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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT

In re: ) BAP No. CC-10-1275-PaKiSa  
)  
WILSHIRE COURTYARD, ) Bk. No. LA 97-10771 PC  
)  
Debtor. )

CALIFORNIA FRANCHISE TAX BOARD, )  
)  
Appellant, )

v. ) **O P I N I O N**

WILSHIRE COURTYARD; JEROME H. )  
SNYDER GROUP I, LTD.; LEWIS P. )  
GEYSER REVOCABLE TRUST; GEYSER )  
CHILDREN'S TRUST, FBO Jennifer )  
Geyser, Lewis P. Geyser, Trustee; )  
WENDY K. SNYDER; JEROME H. SNYDER; )  
GEYSER CHILDREN'S TRUST, FBO )  
Daniel Geyser, Lewis P. Geyser, )  
Trustee; RUSSELL & RUTH KUBOVEC, )  
DECEASED, KUBOVEC FAMILY TRUST, )  
Rita Farmer, Trustee; WILLIAM N. )  
SNYDER; JOAN SNYDER; GEYSER )  
CHILDREN'S TRUST, FBO Douglas )  
Geiser, Lewis P. Geyser, Trustee; )  
LON J. SNYDER; SNYDER CHILDREN'S )  
TRUST, FBO William N. Snyder, )  
Lewis P. Geyser, Trustee, )  
Appellees. )

Argued and submitted on May 13, 2011  
at Pasadena, California

Filed - September 19, 2011

Appeal from the United States Bankruptcy Court  
for the Central District of California

Hon. Samuel Bufford, Bankruptcy Judge and Hon. Vincent Zurzolo,  
Chief Bankruptcy Judge, Presiding.<sup>1</sup>

<sup>1</sup> As explained below, Bankruptcy Judges Bufford and Zurzolo  
each entered orders that are implicated in these appeals.

1 Appearances: Todd M. Bailey appeared for Appellant California  
Franchise Tax Board.

2

3 Lewis P. Geysler appeared for Appellees Jerome H.  
4 Snyder Group I, Ltd., Lewis P. Geysler Revocable  
Trust, Wendy K. Snyder, Jerome H. Snyder, Geysler  
5 Children's Trust, FBO Jennifer Geysler, Lewis P.  
6 Geysler, Trustee, Geysler Children's Trust, FBO  
7 Daniel Geysler, Lewis P. Geysler, Trustee, Russell &  
8 Ruth Kubovec, Deceased, Kubovec Family Trust, Rita  
Farmer, Trustee, William N. Snyder, Joan Snyder,  
9 Geysler Children's Trust, FBO Douglas Geysler, Lewis  
10 P. Geysler, Trustee, Lon J. Snyder and Snyder  
Children's Trust, FBO William N. Snyder, Lewis P.  
Geysler, Trustee.

11 Lewis R. Landau appeared for Appellee Wilshire  
Courtyard.

12

13 Before: PAPPAS, KIRSCHER and SARGIS,<sup>2</sup> Bankruptcy Judges.

14 PAPPAS, Bankruptcy Judge:

15

16 In this complicated dispute, the Panel is asked to review the  
17 opinions and orders of the bankruptcy court entered in a reopened  
18 chapter 11<sup>3</sup> real estate partnership reorganization case, and in  
19 particular, the state tax consequences of confirmation of the  
20 debtor's plan for its former partners. While the substantive  
21 issues raised in this appeal involve interesting, complex  
22 questions about the interplay of bankruptcy and tax law, we may  
23 not comment on those issues. Instead, the Panel is compelled to

24

25 <sup>2</sup> The Honorable Ronald H. Sargis, Bankruptcy Judge for the  
26 Eastern District of California, sitting by designation.

27 <sup>3</sup> Because this bankruptcy case was filed over a decade ago,  
28 unless otherwise indicated, all chapter, section and rule  
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and  
to the Federal Rules of Bankruptcy Procedure, Rules 1001-9036, as  
enacted and promulgated prior to the effective date of The  
Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,  
Pub. L. 109-8, 119 Stat. 23. The Federal Rules of Civil Procedure  
are referred to as "Civil Rules."

1 reverse the bankruptcy court's ruling that it had subject matter  
2 jurisdiction to adjudicate the issues in this contest, to vacate  
3 the orders of the bankruptcy court, and to remand this matter to  
4 the bankruptcy court with instructions that it dismiss.

5 **FACTS<sup>4</sup>**

6 **Events Before the Reopening of the Bankruptcy Case.**

7 Wilshire Courtyard ("Wilshire") was a California general  
8 partnership.<sup>5</sup> We refer to its general partners, the appellees in  
9 this appeal, collectively as the "Wilshire Partners."

10 Wilshire began operations in 1984. By 1987, Wilshire had  
11 developed and owned two commercial complexes on Wilshire Boulevard  
12 in Los Angeles containing almost a million square feet of rental  
13 office space (the "Property").

14 In 1989, Wilshire entered into several financing agreements  
15 concerning the Property. As a result of these transactions, the  
16 secured lender holding the first position lien on the Property was  
17 Continental Bank, N.A. ("Continental"); various other entities  
18 held subordinated secured debt. Wilshire's combined secured debt  
19 aggregated almost \$350 million. Wilshire defaulted on the  
20 Continental loan in July 1996, and Continental scheduled a  
21 foreclosure sale for July 9, 1997. In response, Wilshire filed a  
22 chapter 11 bankruptcy petition on July 8, 1997.

23 Appellant California Franchise Tax Board ("CFTB") was listed  
24 in the creditor's matrix filed by Wilshire. CFTB acknowledges

25 \_\_\_\_\_  
26 <sup>4</sup> The material facts in this appeal are undisputed.

27 <sup>5</sup> Through the chapter 11 process, Wilshire was transformed  
28 from a general partnership to a limited liability company; in this  
opinion, "Wilshire" refers to both the original partnership as  
well as the reorganized debtor/limited liability company.

1 that it received the initial notice of the commencement of the  
2 case sent out by the clerk of the bankruptcy court. However, for  
3 the reasons discussed below, CFTB did not file a proof of claim,  
4 assert any other claim, nor otherwise participate in Wilshire's  
5 bankruptcy case.

6 Early in the bankruptcy case, Continental was acquired by  
7 Bank of America ("BA").<sup>6</sup> BA, Wilshire, and the Wilshire Partners  
8 eventually negotiated a joint, consensual plan of reorganization.  
9 Under the terms of the joint plan, when it became effective,  
10 Wilshire would be restructured from a California general  
11 partnership to a Delaware limited liability company. It would  
12 continue to own and operate the Property. Wilshire would arrange  
13 for a new, nonrecourse loan for \$100 million, secured by a first  
14 deed of trust on the Property.

15 For its part in the reorganization, BA agreed to contribute  
16 \$23 million to the reorganized Wilshire, and to release its  
17 secured indebtedness, in exchange for its receipt of the \$100  
18 million in new loan proceeds. In consideration of its agreements,  
19 BA would receive a 99 percent ownership interest in the  
20 reorganized Wilshire; the Wilshire Partners would receive the  
21 remaining one percent interest. For giving up almost all of their  
22 former equity in the business, the Wilshire Partners would also  
23 receive \$3.5 million in cash, and a \$450,000 loan.

24 Wilshire's disclosure statement was approved by the  
25

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26 <sup>6</sup> According to the plan of reorganization eventually  
27 approved by the bankruptcy court, BA was acting as a trustee and  
28 servicer for several secured creditors. For convenience, and  
because it is not essential in this appeal, we will refer to all  
of these secured creditors collectively as "BA."

1 bankruptcy court on February 19, 1998. The disclosure statement  
2 did not address the state tax consequences for the Wilshire  
3 Partners as a result of the transactions proposed in the  
4 reorganization plan.

