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Kevin P. McDowell

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Notes

Statutory Authority for Bankruptcy Judges to Conduct Jury Trials: Fact or Fiction?

*In re United Missouri Bank of Kansas City, N.A.*¹

I. INTRODUCTION

Congress, courts, and commentators have struggled during the last century with the issue of whether a party to a bankruptcy proceeding has a seventh amendment right to a jury trial.² That issue is further complicated by a second issue: whether a bankruptcy court has authority to conduct a jury trial, or whether the jury trial must be removed to the district court. In 1989, it appeared that the United States Supreme Court would answer these two questions in *Granfinanciera v. Nordberg*.³ The question presented in *Granfinanciera* was whether the Granfinanciera Corporation, which had not previously participated in the bankruptcy proceeding, was entitled to a jury trial when sued by the trustee of the bankruptcy estate to recover an alleged preferential transfer.⁴ The Supreme Court concluded that Granfinanciera was entitled to a jury trial under the seventh amendment, but the Court expressly declined to decide whether the bankruptcy court was authorized to hear a jury trial.⁵

1. 901 F.2d 1449 (8th Cir. 1990).

2. See generally Bever & Cántrel, *Jury Trials in the Bankruptcy Courts: Awaiting a Final Verdict*, 20 ST. MARY'S L.J. 799 (1989); Cyr, *The Right to Trial by Jury in Bankruptcy: Which Judge is to Preside?*, 63 AM. BANKR. L.J. 53 (1989); Ferriell, *Constitutionality of the Bankruptcy Amendments and Federal Judgeship Act of 1984*, 63 AM. BANKR. L.J. 109 (1989); Comment, *The Bankruptcy Amendments and Federal Judgeship Act of 1984: The Impact on the Right of Jury Trial in Bankruptcy Court*, 16 TEX. TECH. L. REV. 535 (1985); Gibson, *Jury Trials in Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment*, 72 MINN. L.REV. 967 (1988); King, *Jurisdiction and Procedure Under the Bankruptcy Amendments of 1984*, 38 VAND. L. REV. 675 (1985); Sabino, *Jury Trials in the Bankruptcy Court: The Controversy Ends*, 93 COMM. L.J. 238 (1988); Warner, *Katchen Up in Bankruptcy: The New Jury Trial Right*, 63 AM. BANKR. L.J. 1 (1989).

3. 492 U.S. 33 (1989).

4. *Id.* at 39. The suit alleged that Granfinanciera had received a 1.7 million dollar payment from the Chase & Sanborn Corporation within one year before Chase & Sanborn filed a Chapter 11 bankruptcy petition. *Id.* at 40.

5. *Id.* at 79-80.

Since *Granfinanciera*, several circuits of the United States Courts of Appeals have attempted to decide whether a bankruptcy judge has authority to conduct a jury trial.⁶ In *In Re United Missouri Bank of Kansas City*,⁷ which involved an alleged preferential transfer similar to the one in *Granfinanciera*, the Eighth Circuit concluded that bankruptcy judges may not preside over a jury trial because of a lack of statutory authority.⁸ The court did not address the constitutional issues, but did acknowledge "the serious constitutional problems posed by an alternative interpretation."⁹ This Note will focus exclusively on the statutory implications raised by jury trials in the bankruptcy forum, and will not discuss associated constitutional issues.

II. THE FACTS AND HOLDING

On February 13, 1987, the Kroh Brothers Development Company filed a Chapter 11¹⁰ voluntary bankruptcy petition.¹¹ The bankruptcy trustee for Kroh Brothers filed suit on February 10, 1989, against United Missouri Bank of Kansas City ("UMB") to recover alleged preferential transfers. The trustee asserted that UMB improperly received a four million dollar payment from Kroh Brothers only a few months before the company filed for bankruptcy.¹² UMB had not filed a claim or participated in the bankruptcy proceedings before the initiation of the trustee's action.¹³

UMB asserted the right to a jury trial and requested the district court to withdraw the case from the jurisdiction of the bankruptcy court.¹⁴ The jury trial request stemmed from the recognition in *Granfinanciera* of a seventh

6. See *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 911 F.2d 380 (10th Cir. 1990); *In re United Missouri Bank of Kansas City*, 901 F.2d 1449 (8th Cir. 1990); *Ben Cooper, Inc. v. The Ins. Co. of Pennsylvania (In re Ben Cooper, Inc.)*, 896 F.2d 1394 (2d Cir. 1990) *vacated on other grounds*, 111 S.Ct. 425 (1990).

