel bound by the state court's decision and determined that the retroactive rent was a discharged debt. The landlord was still free to pursue an in rem case in state court, however.

E. Conclusion

Rooker-Feldman is a viable doctrine in all federal courts. Although the Seventh Circuit has not determined if it applies to the issues of the automatic stay or to dischargeability, it seems clear that the potential exists for the issue to come up in bankruptcy courts in Indiana. Certainly, a variety of state court decisions in non-core areas would have preclusive effect in a bankruptcy proceeding. It remains arguable if issues regarding the automatic stay and dischargeability would be precluded by Rooker-Feldman if a state court had addressed those issues.