5 Notice of the confirmation hearing concerning the joint plan  
6 was sent by Wilshire to interested parties in the bankruptcy case  
7 on February 12, 1998. However, CFTB was not served with a copy of  
8 the proposed plan nor given notice of the confirmation hearing.<sup>7</sup>

9 After the confirmation hearing, the bankruptcy court entered  
10 an Order Confirming the Joint Plan of Reorganization on April 14,  
11 1998. CFTB acknowledges that it received the "Notice of Order  
12 Confirming [Wilshire's] Chapter 11 Plan" from the clerk of the  
13 bankruptcy court, which stated in relevant part that, "Notice is  
14 hereby given of the entry of an order of this Court confirming a  
15 Plan of Reorganization. A copy of the order and the plan itself  
16 are contained in the Court file located at the address listed  
17 herein."

18 A plan having been confirmed, the Wilshire case was closed by  
19 the bankruptcy court in an order entered on October 22, 1998.  
20 Wilshire contends, and CFTB has not effectively disputed, that the  
21 confirmed plan was implemented and consummated, in that the  
22 restructure of the reorganized Wilshire, and the various transfers  
23 and transactions contemplated by the confirmed plan, were all

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25 <sup>7</sup> While Wilshire and the Wilshire Partners argue that CFTB  
26 received effective notice or had knowledge of the bankruptcy  
27 proceedings by other means, Wilshire apparently did not serve  
28 notice of the plan and confirmation hearing on CFTB because it had  
not filed proofs of claim in the bankruptcy case. Of course, for  
its part, CFTB did not consider itself to be a "creditor" in the  
bankruptcy case, since the general partnership Wilshire was not a  
taxable entity.

1 completed.

2 After the plan was confirmed, the various Wilshire Partners  
3 reported approximately \$208 million in aggregate cancellation of  
4 debt income ("CODI") on their individual 1998 California state tax  
5 returns. Then, on November 15, 2002, CFTB sent Wilshire and the  
6 Wilshire Partners an "Audit Issue Presentation Sheet" ("AIPS").  
7 The AIPS informed them that CFTB challenged the Wilshire Partners'  
8 characterization of the tax consequences of the transactions  
9 effected by the confirmed chapter 11 plan as CODI. Rather than  
10 \$208 million in CODI, CFTB argued that the Wilshire Partners  
11 should have reported approximately \$231 million in capital gain  
12 income arising from the plan transactions, because the treatment  
13 of their interests under the plan constituted a disguised sale of  
14 the Property. Based on the AIPS, CFTB issued notices of proposed  
15 assessments to the Wilshire Partners on June 15, 2004, totaling  
16 approximately \$13 million in unpaid income taxes.

17 The Wilshire Partners disputed CFTB's position. Over the  
18 next five years, CFTB and The Wilshire Partners engaged in several  
19 rounds of administrative hearings relating to this dispute.<sup>8</sup>

20 **Reopening of the Bankruptcy Case.**

21 On May 27, 2009, the contest shifted back to the bankruptcy  
22 court. Wilshire filed an ex parte motion to reopen the bankruptcy  
23 case. As cause for reopening, Wilshire argued that, through the  
24 AIPS and the continuing administrative hearings, CFTB was

25

26 \_\_\_\_\_  
27 <sup>8</sup> CFTB states in its brief that, upon reopening of the  
28 bankruptcy case, and receipt of the Order to Show Cause discussed  
below, the CFTB hearing officer suspended work on the  
administrative hearings. There is no other information in the  
record concerning the status of those administrative hearings.

1 attempting to collaterally attack the confirmed chapter 11 plan by  
2 characterizing its terms as effecting a disguised sale of the  
3 Property while, according to the plan, Wilshire had retained  
4 ownership of the Property. The bankruptcy court granted the  
5 motion and entered an order reopening the bankruptcy case on June  
6 4, 2009.

7 Wilshire then filed a motion for an Order to Show Cause Re  
8 Contempt ("OSC") on June 23, 2009. The bankruptcy court entered  
9 the OSC on August 12, 2009, directing CFTB to appear before the  
10 bankruptcy court to show why it should not be held in contempt for  
11 collaterally attacking, and by refusing to act in accordance with,  
12 the plan and confirmation order.

13 CFTB responded to the OSC on August 27, 2009, arguing that  
14 Wilshire had not given CFTB adequate notice of the terms of the  
15 proposed plan, the time for objecting to the plan, or of the  
16 confirmation hearing, so CFTB was not bound by the plan and  
17 confirmation order; Wilshire lacked standing to prosecute the OSC  
18 motion; issuance of a contempt order by the bankruptcy court  
19 against CFTB would be fundamentally unfair, because the state tax  
20 consequences of the plan terms were never considered, and would  
21 have been beyond the authority of the bankruptcy court to  
22 determine; and Wilshire was guilty of laches because it had  
23 delayed raising these issues in the bankruptcy case for six years.

24 Wilshire replied on September 9, 2009, arguing that CFTB  
25 received adequate notice of the filing of the bankruptcy case and  
26 proceedings and entry of the confirmation order; Wilshire had both  
27 prudential and constitutional standing to seek enforcement of the  
28 confirmation order. CFTB could not prove its affirmative defense

1 of laches.

2 The bankruptcy court held an initial hearing on the OSC on  
3 September 15, 2009. Wilshire and CFTB appeared by counsel; the  
4 Wilshire Partners, however, were not represented. After hearing  
5 arguments of counsel, the bankruptcy court directed the parties to  
6 submit further briefing whether a contempt motion was proper under  
7 the circumstances of this case, and suggested that the individual  
8 Wilshire Partners should be joined as parties to the proceedings.

9 After a continued status conference, on March 12, 2010,  
10 acting under authority of Rule 7019, made applicable in contested  
11 matters by Rule 9014(c), the bankruptcy court ordered the joinder  
12 of the Wilshire Partners in the proceedings. None of the Wilshire  
13 Partners objected to the joinder order.

14 Wilshire and the Wilshire Partners filed a joint Motion for  
15 Summary Judgment or Summary Adjudication of Issues on May 3, 2010.  
16 In the motion, they repeated Wilshire's earlier allegations  
17 concerning CFTB's receipt of adequate notice in the chapter 11  
18 case, that CFTB's characterization of the plan transactions as a  
19 disguised sale amounted to a collateral attack on the plan, and  
20 that the confirmation order should be enforced under applicable  
21 provisions of the Bankruptcy Code.

22 CFTB filed an opposition to the summary judgment motion on  
23 June 9, 2010, generally countering these allegations. In addition  
24 to its earlier arguments, CFTB also argued that the bankruptcy  
25 court lacked subject matter jurisdiction to decide the motion, and  
26 that even if it had jurisdiction, the bankruptcy court should  
27 abstain from considering the tax issues. If the bankruptcy court  
28 was inclined to resolve the tax issues, and to decide whether the



1 plan transactions did indeed result in CODI rather than capital  
2 gain, CFTB requested a six-month continuance to undertake  
3 discovery on that issue.

4 Wilshire and the Wilshire Partners responded to CFTB's  
5 opposition on June 16, 2010, generally repeating and supporting  
6 their earlier arguments.

7 The bankruptcy court conducted a hearing on both the OSC and  
8 summary judgment motion on June 22, 2010, at which all the parties  
9 were represented by counsel. The bankruptcy court rejected CFTB's  
10 request to submit additional briefing, and denied its request for  
11 additional time for discovery. After hearing from the parties,  
12 the bankruptcy court addressed the issues, and in particular,  
13 focused on one particular finding it had made in the Confirmation  
14 Order, providing that:

15 V. The Joint Plan and all agreements, settlements,  
16 transactions and transfer contemplated thereby do not  
17 provide for, and when consummated will not constitute,  
18 the liquidation of all or substantially all of the  
property of the Debtor's Estate under Bankruptcy Code  
section 1141(d)(3)(A) [.]