7. 901 F.2d 1449 (8th Cir. 1990).

8. *Id.* at 1457.

9. *Id.*

10. 11 U.S.C. §§ 1101-1174 (1988).

11. *In re Kroh Bros. Dev. Co.*, 100 Bankr. 480, 481 (Bankr. W.D. Mo. 1989). Before declaring bankruptcy, Kroh Brothers was one of the largest real estate development companies in Kansas City, Missouri. *Id.* Kroh Brothers Development Company, its five affiliated corporations, and twenty-seven partnerships each filed Chapter 11 petitions beginning February 13, 1987, through May 1, 1987. *Id.*

12. *United Missouri Bank*, 901 F.2d at 1450. UMB claims that the four million dollar payment was a deposit into the Kroh Brothers bank account and that the bank itself received none of the money.

13. *Id.*

14. *Id.*

amendment right to a jury trial in certain bankruptcy proceedings, including those involving preferential transfer issues.¹⁵

Bankruptcy Judge See had little difficulty in finding that UMB was entitled to a jury trial under the guidelines established by *Granfinanciera*. That case established that a party, when sued by the trustee of a bankrupt estate to recover an alleged preferential transfer, is entitled to a jury trial.¹⁶ The critical issue before Judge See was whether the bankruptcy court had the power to hear the jury trial or whether the district court must hear such trials.¹⁷ She concluded that in the case of core proceedings,¹⁸ bankruptcy courts have statutory and constitutional authority to hear jury trials.¹⁹ This statutory authority was based upon a "comprehensive reading" of the relevant sections of the bankruptcy statutes.²⁰ Thus, Judge See granted UMB the right to a jury trial, but refused to withdraw the case from the bankruptcy court.²¹

On appeal, United States District Court Judge Sachs affirmed the ruling of the bankruptcy court, thus denying UMB's withdrawal motion but affirming UMB's right to a jury trial.²² Judge Sachs, following the reasoning of Judge See, emphasized two recent decisions²³ that concluded that bankruptcy courts have both statutory and constitutional authority to conduct jury trials. Judge Sachs found that a bankruptcy court is not prevented by its article I status from holding a jury trial, and thus there is "nothing inherently inappropriate" with conducting such a trial in the bankruptcy forum.²⁴

UMB filed a Petition for Writs of Mandamus and Prohibition with the Court of Appeals for the Eighth Circuit, which reversed the district and

15. *Granfinanciera*, 492 U.S. at 79-80. See *supra* notes 3-5 and accompanying text for discussion of *Granfinanciera*.

16. *In re Kroh Bros. Dev. Co. v. United Missouri Bank of Kansas City*, 108 Bankr. 710, 712 (Bankr. W.D. Mo. 1989).

17. *Id.*

18. See *infra* notes 52-59 and accompanying text for discussion of core and non-core proceedings.

19. *Kroh Bros.*, 108 Bankr. at 716.

20. *Id.* at 712. Judge See relied upon 28 U.S.C. §§ 151, 157, 1411 (1988) as authority for bankruptcy judges to conduct jury trials. *Id.* at 712-14. See *infra* note 76 and accompanying text for a discussion of § 151. See *infra* notes 52-75 and accompanying text for a discussion of § 157. See *infra* notes 60-65 and accompanying text for a discussion of § 1411.

21. *Kroh Bros.*, 108 Bankr. at 716.

22. *Kroh Bros. Dev. Co. v. United Missouri Bank of Kansas City*, 108 Bankr. 228, 229-30 (Bankr. W.D. Mo. 1989).