19 Order Confirming the Debtor's Joint Plan of Reorganization Dated  
20 December 12, 1997 at ¶ V (entered April 14, 1998) ("Finding V").  
21 Interpreting the meaning of this provision of the order, the  
22 bankruptcy judge stated: "I'm determining that the finding in the  
23 confirmation order is that the transaction provided for in the  
24 plan was not a sale for any purpose. . . . [B]ecause it's not a  
25 sale there's no tax imposed on the partnership. There's no gain  
26 to be taxed [to] the partnership." Hr'g Tr. 40:7-15 (June 22,  
27 2010). However, the bankruptcy court was uncertain as to the tax  
28 consequences to the Wilshire Partners, and requested further

1 briefing from the parties.

2 Both parties filed supplemental briefs. On July 15, 2010,  
3 the bankruptcy court entered an Order for Summary Adjudication,  
4 memorializing its oral ruling at the June 22 hearing that,  
5 according to Finding V, "the transaction under the plan is not a  
6 sale or exchange for any purpose."

7 The bankruptcy court held a second hearing on the summary  
8 judgment motion on July 20, 2010. Early in the hearing, the court  
9 noted that its July 15, 2010 order interpreting Finding V was  
10 effective only as to Wilshire, and only tentative as to the  
11 individual Wilshire Partners. After hearing the arguments of the  
12 parties, the bankruptcy court announced it would grant summary  
13 judgment to Wilshire and the Wilshire Partners. Among the rulings  
14 made by the bankruptcy court were that: (a) § 1141 provides that  
15 all creditors are bound by the plan, and this includes the CFTB;  
16 (b) the terms of the confirmed plan also apply to the Wilshire  
17 Partners; (c) and the CFTB's actions constitute contempt of the  
18 confirmation order, and CFTB would be ordered to cease and desist.  
19 Hr'g Tr. 30:1-3; 8-9; 18-19 (July 20, 2010).

20 On July 26, 2010, CFTB filed a timely appeal of the  
21 bankruptcy court's July 15, 2010 order, its July 20 oral rulings,  
22 together with "any judgment, order or decree related to the July  
23 20, 2010 decision."

24 On August 31, 2010, the bankruptcy court entered a published  
25 "Opinion on Summary Judgment Motion" (the "Opinion"). In re  
26 Wilshire Courtyard, 437 B.R. 380 (Bankr. C.D. Cal. 2010). In it,  
27 the court defended its subject matter jurisdiction on three  
28 grounds. First, it held, the bankruptcy court had continuing,

1 post-confirmation jurisdiction over matters with a "close nexus"  
2 to the bankruptcy case. Second, it opined that CFTB's alleged  
3 violation of the confirmation order required interpretation of  
4 that order, and the court had jurisdiction to interpret and  
5 enforce its own orders. And third, the bankruptcy court decided  
6 that, since this case required it to make income tax  
7 determinations regarding the non-debtor partners, which in turn  
8 required the court to make a determination of the nature of the  
9 income at the partnership/debtor level, these determinations also  
10 involved interpretation and enforcement of its confirmation order.  
11 In re Wilshire Courtyard, 437 B.R. at 384.

12 Moving to the merits of the contest, the essential holding of  
13 the Opinion can be summarized in an excerpt:

14 The court holds that the interests of the [Wilshire  
15 Partners] are wholly derivative from the status of the  
16 property in the partnership. In consequence, [C]FTB  
17 cannot recharacterize the plan transactions at the  
18 partner level without recharacterizing them at the  
19 partnership level as well. Because [C]FTB has not  
brought any such recharacterization application before  
this court (and cannot because the statute of  
limitations has run), [C]FTB is prohibited by the plan  
from claiming that the partners can be taxed on the plan  
transactions as a sale generating taxable income.

20 Id. at 383.

21 On October 4, 2010, the bankruptcy court entered a final  
22 "Order Granting Summary Judgment." With some minor discrepancies,  
23 this final order was consistent with the Opinion.<sup>9</sup>

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24  
25 <sup>9</sup> Up to this point, the proceedings in the bankruptcy court  
26 were conducted, and the decisions and orders entered, by presiding  
27 Bankruptcy Judge Bufford. Because of his retirement, this final  
28 order was entered by then-Chief Bankruptcy Judge Zurzolo without  
further hearings. While it is not critical to our analysis, we  
presume Judge Zurzolo also entered the order without conducting an  
independent review and analysis of the issues of law previously

(continued...)

1 On September 13, 2010, CFTB filed an amended notice of  
2 appeal, now seeking review of the July 15 order, the July 20 oral  
3 decision, the August 31 Opinion, and the October 4, 2010 Order  
4 Granting Summary Judgment.

#### 5 JURISDICTION

6 CFTB challenges the bankruptcy court's decision that it had  
7 subject matter jurisdiction to resolve the issues in this case.  
8 This contention is addressed in detail below. There is no  
9 challenge to the Panel's jurisdiction over this appeal, however,  
10 which is clear under 28 U.S.C. § 158.

#### 11 ISSUE

12 Whether the bankruptcy court had subject matter jurisdiction  
13 to adjudicate the issues in this appeal.

#### 14 STANDARD OF REVIEW

15 The existence of subject matter jurisdiction is a question of  
16 law reviewed de novo. Atwood v. Fort Peck Tribal Court  
17 Assiniboine, 513 F.3d 943, 946 (9th Cir. 2008); Carpenter v. FDIC  
18 (In re Carpenter), 205 B.R. 600, 604 (9th Cir. BAP 1997). De novo  
19 review is independent, with no deference given to the trial  
20 court's conclusions. See First Ave. W. Bldg., LLC v. James (In re  
21 Onecast Media, Inc.), 439 F.3d 558, 561 (9th Cir. 2006).

#### 22 DISCUSSION

#### 23 The bankruptcy court lacked subject matter jurisdiction to 24 adjudicate the Wilshire Partners' state tax obligations.

25 CFTB asserts numerous arguments challenging the merits of the

26 <sup>9</sup>(...continued)  
27 decided by Judge Bufford. And because we determine, infra, that  
28 the bankruptcy court lacked subject matter jurisdiction to enter  
its various orders, we need not examine any of the possible  
inconsistencies between the Opinion and the final order.

1 bankruptcy court's rulings that CFTB may not pursue recovery from  
2 the Wilshire Partners for capital gains taxes allegedly due under  
3 state law. Wilshire and the Wilshire Partners dispute CFTB on  
4 each substantive point, urging the Panel to affirm the decisions  
5 of the bankruptcy court. However, before we may review the  
6 parties' arguments concerning the substance of this dispute, the  
7 Panel must conclude that the bankruptcy court had subject matter  
8 jurisdiction to make its decisions. Because we decide that the  
9 bankruptcy court lacked jurisdiction to adjudicate the individual  
10 Wilshire Partners' state tax obligations, the Panel will not  
11 address the other issues or arguments of the parties in this  
12 appeal.

13 The decisions of the Ninth Circuit guide us to our  
14 conclusion.<sup>10</sup> In determining the scope of a bankruptcy court's  
15 jurisdiction, we begin with the statutory scheme, because the  
16 "jurisdiction of the bankruptcy courts, like that of other federal  
17 courts, is grounded in, and limited by, statute." Battle Ground  
18 Plaza, LLC v. Ray (In re Ray), 624 F.3d 1124, 1130 (9th Cir. 2010)  
19 (quoting Celotex Corp. v. Edwards, 514 U.S. 300, 307 (1995)). A  
20 bankruptcy court's jurisdiction is, generally, prescribed by 28  
21 U.S.C. § 1334(b). In addition to granting jurisdiction to  
22 bankruptcy courts over bankruptcy cases, the statute provides that

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23  
24 <sup>10</sup> The Panel is cognizant of the Supreme Court's recent  
25 decision in Stern v. Marshall, 131 S. Ct. 2594 (2011), wherein the  
26 court holds that a bankruptcy court lacks "constitutional  
27 authority to enter a final judgment on a state law counterclaim  
28 that is not resolved in the process of ruling on a creditor's  
proof of claim." Id. at 2620. However, we conclude that the  
Supreme Court's decision is inapposite to the issues raised in  
this case involving a post-confirmation challenge to the  
bankruptcy court's jurisdiction to decide the tax dispute between  
the Wilshire Partners and CFTB.