23. *Id.* at 229. See *Dailey v. First Peoples Bank*, 76 Bankr. 963 (D. N.J. 1987); *McCormick v. Am. Investors Management, Inc.*, 67 Bankr. 838 (Bankr. D. Nev. 1986).

24. *Kroh Bros.*, 108 Bankr. at 229.

bankruptcy court decisions.²⁵ The court agreed that UMB possessed a seventh amendment right to a jury trial, but found that the bankruptcy court did not have proper statutory authority to conduct such a trial.²⁶ In an opinion written by Chief Justice Lay, the Eighth Circuit focused on and rejected the reasoning of the Second Circuit's recent decision in *In re Ben Cooper, Inc.*,²⁷ which held that a bankruptcy judge has both statutory and constitutional authority to hear jury trials in core proceedings.²⁸ Because the Eighth Circuit found no evidence of statutory authority, the court did not address the issue of constitutional authority.²⁹ Because the Eighth Circuit discovered no evidence of express or implied statutory authority for a bankruptcy judge to conduct a jury trial, the court remanded the case to the district court rather than to the bankruptcy court.³⁰

III. LEGAL BACKGROUND

A. Statutory History

The legislative history of the authority possessed by the bankruptcy court is a long, confusing, and often contradictory journey dating from 1898, the year of the first bankruptcy act.³¹ To fully comprehend the issues posed by the instant case, one must first understand the creation of bankruptcy courts and article I courts in general. Bankruptcy courts are article I courts created by Congress, and are of limited jurisdiction. Thus, they cannot exercise the wide range of powers held by article III courts.³² The powers of article I courts are limited by the Constitution as well as by congressional authority.³³

Before 1978, bankruptcy courts derived their statutory authority from the Bankruptcy Act of 1898.³⁴ Bankruptcy "referees" had summary jurisdiction³⁵ over all equitable proceedings arising out of the bankrupt estate. All

25. *United Missouri Bank*, 901 F.2d at 1450-51.

26. *Id.* at 1454-57.

27. 896 F.2d 1394 (2d Cir. 1990).

28. *Id.* at 1402-04.

29. *United Missouri Bank*, 901 F.2d at 1457.

30. *Id.* at 1454-57.

31. Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979).

32. *United Missouri Bank*, 901 F.2d at 1451-52 (citing *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)).

33. *Id.* at 1452.

34. Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979).

35. Gibson, *supra* note 2, at 971 n.20. Gibson describes the three categories of summary jurisdiction as follows:

other bankruptcy matters were conducted within the plenary jurisdiction³⁶ of the district court. Historically, jury trials were not allowed in the bankruptcy forum except for two narrow exceptions involving involuntary petitions and the dischargeability of debts.³⁷ The 1898 Act, however, gave no indication as to which court was to conduct the jury trial if one of these exceptions was applicable.³⁸ In *Katchen v. Landry*,³⁹ the Supreme Court stated that the summary jurisdiction of the bankruptcy court was equitable in nature and did not entail conducting jury trials. *Katchen* carved out an exception to the seventh amendment right to a jury trial when Congress grants jurisdiction to a court of equity containing "a specific statutory scheme contemplating the prompt trial of a disputed claim without the intervention of a jury."⁴⁰ Thus, the right to a jury trial did not exist in a bankruptcy court under the 1898 Act.

In 1978, Congress enacted the Bankruptcy Reform Act⁴¹ ("the 1978 Act"), which radically revised bankruptcy laws and procedures. The 1978 Act granted broad jurisdictional authority to the bankruptcy judge, including an apparent right to hear jury trials under section 1480:

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury, in a case under title 11 or in a proceeding arising under title 11 or arising in or related to a case under title 11, that is provided by any statute in effect on September 30, 1979.

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- 1) The exclusive jurisdiction over all administrative matters arising under the bankruptcy proceeding;
 - 2) the exclusive right to determine title to and possession of disputed assets within the court's possession;
 - 3) the right to rule on matters submitted to the bankruptcy judge with the consent of the parties.

Id.

36. See *United Missouri Bank*, 901 F.2d at 1452. Plenary jurisdiction includes "litigation involving the trustee and third parties brought in the form of an ordinary civil action. If the action is brought in the federal court, the right of jury trial . . . is determined according to the nature of the issues, just as in any other civil action." Gibson, *supra* note 2, at 1013 n.213 (quoting J. MOORE & W. PHILLIPS, DEBTORS' AND CREDITORS' RIGHTS 6-1 to 6-2 (1966)).

37. Act of July 1, 1898, ch. 541 §§ 17(c)(5), 19, 30 Stat. 544 (repealed 1979).

38. See *United Missouri Bank*, 901 F.2d at 1452; Gibson, *supra* note 2, at 974.

39. 382 U.S. 323 (1966).

40. *Id.* at 339.

41. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified as amended at 28 U.S.C. §§ 1 to-1329 (repealed 1984)).

(b) The bankruptcy court may order the issues arising under section 303 under title 11 [governing involuntary bankruptcy petitions] to be tried without a jury.⁴²

Although subsection (b) of section 1480 clearly reversed the earlier practice of allowing involuntary petition jury trials in the bankruptcy court, subsection (a) apparently granted authority to the bankruptcy court to conduct jury trials in other bankruptcy proceedings. Although section 1480 was open to conflicting interpretation,⁴³ most courts concluded that it was an authorized grant of power for bankruptcy judges to hear jury trials.⁴⁴

The broad grant of jurisdiction within the 1978 Act was held unconstitutional by a Supreme Court plurality in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*⁴⁵ The *Marathon* court concluded that the 1978 Act had "impermissibly removed most, if not all, of 'the essential attributes of the judicial power' from the art. III district court, and had vested those attributes in a non-art. III adjunct."⁴⁶ Because Congress delayed in amending the Bankruptcy Code after *Marathon*, the Administrative Office of the Courts quickly promulgated an Emergency Rule in 1982 that prohibited bankruptcy judges from hearing jury trials.⁴⁷ Under the Emergency Rule, if a bankruptcy matter required a jury trial, only the district court was authorized to

42. 28 U.S.C. § 1480 (repealed 1984).

43. Commentators and courts argued whether section 1480 maintained the summary/plenary distinction of the 1898 Act or whether the summary/plenary approach was abandoned in favor of the traditional seventh amendment approach used by the district court in a civil case. See *Bever & Cantrel*, *supra* note 2, at 803-804; *Gibson*, *supra* note 2, at 976-86. Compare *Nickinello v. Roberson (In re Huey)*, 23 Bankr. 804, 805 (Bankr. 9th Cir. 1982); *Martin Baker Well Drilling v. Koulovatros (In re Martin Baker Well Drilling, Inc.)*, 36 Bankr. 154 (Bankr. D. Me. 1984) (both cases use the pure seventh amendment approach) with *Belfance v. Sizzler Steak Houses (In re Portage Assoc., Inc.)*, 16 Bankr. 445 (Bankr. N.D. Ohio 1982); *In re Lafayette Radio Electronics Corp.*, 7 Bankr. 187 (Bankr. E.D.N.Y. 1980).

44. See, e.g., *Nickinello v. Roberson (In re Huey)*, 23 Bankr. 804, 805 (Bankr. 9th Cir. 1982); *Young v. Peter J. Saker, Inc. (In re Paula Saker & Co., Inc.)*, 37 Bankr. 802 (Bankr. S.D.N.Y. 1984); *Martin Baker Well Drilling, Inc. v. Koulovatros (In re Martin Baker Well Drilling, Inc.)*, 36 Bankr. 154 (Bankr. D. Me. 1984); *King*, *supra* note 2, at 703.

45. 458 U.S. 50 (1982).

46. *Id.* at 87.

47. *Vihon, Delegation of Authority and the Model Rule: The Continuing Saga of Northern Pipeline*, 88 COM. L.J. 64, 77-8 (1983) (reprinting emergency rule issued by the Administrative Office of the Courts). Section (d)(1) of the Emergency Rule states that "bankruptcy judges may not conduct: . . . (D) jury trials." *Id.* at 78. See *Gibson*, *supra* note 2, at 987 n.87.

conduct the trial.⁴⁸ When the revised bankruptcy rules were issued the following year, however, Bankruptcy Rule 9015⁴⁹ appeared to reauthorize jury trials by providing procedural guidelines for conducting jury trials in the bankruptcy forum. Therefore, Rule 9015 was in direct conflict with the Emergency Rule and many courts viewed Rule 9015 as taking precedence over the Emergency Rule.⁵⁰ As a result, the questions of whether a jury trial right existed and in what forum that jury trial was to be held remained unsettled.