1 "the district courts [and by reference pursuant to 28 U.S.C.  
2 § 157, the bankruptcy courts] shall have original but not  
3 exclusive jurisdiction of all civil proceedings arising under  
4 title 11, or arising in or related to cases under title 11."

5 Because in many respects the bankruptcy courts' statutory  
6 jurisdiction is narrow in focus, we individually examine each  
7 potential basis for the bankruptcy court's assertion of subject  
8 matter jurisdiction, below.

9 **1. "Arising under" and "arising in" jurisdiction.**

10 Only when a right to relief is created by title 11 does an  
11 action to enforce that right "arise under title 11." Harris v.  
12 Wittman (In re Harris), 590 F.3d 730, 737 (9th Cir. 2009); see  
13 H.R. Rep. No. 595, 95th Cong., 1st Sess. 445 (1977). Similarly,  
14 proceedings "arising in" bankruptcy cases, for purposes of the  
15 jurisdictional statute, are also usually easy to identify as those  
16 that, although not based on any right granted in title 11, would  
17 not exist outside a bankruptcy case, such as matters related to  
18 the administration of the bankruptcy estate. Maitland v. Mitchell  
19 (In re Harris Pine Mills), 44 F.3d 1431, 1435-37 (9th Cir. 1995).  
20 Neither of these statutory bases for jurisdiction can be invoked  
21 in this case.

22 In our view, adjudication of the dispute between the Wilshire  
23 Partners and CFTB does not implicate either the bankruptcy court's  
24 arising under or arising in jurisdiction. No provision of the  
25 bankruptcy code dealing with state tax consequences is at issue,  
26 nor were other chapter 11 provisions used by Wilshire in an  
27 attempt to restructure the tax consequences of plan confirmation.  
28 Instead, reduced to its essence, the contest in the bankruptcy

1 court in this case concerned whether, because of the terms of the  
2 order confirming Wilshire's reorganization plan,<sup>11</sup> the Wilshire  
3 Partners owe the State of California \$13 million in taxes on what  
4 CFTB characterizes as their income from capital gains. The  
5 parties acknowledge that this dispute did not arise until long  
6 after confirmation of the Wilshire plan, when CFTB issued the AIPS  
7 in 2002, and then in 2004 assessed the Wilshire Partners for this  
8 tax liability. While originally casting their motion as one for a  
9 finding that CFTB was guilty of "contempt," the real relief sought  
10 from the bankruptcy court in the motion filed by Wilshire, and  
11 later joined by the Wilshire Partners, was a declaration from the  
12 bankruptcy court that, as a result of confirmation of the plan,  
13 the individual Wilshire Partners received cancellation of debt  
14 income, not capital gains, and an order prohibiting CFTB from  
15 collecting the taxes and vacating the assessments. Viewed in this  
16 fashion, this contest is at bottom a tax dispute between the  
17 Wilshire Partners and CFTB arising under California state tax law,

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18  
19 <sup>11</sup> In making its decision, the bankruptcy court relied not on  
20 any express provision of Wilshire's plan characterizing the  
21 transactions as something other than a sale of Wilshire's assets,  
22 but instead, on a "finding" made in its order confirming the plan.  
23 We do not say here that, in a case where a chapter 11 debtor  
24 clearly invokes the substantive provisions of title 11 to  
25 restructure debtor-creditor relations, to modify rights of third  
26 parties, or to transfer bankruptcy estate property, the bankruptcy  
27 court lacks jurisdiction to interpret and enforce those plan  
28 provisions on those who are bound by its terms, and to prevent a  
collateral attack or serial litigation concerning the confirmation  
order. But this is not such a case, as it is undisputed that the  
disclosure statement and chapter 11 plan filed by Wilshire, served  
on its creditors, and eventually confirmed by the bankruptcy court  
simply makes no mention of the "sale/no-sale" attributes of the  
property transfers, or of the state tax consequences to the  
Wilshire Partners of confirmation of that plan. Such an "after  
the fact" declaration by the bankruptcy court giving CFTB no  
inkling of what was intended is not an adequate basis for the  
bankruptcy court's decision to assume jurisdiction.

1 not the bankruptcy code. In other words, the Wilshire Partners'  
2 right to relief, if any, does not "arise under" any provision of  
3 the bankruptcy code.

4 It is equally clear that this dispute does not "arise in" a  
5 case under the bankruptcy code. Under the case law, this language  
6 in the jurisdictional statute refers to an "administrative matter  
7 unique to the bankruptcy process that has no independent existence  
8 outside of bankruptcy and could not be brought in another forum,  
9 but whose cause of action is not expressly rooted in the  
10 bankruptcy code." In re Ray, 624 F.3d at 1131. Wilshire and the  
11 Wilshire Partners do not argue that the critical issues raised by  
12 the contempt motion in these proceedings could not have been  
13 prosecuted in state court. Indeed, the parties were actively  
14 litigating the Wilshire Partners' alleged tax liability in the  
15 state administrative proceedings that were on-going at the time  
16 Wilshire sought to reopen the bankruptcy case. The Wilshire  
17 Partners certainly could have sought relief from CFTB's tax  
18 assessment in those proceedings, and if necessary, in state court.

19 The Wilshire Partners disagree, and instead suggest that this  
20 contest could not "feasibly be adjudicated in any alternate forum  
21 due to the procedures applicable to the adjudication of tax  
22 disputes." Wilshire Partner's Reply Br. at 7 (emphasis added).  
23 They explain that, under California law, a taxpayer has no  
24 recourse to the state courts until after a disputed tax is paid,  
25 at which point the taxpayer may sue for a refund. Nast v. St. Bd.  
26 of Equalization, 46 Cal. App. 4th 343, 346-47 (Cal. Ct. App.  
27 1996). According to the Wilshire Partners, they lack an  
28 "accessible alternate venue" for the adjudication of the tax



1 dispute, because it could not "feasibly be adjudicated" in the  
2 state court, apparently because of the extent of the taxes CFTB  
3 seeks to collect from them.

4       The Wilshire Partners' argument that the state proceedings  
5 were not "feasible" lacks merit in the context of determining the  
6 subject matter jurisdiction of the bankruptcy court. First, by  
7 reopening the bankruptcy case, the pending state administrative  
8 proceedings in which the parties' positions on the assessments and  
9 issues were being considered were interrupted. Presumably, absent  
10 the bankruptcy proceedings initiated by Wilshire, the state  
11 administrative proceedings would have progressed toward  
12 determining the Wilshire Partners' tax liabilities.

13       Second, there is nothing in the bankruptcy code or case law  
14 that provides that the "arising in" jurisdiction of a bankruptcy  
15 court requires that the proceedings available in the alternative  
16 forum be prompt or feasible. The requirement for bankruptcy court  
17 jurisdiction is that an action have "no independent existence  
18 outside of bankruptcy and could not be brought in another forum."  
19 In re Ray, 624 F.3d at 1131 (emphasis added). Moreover, the  
20 suggestion by Wilshire and the Wilshire Partners that the delay  
21 caused by the state tax procedures renders those proceedings  
22 unfair is at odds with the Supreme Court's conclusion in another  
23 case that the CFTB's procedures for settling tax disputes  
24 constitute "a plain, speedy and efficient remedy." Cal. Franchise  
25 Tax Bd. v. Alcan Aluminium Ltd., 493 U.S. 331, 338 (1990).