Responding to the confusion, Congress finally issued the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("the 1984 Act").⁵¹ This act limited the jurisdiction of the bankruptcy courts and bifurcated the bankruptcy judge's authority according to whether a proceeding was core or non-core.⁵² In non-core proceedings, the bankruptcy judge may only hear the case and submit findings of fact and conclusions of law to the district court, which maintains the authority to enter a final judgment.⁵³ With the consent of both parties, the bankruptcy judge may "hear and determine" a non-core proceeding and accordingly "enter appropriate orders and judgements."⁵⁴

The fact that the district court retains the right to enter a final judgment in a non-core proceeding is inconsistent with the seventh amendment provision that "no fact tried by a jury, shall be otherwise re-examined in any Court of the United States."⁵⁵ Thus, the *de novo* review of a non-core proceeding is incompatible with the right to a jury trial.⁵⁶ In core proceedings,⁵⁷ howev-

48. See Vihon, *supra* note 47, at 78.

49. FED. R. BANKR. 9015, 11 U.S.C. §1411 app. at 140 (Supp. IV 1986) (repealed 1987).

50. See, e.g., Young v. Peter J. Saker, Inc. (*In re Paula Saker & Co., Inc.*), 37 Bankr. 802, 809 (Bankr. S.D.N.Y. 1984); Martin Baker Well Drilling v. Koulouvatros (*In re Martin Baker Well Drilling, Inc.*), 36 Bankr. 154, 158 (Bankr. D. Me. 1984).

51. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified as amended at 28 U.S.C. § 151 (1984)).

52. See 28 U.S.C. §§ 157, 158 (1988).

53. See 28 U.S.C. § 157(c)(1) (1988).

54. See 28 U.S.C. § 157(c)(2) (1988).

55. U.S. CONST. amend. VII (1791).

56. See, e.g., United Missouri Bank, 901 F.2d at 1453; Dailey v. First Peoples Bank, 76 Bankr. 963, 968 (D. N.J. 1987); Pied Piper Casuals, Inc. v. Ins. Co. of State of Pa., 72 Bankr. 156 (S.D.N.Y. 1987); Smith-Douglass, Inc. v. Smith (*In re Smith-Douglass, Inc.*), 43 Bankr. 616, 618 (Bankr. E.D.N.C. 1984). *But see* THB Corp. v. Essex Builders Co., Inc. (*In re THB Corp.*), 94 Bankr. 797, 800 (Bankr. D. Mass. 1988); Price Watson Co. v. Amcx Steel Corp. (*In re Price Watson Co.*), 66 Bankr. 144, 157 (Bankr. S.D. Tex. 1986).

57. 28 U.S.C. § 157 (b)(2)(1988) states the following:

2) Core proceedings include, but are not limited to -

er, the bankruptcy judge may "hear and determine" the proceeding and "enter appropriate orders and judgments," subject to review by the district court.⁵⁸ *Granfinanciera* states that the jurisdiction of certain core proceedings, such as the preferential transfer claim in *United Missouri Bank*, is consistent with the seventh amendment right to a jury trial.⁵⁹ The scope of *Granfinanciera* is limited, however, to core proceedings and does not involve non-core actions.