26       Simply put, the issues raised by Wilshire and the Wilshire  
27 Partners in this case did not "arise under" the bankruptcy code,  
28 nor "arise in" a bankruptcy case.

1 **2. "Related to" jurisdiction.**

2 In response to CFTB's challenge, the bankruptcy court  
3 addressed the question of its subject matter jurisdiction in its  
4 Opinion. Although the court did not employ the precise terms, we  
5 construe its holding to be that it had "related to" jurisdiction  
6 under 28 U.S.C. § 1334(b), ancillary jurisdiction to interpret the  
7 plan and confirmation order, and supplemental jurisdiction over  
8 the claims of the nondebtor Wilshire Partners. Under the  
9 applicable case law, we respectfully disagree that jurisdiction  
10 existed under any of those grounds.

11 Whether the bankruptcy court had related to jurisdiction is a  
12 harder question than arising in or arising under, because this  
13 jurisdictional component covers a much broader set of disputes,  
14 actions and issues. Indeed, related to jurisdiction arguably  
15 includes almost every matter or action that directly or indirectly  
16 relates to a bankruptcy case. Sasson v. Sokoloff (In re Sasson),  
17 424 F.3d 864, 868-69 (9th Cir. 2005). Here, Wilshire and the  
18 Wilshire Partners contend that not only are terms of the Wilshire  
19 confirmed plan called into question by CFTB's position, but its  
20 actions constitute, in substance, a collateral attack on the  
21 bankruptcy court's confirmation order. At first blush, these  
22 arguments would seem to be "related to" Wilshire's bankruptcy  
23 case.

24 The bankruptcy court explained its view of its related to  
25 jurisdiction in this case as follows:

26 [T]hough a bankruptcy court has more limited subject  
27 matter jurisdiction post-confirmation than  
28 pre-confirmation, it retains post-confirmation subject  
matter jurisdiction over matters with a "close nexus" to  
the bankruptcy case [citing In re Pegasus Gold Corp.,

1 394 F.3d at 1193-94]. Matters involving "the  
2 interpretation, implementation, consummation, execution  
3 or administration of the confirmed plan will typically  
4 have the requisite close nexus." Id. at 1194. In this  
5 case, the determination whether [C]FTB's actions violate  
6 the confirmation order involves an interpretation of the  
7 confirmed plan, and confers continuing subject matter  
8 jurisdiction on the court after plan confirmation.

6 In re Wilshire Courtyard, 437 B.R. at 384. The bankruptcy court's  
7 reasoning that the parties' request that it "interpret" the plan  
8 and confirmation order establishes the "close nexus" to the  
9 bankruptcy case so as to confer related to subject matter  
10 jurisdiction is, in our view, flawed. More precisely, as the case  
11 law discussed below shows, in order to find the requisite close  
12 bankruptcy nexus and establish post-confirmation jurisdiction in a  
13 chapter 11 case, the outcome of the issues before the bankruptcy  
14 court must potentially impact the debtor, the estate, or the  
15 implementation of the plan of reorganization. Here, the outcome  
16 of the Wilshire Partners' tax dispute with CFTB will have no  
17 impact whatsoever on the debtor, the estate, or the implementation  
18 of the Wilshire plan of reorganization.

19 As the bankruptcy court acknowledged, in recent years various  
20 courts of appeal have articulated the limits on bankruptcy court  
21 related to jurisdiction over matters arising after confirmation of  
22 a debtor's reorganization plan. See, e.g., Binder v. Price  
23 Waterhouse & Co. (In re Resorts Int'l, Inc.), 372 F.3d 154, 166-67  
24 (3d Cir. 2004) ("the essential inquiry appears to be whether there  
25 is a close nexus to the bankruptcy plan or proceeding sufficient  
26 to uphold bankruptcy court jurisdiction over the matter"); Bank of  
27 La. v. Craig's Stores of Tex., Inc. (In re Craig's Stores of Tex.,  
28 Inc.), 266 F.3d 388, 390-91 (5th Cir. 2001) (post-confirmation

1 bankruptcy jurisdiction limited to matters pertaining to  
2 implementation or execution of the plan).

3       The Ninth Circuit has adopted the “close nexus” test of  
4 Resorts Int’l for measuring post-confirmation related to  
5 bankruptcy court jurisdiction. State of Montana v. Goldin (In re  
6 Pegasus Gold Corp.), 394 F.3d 1189, 1194 (9th Cir. 2005)  
7 (reasoning that while this test “recognizes the limited nature of  
8 post-confirmation jurisdiction, [it] retains a certain  
9 flexibility”). In Resorts Int’l, the Third Circuit considered  
10 what it perceived to be problems in its existing precedent, Pacor,  
11 Inc. v. Higgins, 743 F.2d 984 (3d Cir. 1984).<sup>12</sup> In Pacor, the  
12 court had held that “the test for determining whether a civil  
13 proceeding is related to bankruptcy is whether the outcome of that  
14 proceeding could conceivably have any effect on the estate being  
15 administered in bankruptcy.” Id. at 994. The Pacor test,  
16 however, proved less than useful in determining related to  
17 jurisdiction after confirmation of a plan because the bankruptcy  
18 estate no longer exists. In Resorts Int’l, the court shifted the  
19 emphasis to whether “there is a close nexus to the bankruptcy plan  
20 or proceeding sufficient to uphold bankruptcy court jurisdiction  
21 over the matter.” 372 F.3d at 166-67. Although the Third Circuit

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23       <sup>12</sup> Pacor is among the most influential decisions in  
24 bankruptcy law, and forms the analytical framework for related to  
25 jurisdiction in the Third, Fourth, Fifth, Eighth, Ninth and  
26 Eleventh Circuits. See, e.g., Fietz v. Great W. Sav. (In re  
27 Fietz), 852 F.2d 455, 457 (9th Cir. 1988) (“We . . . adopt the  
28 Pacor definition [of related to jurisdiction]. . . . We reject  
any limitation on this definition[.]”). Although Pacor is  
somewhat dated, it is still the “grandfather” of related to  
analysis, and its caution that related to jurisdiction requires an  
effect on the bankruptcy estate [or, as its progeny interpreted  
Pacor for postconfirmation purposes, the debtor or the plan] is  
instructive for our purposes.

1 never precisely defined what it meant by "close nexus," it cited  
2 numerous case examples of a nexus that would support  
3 jurisdiction. In re Resorts Int'l, Inc., 372 F.3d at 167, citing  
4 Donaldson v. Bernstein, 104 F.3d 547, 552 (3d Cir. 1997) (post-  
5 confirmation proceeding concerning the reorganized debtor's  
6 failure to pay unsecured creditors according to terms in the  
7 plan); U.S. Tr. v. Gryphon at the Stone Mansion, 216 B.R. 764  
8 (W.D. Pa. 1997), aff'd 166 F.3d 552 (3d Cir. 1999) (dispute  
9 regarding post-confirmation U.S. Trustee quarterly fees);  
10 Bergstrom v. Dalkon Shield Claimants Trust (In re A.H. Robins  
11 Co.), 86 F.3d 364, 372-73 (4th Cir. 1996) (dispute over  
12 calculation of attorney fees that could affect treatment of  
13 remaining claims under the plan). However, the import of the  
14 Resorts Int'l analysis is even more revealing by its citation of  
15 example cases where the facts did not establish a sufficiently  
16 close nexus to support bankruptcy jurisdiction. In re Resorts  
17 Int'l, Inc., 372 F.3d at 168 (giving example of dispute between a  
18 plan liquidating trust and tobacco manufacturers that would have  
19 "no impact on any integral aspect of the bankruptcy plan or  
20 proceeding," citing Falise v. Am. Tobacco Co., 241 B.R. 48, 52  
21 (E.D.N.Y. 1999)); Grimes v. Graue (In re Haws), 158 B.R. 965, 971  
22 (Bankr. S.D. Tex. 1993) (in an action by trustee against partner  
23 of the debtor, trustee failed to prove how any damages received  
24 from the defendant were "necessary to effectuate the terms of [the  
25 plan]"). In short, under Resorts Int'l, as a condition for  
26 bankruptcy court post-confirmation jurisdiction, the outcome of a  
27 dispute must produce some effect on the reorganized debtor or a  
28 confirmed plan. Indeed, immediately following its review of this