Rather than specifically settling the jury trial issue, the 1984 Act confused courts and commentators by enacting section 1411,⁶⁰ which referred

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- (A) matters concerning the administration of the estate;
 - (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
 - (C) counterclaims by the estate against persons filing claims against the estate;
 - (D) orders in respect to obtaining credit;
 - (E) orders to turn over property of the estate;
 - (F) proceedings to determine, avoid, or recover preferences;
 - (G) motions to terminate, annul, or modify the automatic stay;
 - (H) proceedings to determine, avoid, or recover fraudulent conveyances;
 - (I) determinations as to the dischargeability of particular debts;
 - (J) objections to discharges;
 - (K) determinations of the validity, extent, or priority of liens;
 - (L) confirmation of plans;
 - (M) orders approving the use or lease of property, including the use of cash collateral;
 - (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
 - (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

58. 28 U.S.C. § 157(b)(1) (1984). Section 157(b)(1) states: "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments, subject to review under section 158 of this title."

59. *Granfinanciera*, 492 U.S. at 80.

60. 28 U.S.C. § 1411 (1988).

to jury trials only in connection with cases involving wrongful death and tort-related actions. Section 1411 states:

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 [involving involuntary bankruptcies] of title 11 to be tried without a jury.⁶¹

Many commentators contend that section 1411 limits the district court to hear jury trials in only these two specific actions and that all other jury trials are to be held in the bankruptcy forum.⁶² Others argue, however, that the lack of express language prevents bankruptcy courts from conducting jury trials.⁶³ Several courts have cited this lack of express authority, in addition to the *Marathon* decision, as a basis for refusing to allow a non-article III bankruptcy judge to preside over jury trials.⁶⁴ The legislative record of section 1411 is relatively silent on the matter, further complicating the issue.⁶⁵

Finally, in 1987, the newly created Bankruptcy Rules replaced Bankruptcy Rule 9015,⁶⁶ which had provided procedural guidelines for jury trials in the bankruptcy forum.⁶⁷ This raised serious doubts as to whether statutory authority existed for bankruptcy courts to conduct jury trials because some authorities had relied upon Rule 9015 as granting jury trial authority.⁶⁸ The

61. *Id.*

62. *See, e.g.,* M & E Contractors, Inc. v. Kugler-Morris Gen. Contractors, Inc., 67 Bankr. 260, 267 (N.D. Tex. 1986); Price-Watson Co. v. Amex Steel Corp. (*In re* Price-Watson Co.), 66 Bankr. 144, 152 (Bankr. S.D. Tex. 1986); Baldwin-United Corp. v. Thompson (*In re* Baldwin-United Corp.), 48 Bankr. 49, 56 (Bankr. S.D. Ohio 1985).

63. *See, e.g.,* Jefferson Nat'l Bank v. Durbin, Inc. (*In re* Durbin, Inc.), 62 Bankr. 139, 146 (S.D. Fla. 1986); Terry v. Proehl (*In re* Proehl), 36 Bankr. 86, 88 (W.D. Va. 1984); Hoffman v. Brown (*In re* Brown), 56 Bankr. 487, 488-91 (Bankr. D. Md. 1985); King, *supra* note 2, at 704.

64. *See, e.g.,* Cameron v. Anderson (*In re* American Energy, Inc.), 50 Bankr. 175, 181 (Bankr. D. N.D. 1985); *Proehl*, 36 Bankr. at 87; *Brown*, 56 Bankr. at 488.

65. *See United Missouri Bank*, 901 F.2d at 1455; *Bever & Cantrel*, *supra* note 2, at 806; *Gibson*, *supra* note 2, at 991.

66. *See supra* notes 49-50 and accompanying text for a discussion of Bankruptcy Rule 9015.

67. *See* Committee Note to Abrogation of Bankr. R. 9015, *reprinted in* Bankruptcy Service § 62:175 (1987).

68. *See, e.g.,* Howison v. Country Hills Assocs. (*In re* W.G.M.C., Inc.), 96 Bankr.

issue of where a bankruptcy jury trial should be conducted has remained unanswered, primarily because of the unclear statutory language and because, until *Granfinanciera*, the seventh amendment right to a jury trial in a bankruptcy proceeding was uncertain.