1 case law, the Third Circuit concluded "where there is a close  
2 nexus to the bankruptcy plan or proceeding, as when a matter  
3 affects the interpretation, implementation, consummation,  
4 execution, or administration of a confirmed plan or incorporated  
5 litigation trust agreement, retention of post-confirmation  
6 bankruptcy court jurisdiction is normally appropriate." Id. at  
7 168-69. This statement is quoted by the bankruptcy court in this  
8 case to justify that interpretation of a plan provision, standing  
9 alone, provides a basis for subject matter jurisdiction over this  
10 dispute.<sup>13</sup> But fairly read, it is clear that the Resorts Int'l  
11 court did not intend that a need for plan interpretation support  
12 post-confirmation jurisdiction in all cases, but only in those  
13 where the results of plan interpretation would have a demonstrable  
14 impact on the debtor or confirmed plan of reorganization.

15 As noted, the Ninth Circuit adopted the close nexus test in  
16 In re Pegasus Gold, a seminal decision exploring the limits of  
17 post-confirmation bankruptcy jurisdiction. Pegasus Gold involved  
18 a dispute between the debtor and the State of Montana over  
19 financial responsibility for reclamation and water treatment  
20 costs. The parties had reached a settlement agreement approved by  
21 the bankruptcy court under which the debtor agreed to establish a  
22 new entity, RSC, which would perform the reclamation work. The  
23 debtor funded RSC, and a share of RSC became an asset of the  
24 debtor's liquidating trust established in the debtor's chapter 11  
25 plan.

26 After confirmation of the plan, disagreements arose between  
27

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28 <sup>13</sup> The bankruptcy court cited to Pegasus Gold for this  
statement. Pegasus Gold in turn cited to Resorts Int'l.

1 the State and trust almost immediately, and the State terminated  
2 RSC. The Liquidating Trustee then filed a complaint for breach of  
3 contract against the State in the bankruptcy court. Although the  
4 State objected, the bankruptcy court held it had jurisdiction, and  
5 the State appealed.

6 When the appeal eventually reached the Ninth Circuit, it  
7 affirmed the bankruptcy court's decision in favor of its  
8 jurisdiction. In re Pegasus Gold, 394 F.3d 1189. Applying the  
9 Resorts Int'l close nexus test, the court noted that although the  
10 trustee's complaint alleged numerous state law contract and tort  
11 claims against the State, at least three of those claims, and the  
12 remedies sought by the trustee, could conceivably affect the  
13 implementation and execution of the confirmed reorganization plan,  
14 especially the funding of RSC, and the cash flow into the  
15 liquidation trust from RSC income. Id. at 1194. As a result, the  
16 court held that the bankruptcy court had related to jurisdiction  
17 over those claims. Id.

18 Because the bankruptcy court had subject matter jurisdiction  
19 over some of the trustee's claims, the Ninth Circuit held that the  
20 bankruptcy court could also properly adjudicate the remaining  
21 trustee claims against the State by exercising supplemental  
22 jurisdiction under 28 U.S.C. § 1367, because those additional  
23 claims arose from a "'common nucleus of operative facts' and would  
24 ordinarily be expected to be resolved in one judicial proceeding."  
25 Id. at 1195, citing United Mine Workers v. Gibbs, 383 U.S. 725,  
26 725 (1966) and Sec. Farms v. Int'l Bhd. Of Teamsters, 124 F.3d  
27 999, 1008 (9th Cir. 1997).

28 The Ninth Circuit further explained the meaning of the close

1 nexus test it first articulated in Pegasus Gold in Sea Hawk  
2 Seafoods, Inc. v. State of Alaska (In re Valdez Fisheries Dev.  
3 Ass'n, Inc.), 439 F.3d 545 (9th Cir. 2006). In Valdez Fisheries,  
4 a creditor of a former chapter 11 debtor commenced an adversary  
5 proceeding in the bankruptcy court in connection with a closed  
6 bankruptcy case to determine the effect of its settlement  
7 agreement with the debtor on its fraudulent conveyance claim  
8 against another creditor. On appeal, the court held that, on the  
9 facts of that case, the claims asserted in the adversary  
10 proceeding failed the close nexus test, and therefore, the  
11 bankruptcy court lacked subject matter jurisdiction to entertain  
12 the creditor's suit. The court noted there was no confirmed plan,  
13 and there was no assertion that the outcome of the dispute between  
14 two creditors, Sea Hawk and the State of Alaska, would have any  
15 effect on the estate in the closed bankruptcy case. In the  
16 court's view, to show a close nexus, the outcome of a dispute must  
17 "alter the debtor's rights, liabilities, options, or freedom of  
18 action or in any way impact upon the handling and administration  
19 of the bankrupt estate." Id. at 548 (quoting In re Fietz, 852  
20 F.2d at 427). In Valdez Fisheries, the court distinguished its  
21 holding from that in Pegasus Gold, observing that the post-  
22 confirmation claims asserted by debtor that the State of Montana  
23 had breached the terms of a confirmed reorganization plan and "the  
24 outcome of those claims could affect the implementation and  
25 execution of the plan." Id. at 548.

26 The Ninth Circuit most recently visited related to  
27 jurisdiction after confirmation in a chapter 11 case in In re Ray,  
28 624 F.3d 1124. In Ray, the bankruptcy court had approved the sale



1 of a parcel of property owned by the debtor and his nondebtor co-  
2 owner, free and clear of the first refusal rights previously  
3 granted by them to Battle Ground Plaza, LLC ("BG Plaza"). After  
4 the debtor's plan was confirmed and the bankruptcy case was  
5 closed, BG Plaza sued the reorganized debtor, the nondebtor co-  
6 owner, the purchaser, and the purchaser's successor in state court  
7 for breach of its contractual right of first refusal. Because the  
8 sale was originally authorized under a bankruptcy court order, the  
9 state court, in its words, "remanded" the action to the bankruptcy  
10 court, and stayed proceedings in state court pending the  
11 bankruptcy court's determination whether it retained jurisdiction  
12 over the transaction and dispute. In re Ray, 624 F.3d at 1129.  
13 The bankruptcy court assumed jurisdiction and proceeded to  
14 construe the sale order and resolve the parties' claims.

15       When the dispute finally reached the Ninth Circuit, the court  
16 decided that the bankruptcy court lacked jurisdiction to decide a  
17 dispute between two nondebtors over the meaning of the bankruptcy  
18 court's sale order entered in a since-closed chapter 11 bankruptcy  
19 case. Applying Valdez Fisheries, the court concluded that,  
20 because the claims were all based upon Washington law, could exist  
21 entirely apart from the bankruptcy proceeding, and could not  
22 impact the closed bankruptcy case, the state court, not the  
23 bankruptcy court, should construe the sale order and adjudicate  
24 the parties' rights. Id. at 1134-35.

25       We distill several lessons from these decisions for  
26 application of the close nexus test as developed in Resorts Int'l,  
27 and as adopted and refined by the Ninth Circuit. Stated briefly,  
28 to support jurisdiction, there must be a close nexus connecting a

1 proposed post-confirmation proceeding in the bankruptcy court with  
2 some demonstrable effect on the debtor or the plan of  
3 reorganization.