B. Recent Case History

The statutory authority for bankruptcy courts to conduct jury trials is confusing and contradictory. Courts attempting to grapple with this issue have responded with a wide range of opinions and conclusions. To fully analyze the reasoning of *United Missouri Bank*, it is necessary to discuss two recent United States Courts of Appeals decisions that address the same issue. The first case, *In re Ben Cooper, Inc.*,⁶⁹ was decided in February of 1990, only two months before *United Missouri Bank*. The Second Circuit found statutory and constitutional authority for jury trials in the bankruptcy forum.⁷⁰ In August of 1990, however, only four months after *United Missouri Bank*, the Tenth Circuit decided *In re Kaiser Steel Corp.*⁷¹ The court agreed with the Eighth Circuit in finding that bankruptcy judges may not conduct jury trials due to a lack of statutory authority.⁷² In June of 1990, the United States Supreme Court granted certiorari to *Ben Cooper*, but subsequently vacated the judgment and remanded the case to the Second Circuit to decide a jurisdictional question.⁷³

The Second Circuit conceded that the 1984 Bankruptcy Act does not confer express jury trial authority upon the bankruptcy court. The court stated that section 1411 of the 1984 Act provides little assistance in answering the question of when or where a jury trial should be conducted.⁷⁴ Despite this absence of express language in the 1984 Act, the Second Circuit concluded there is sufficient implied authority based on two separate but related provisions of the United States Code.⁷⁵ First, 28 U.S.C. section 151 provides that "[e]ach bankruptcy judge, as a judicial officer of the district court, may

5, 7 (Bankr. D. Me. 1989); *Weeks v. Kramer (In re G. Weeks Sec., Inc.)*, 89 Bankr. 697, 715 (Bankr. W.D. Tenn. 1988); Sabino, *supra* note 2, at 256-58.

69. *Ben Cooper Inc. v. Ins. Co. of Pa.*, 896 F.2d 1394 (2d Cir. 1990), *vacated on other grounds*, 111 S.Ct. 425 (1990).

70. *Id.* at 1402-04.

71. *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 911 F.2d 380 (10th Cir. 1990).

72. *Id.* at 389.

73. *Ins. Co. of Pennsylvania v. Ben Cooper, Inc.*, 111 S.Ct. 425 (1990).

74. *Ben Cooper*, 896 F. 2d at 1402. See *supra* notes 60-65 and accompanying text for a discussion of section 1411.

75. *Id.*

exercise the authority conferred under this chapter with respect to any action, suit or proceeding."⁷⁶ Second, 28 U.S.C. section 157(b) grants bankruptcy judges "the authority to conduct trials and issue final orders in core proceedings."⁷⁷ In reconciling *Granfinanciera* with these two provisions, the Second Circuit concluded that jury trials must be allowed in the bankruptcy court.⁷⁸ The court then examined two potential constitutional barriers, which they ultimately found not to prevent a bankruptcy court from conducting a jury trial.⁷⁹

In *Kaiser Steel*, the Tenth Circuit, having searched the language and legislative record of the 1984 Act, concluded that no evidence existed of express or implied statutory authority.⁸⁰ The court pointed to the repeal of section 1481 of the 1978 Act, which had given the bankruptcy courts "the powers of a court of equity, law and admiralty," as evidence of their finding.⁸¹ The Tenth Circuit rejected the Second Circuit's interpretation that

76. 28 U.S.C § 151 (1988).

77. *Ben Cooper*, 896 F. 2d at 1402. 28 U.S.C. § 157(b)(1) (1988) states as follows:

Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

78. *Ben Cooper*, 896 F.2d at 1402.

79. *Id.* at 1403-04. The Second Circuit in *Ben Cooper*, having found proper statutory authority, addressed the constitutional problems posed by the seventh amendment and article III. The seventh amendment provides that no fact determined by a jury may be reexamined by another court of law. The court conceded that noncore proceedings may violate the seventh amendment because the findings of fact determined at the bankruptcy court level are required to be reviewed *de novo* by the district court. *Id.* However, "[s]ince the jury verdict in a core proceeding is subject only to the traditional standards of appellate review, such proceeding does not violate the Seventh Amendment." *Id.* See *supra* notes 52-59 and accompanying text for a discussion of core and noncore distinction.