4 Applying the Ninth Circuit case law to the facts of this  
5 appeal, while it is true Wilshire and the Wilshire Parties were  
6 asking the bankruptcy court to interpret its own confirmation  
7 order, it seems clear that the bankruptcy court lacked related to  
8 jurisdiction to adjudicate the tax issues between the Wilshire  
9 Partners and CFTB. All of the acts and transactions required to  
10 consummate and implement the confirmed plan in this case had been  
11 completed, and the bankruptcy case had long since been closed, by  
12 the time the tax dispute between the Wilshire Partners and CFTB  
13 arose. More importantly, the outcome of that tax dispute can have  
14 no conceivable effect on the implementation of the confirmed plan  
15 of reorganization, or on the reorganized debtor, Wilshire.  
16 Instead, any consequences from CFTB's actions will impact only the  
17 Wilshire Partners.

18 Moreover, as in Ray, the central issues in the Wilshire  
19 Partners-CFTB dispute concern application of California's tax  
20 laws, not bankruptcy law, to the transactions effected by the  
21 confirmed plan. As was the case in Ray, even if the terms of  
22 Wilshire's confirmed plan and the confirmation order are  
23 implicated in the resolution of this contest, the California  
24 administrative agencies and courts can construe their meaning.

25 Under Ninth Circuit case law, a close nexus between this tax  
26 dispute and the Wilshire bankruptcy case is missing. As a result,  
27 the bankruptcy court erred in assuming related to jurisdiction  
28 over this dispute.

1 **3. Supplemental or ancillary jurisdiction.**

2 By this conclusion, we also dispose of the Wilshire Partners'  
3 argument that the bankruptcy court could properly exercise  
4 supplemental jurisdiction under 28 U.S.C. § 1367(a)<sup>14</sup> because "the  
5 common nucleus of operative facts was the interpretation of the  
6 Plan, Confirmation Order and section 346 [of the bankruptcy code]  
7 to determine whether the [C]FTB's issuances of Notices of Income  
8 Tax Due collaterally attack the Confirmed Plan and violate section  
9 346(a) and (j)(1)." Reply Br. at 10, citing In re Pegasus.

10 To support the exercise of supplemental jurisdiction, the  
11 statute requires that there be another claim as to which the  
12 bankruptcy court has original jurisdiction. Sasson v. Sokoloff  
13 (In re Sasson), 424 F.3d 864, 869 (9th Cir. 2005) (holding that  
14 the bankruptcy court may exercise supplemental jurisdiction under  
15 28 U.S.C. § 1367(a) "over all other claims that are so related to  
16 claims in the action within [the bankruptcy court's] original  
17 jurisdiction that they form part of the same case or  
18 controversy"). However, as we explained above, the bankruptcy  
19 court lacked jurisdiction over any of the claims under these

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21 <sup>14</sup> 28 U.S.C. § 1367 provides:

22 Supplemental jurisdiction.

23 (a) Except as provided in subsections (b) and (c) or as  
24 expressly provided otherwise by Federal statute, in any  
25 civil action of which the district courts have original  
26 jurisdiction, the district courts shall have  
27 supplemental jurisdiction over all other claims that are  
28 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.

1 facts. Because of this, it also lacked supplemental jurisdiction  
2 over any other claims.

3 The bankruptcy court also concluded it possessed ancillary  
4 jurisdiction to interpret and enforce its orders:

5 Further, a bankruptcy court retains subject matter  
6 jurisdiction to interpret and enforce its own orders.  
7 See Haw. Airlines, Inc. v. Mesa Air Group, Inc., 355  
8 B.R. 214, 218 (D. Haw. 2006) ("The law is clear that '[a]  
9 bankruptcy court retains post-confirmation jurisdiction  
10 to interpret and enforce its own orders, particularly  
11 when disputes arise over a bankruptcy plan of  
12 reorganization'" (citing Luan Investment S.E. v.  
13 Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d  
14 223, 230 (2d Cir. 2002))). Accordingly, this court  
15 retains subject matter jurisdiction to interpret and  
16 enforce the chapter 11 plan and the confirmation order.

17 In re Wilshire Courtyard, 437 B.R. at 384. We also disagree with  
18 the bankruptcy court on this point.

19 "Ancillary jurisdiction may rest on one of two bases: (1) to  
20 permit disposition by a single court of factually interdependent  
21 claims, and (2) to enable a court to vindicate its authority and  
22 effectuate its decrees." In re Valdez Fisheries, 439 F.3d at 549,  
23 citing Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375,  
24 379-80 (1994); In re Ray, 624 F.3d at 1135. The bankruptcy court  
25 here relied on the second prong of ancillary jurisdiction - to  
26 vindicate its authority and effectuate its decrees.

27 Significantly, the two cases cited by the bankruptcy court to  
28 support its ancillary jurisdiction deal with interpretation and  
enforcement of court orders that have an effect on the reorganized  
debtor and the administration of a bankruptcy estate. In Hawaiian  
Airlines, the debtor commenced a post-confirmation adversary  
proceeding against an investor for return of property of the  
bankruptcy estate. The adversary proceeding asked the bankruptcy

1 court to interpret and enforce its Plan Procedures Order, which  
2 governed the relationships between the reorganized debtor and  
3 potential investors. Specifically, the orders to be interpreted  
4 related to contracts between the trustee and parties directly  
5 affecting the administration and assets of the estate itself.  
6 Haw. Airlines, 355 B.R. at 217. Likewise, in Petrie Retail, the  
7 bankruptcy court was called upon to interpret and enforce orders  
8 enjoining a creditor from commencing or continuing an action  
9 contingent upon the interpretation of lease provisions that were  
10 at issue in the administration of the debtors' estate. In re  
11 Petrie Retail, 304 F.3d at 225.

12 In short, the two cases relied on by the bankruptcy court to  
13 support ancillary jurisdiction both involve actions, the outcome  
14 of which would directly affect the debtor and the operation or  
15 implementation of its plan of reorganization. In the present  
16 appeal, on the other hand, the results of the tax dispute between  
17 the Wilshire Partners and CFTB will have no effect on either the  
18 debtor (i.e., Wilshire), any estate, or the confirmed plan of  
19 reorganization.

20 The Ninth Circuit's most recent review of ancillary  
21 jurisdiction is also found in In re Ray, 624 F.3d at 1135-36. The  
22 Ray bankruptcy court had held that it had jurisdiction and this  
23 Panel affirmed under both related to and ancillary jurisdiction.  
24 Id. at 1129. As to the bankruptcy court's purported need to  
25 vindicate and effectuate its sale order, the court of appeals  
26 observed that ancillary jurisdiction should only be used "when  
27 necessary to resolve bankruptcy issues, not to adjudicate state  
28 law claims that can be adjudicated in state court." Id. at 1136.

1 Applying In re Ray to the present appeal, the claims in dispute  
2 here are tax claims asserted solely by CFTB against the Wilshire  
3 Partners, and thus most comparable to the state contract claim  
4 rejected as a basis for ancillary jurisdiction in In re Ray.

5 The Wilshire Partners attempt to counter these holdings by  
6 citing the Supreme Court's recent holding in Travelers Indem. Co.  
7 v. Bailey, 129 S. Ct. 2195 (2009) ("Travelers"). Travelers  
8 involved an appeal of the bankruptcy court's "Clarifying Order"  
9 entered in 2004 that interpreted the scope of an injunction  
10 contained in a prior order confirming a chapter 11 plan entered in  
11 1986. Because of its distinctly different facts, we do not  
12 believe Travelers controls here.

13 Travelers was the principal insurance company for Johns-  
14 Manville ("Manville"), a supplier of raw asbestos. When studies  
15 began to mount showing a link between asbestos exposure and  
16 respiratory diseases, the prospect of overwhelming liability led  
17 Manville to file for bankruptcy protection under chapter 11.  
18 Travelers, 129 S. Ct. at 2199. The parties and the bankruptcy  
19 court ultimately concluded that the solution to Manville's  
20 predicament was "a plan of reorganization for [Manville] which  
21 would provide for payment to holders of present or known asbestos  
22 health related claims . . . and [to] those persons who had not yet  
23 manifested an injury but who would manifest symptoms of  
24 asbestos-related illnesses at some future time." In re  
25 Johns-Manville Corp., 97 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).

26 The bankruptcy court confirmed a plan of reorganization that  
27 created the Manville Personal Injury Settlement Trust (the  
28 "Trust"). Manville's insurers agreed to provide most of the

1 initial corpus of the Trust, with \$80 million contributed by  
2 Travelers. Travelers, 129 S. Ct. at 2199. However, the insurance  
3 companies refused to contribute the funds without the protection  
4 of an injunction from the bankruptcy court limiting their exposure  
5 to direct claims (i.e., claims not through the Trust). On  
6 December 18, 1986, the bankruptcy court entered an Insurance  
7 Settlement Order, providing that upon the insurers' payment of the  
8 settlement funds to the Trust, "all Persons are permanently  
9 restrained and enjoined from commencing and/or continuing any  
10 suit, arbitration or other proceeding of any type or nature for  
11 Policy Claims against any or all members of the Settling Insurer  
12 Group [including Travelers]." Travelers, 129 S. Ct. at 2199  
13 (quoting the December 18, 1986, bankruptcy court's Settlement  
14 Order). The Settlement Order was incorporated by reference in the  
15 bankruptcy court's December 22, 1986, order confirming Manville's  
16 chapter 11 plan. Id. The settlement order and plan confirmation  
17 order were affirmed by the district court, and then by the Second  
18 Circuit. Id. at 2200.

19 Over a decade later, claimants began filing direct actions  
20 against Travelers, not based upon Manville's wrongdoing, but  
21 alleging that its insurers had violated state consumer protection  
22 statutes or their common law duties. Travelers asked the  
23 bankruptcy court to enjoin several of those direct actions. The  
24 bankruptcy court entered its Clarifying Order, which provided that  
25 the 1986 settlement order and reorganization plan barred the  
26 direct actions. 129 S. Ct. at 2201. On appeal of the Clarifying  
27 Order, the district court affirmed, but the Second Circuit  
28 reversed, holding that the bankruptcy court had exceeded its

1 jurisdiction in entering the original 1986 settlement order and  
2 injunction barring direct action against insurers, including  
3 Travelers. The Supreme Court granted certiorari.

4 The Supreme Court's Travelers decision principally concerns  
5 whether the bankruptcy court correctly interpreted its 1986  
6 orders. However, there were two jurisdictional issues resolved by  
7 the Court.

8 First, the Court ruled that the Second Circuit had erred in  
9 concluding that the bankruptcy court did not have jurisdiction to  
10 enter the Settlement Order in 1986. Second, the Court ruled,  
11 agreeing with the Second Circuit, that the "Bankruptcy Court  
12 plainly had [subject-matter] jurisdiction to interpret and enforce  
13 its own prior orders." 129 S. Ct. at 2205. As authority for this  
14 proposition, the Court cited Local Loan Co. v. Hunt, 292 U.S. 234  
15 (1934), where the following statement appears:

16 The pleading by which respondent invoked the  
17 jurisdiction of the bankruptcy court in the present case  
18 is in substance and effect a supplemental and ancillary  
19 bill in equity, in aid of and to effectuate the  
20 adjudication and order made by the same court. That a  
21 federal court of equity has jurisdiction of a bill  
22 ancillary to an original case or proceeding in the same  
23 court, whether at law or in equity, to secure or  
24 preserve the fruits and advantages of a judgment or  
25 decree rendered therein, is well settled.

26 Id. at 239.

27 Viewing the Travelers decision in context, we observe the  
28 following: (1) The underlying order that the bankruptcy court  
interpreted and enforced was an injunction that was negotiated by  
the parties to the original settlement agreement, and incorporated  
in the plan of reorganization, and the record clearly indicates  
that the essential parties (the debtor and the insurance



1 companies) would not have agreed to plan confirmation without the  
2 settlement agreement and injunction; (2) the Court's ruling that a  
3 bankruptcy court "plainly" had subject matter jurisdiction to  
4 interpret and enforce its own prior orders should be viewed in  
5 this context, that the Clarifying Order related to an injunction  
6 that had been negotiated and considered an essential part of the  
7 plan of reorganization. The citation the Court provided as  
8 authority for its general proposition reinforces the principle  
9 that exercise of ancillary subject matter jurisdiction must in  
10 some way relate to an order that "preserves the fruits and  
11 advantages" of the previous order.

12 The Travelers decision was made in the context of a complex  
13 history, where the order being interpreted related to an  
14 injunction that was a sine qua non for the acceptance of the plan  
15 of reorganization. After ruling that the bankruptcy court had  
16 jurisdiction to approve the original settlement agreement and  
17 enter the injunction, the Supreme Court considered the ancillary  
18 subject matter question and ruled in light of its previous  
19 decision in Hunt that the bankruptcy court had jurisdiction. The  
20 presence of the Hunt citation shows that the Court had in mind  
21 that, based on the facts of Travelers, ancillary subject matter  
22 jurisdiction in that context related back to preserving a benefit  
23 (a fruit or advantage) granted in the original order. In short,  
24 we believe Travelers is not directly relevant to the current  
25 appeal, because the bankruptcy court's orders interpreting the  
26 plan did not act to preserve a benefit negotiated in the plan of  
27 reorganization or, indeed, have any effect on the plan of  
28 reorganization.

1           The Wilshire Partners attempt to distinguish In re Ray by  
2 noting that Ray dealt solely with a request that the bankruptcy  
3 court enforce, not interpret, its earlier orders: "This act of  
4 interpreting, not merely enforcing, an earlier order distinguishes  
5 [Travelers and this case] from Ray because the Ray case merely  
6 involves the act of enforcing the effect of the earlier sale  
7 order. While enforcement can occur in any court, only the  
8 Bankruptcy Court could interpret its own order." The Wilshire  
9 Partners' Opening Br. at 7.

10           Of course, the Wilshire Partners' argument is incorrect on  
11 its face. It is a gross overstatement to say that the bankruptcy  
12 court is the only court that could interpret its orders. Courts  
13 daily interpret the decisions and orders made by other courts -  
14 indeed, one basic task of any court is the interpretation of case  
15 law, a process of understanding and applying the orders and  
16 rulings of "other" courts.

17           We also disagree with the Wilshire Partners' analysis of the  
18 Ninth Circuit's holding in In re Ray. In that case, the state  
19 court was called upon to interpret the meaning of the bankruptcy  
20 court's sale order in order to determine if a breach of contract  
21 occurred. Though asked to do so by the state court, the Ninth  
22 Circuit held that the bankruptcy court should not have interceded  
23 in the breach contest, and that it lacked jurisdiction to  
24 interpret the sale order where the plan had been implemented and  
25 the bankruptcy case had long-since been closed. In re Ray, 624  
26 F.3d at 1136. As we read the Ninth Circuit's decision, both  
27 interpretation and enforcement of the sale order were matters  
28 properly submitted to the state court, not the bankruptcy court.

1 In sum, we conclude that the bankruptcy court in this case  
2 lacked related to jurisdiction, or ancillary or supplemental  
3 jurisdiction, to adjudicate the tax dispute between the Wilshire  
4 Partners and CFTB.

5 **CONCLUSION**

6 As the Ninth Circuit observed in In re Ray, “[r]eopening of  
7 the bankruptcy case is rare, and only used when necessary to  
8 resolve bankruptcy issues, not to adjudicate state law claims that  
9 can be adjudicated in state court.” 624 F.3d at 1136. Because  
10 the bankruptcy court lacked subject matter jurisdiction to enter  
11 the various orders in this contest, we VACATE those orders and  
12 REMAND with instructions that the bankruptcy court dismiss this  
13 matter.

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