The second constitutional impediment is whether jury trials in the bankruptcy court violated article III of the Constitution. The court concluded that *Marathon* does not prohibit bankruptcy judges from entering final judgements in core proceedings. *Ben Cooper*, 896 F.2d at 1402. The court reasoned that if bankruptcy judges have the power to enter final judgements in core proceedings, then surely jury trials in the bankruptcy court are permissible. *Id.* The power to conduct jury trials was found not to contradict the primary purpose of article III: "to insure a federal judiciary free from pressure from the other branches of government." *Id.* The court illustrated that jury trials have been upheld in other article I forums such as the District of Columbia and federal magistrate courtrooms. *Id.*

80. *Kaiser Steel*, 911 F.2d at 389-92.

81. *Id.* at 391.

the power to issue final orders and judgments in 28 U.S.C. section 157(b)(1) included the power to conduct jury trials and that the words "hear and determine," contained in 28 U.S.C. section 157(b)(1), did not imply jury trial authority but rather suggested the opposite conclusion because the bankruptcy judge cannot review the jury's factual findings.⁸² The court was further convinced that because Congress had previously given article I courts express authority to conduct jury trials, the lack of this express language implied that bankruptcy judges are not to preside over jury trials.⁸³ The Tenth Circuit concluded that, even though *Granfinanciera* suggested giving this power to conduct jury trials to bankruptcy courts, it was improper to grant authority when Congress has not clearly delegated it.⁸⁴

IV. THE INSTANT DECISION

In *United Missouri Bank*, the Court of Appeals for the Eighth Circuit ruled that UMB was entitled to a jury trial, but the trial had to be held in the district court because the bankruptcy court lacked statutory authority to preside over a jury trial. The court began its analysis with a discussion of the *Granfinanciera* decision.⁸⁵ Once the court determined that *Granfinanciera* was controlling, it had little difficulty finding that UMB, as a party to an adversarial proceeding, was entitled to a jury trial.⁸⁶

The majority spent little time addressing whether express authority exists for bankruptcy judges to conduct jury trials. Section 157 of the 1984 Bankruptcy Act, which authorizes bankruptcy courts to conduct certain proceedings, contains no express language conferring jury trial authority on the bankruptcy court.⁸⁷ The court noted that the 1984 Act only discusses jury trials in reference to the district court.⁸⁸ Because Congress has given

82. *Id.*

83. *Id.* at 391-92.

84. *Id.* at 392.

85. *United Missouri Bank*, 901 F.2d at 1451.

86. *Id.* The court concluded the following: "Thus, a party to an adversary proceeding in bankruptcy may have a seventh amendment right to a jury trial before some tribunal, and since there has been no claim filed against the Kroh bankruptcy estate, *Granfinanciera* controls here." *Id.* The court proceeded by giving a historical background of the statutory authority possessed by bankruptcy courts, stressing a desire at all times to determine the intent of Congress. *Id.* at 1451-54.

87. *Id.* at 1454. See discussion of 28 U.S.C. § 157 (1988) *supra* notes 52-59 and accompanying text.

88. *United Missouri Bank*, 901 F.2d at 1454. 28 U.S.C. § 157(b)(5) (1988) states the following: "The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court"

express statutory authority to hear jury trials to non-article III courts in the past, the court concluded that because Congress did not include express language in the 1984 Act, bankruptcy courts do not have the authority to conduct jury trials in core proceedings.⁸⁹

Failing to find express authority within the language of the 1984 Act, the court searched the legislative record for evidence of implied congressional authority.⁹⁰ The court rejected the argument, grounded on section 1411, that because district courts are instructed to hear jury trials in two specific actions, all other jury trials are to be held in the bankruptcy forum.⁹¹ The court reasoned that because no significant mention of extending jury trial authority exists in the legislative record of the 1984 Act, it is beyond the intent of Congress to grant this authority.⁹²

Because *Granfinanciera* mandates a jury trial in fraudulent transfer claims, the Eighth Circuit conceded that although there is no express authority to conduct jury trials, the authority can be implied to make the legislation effective.⁹³ This reasoning was used by the Second Circuit in *Ben Cooper* to find statutory authority.⁹⁴ The Eighth Circuit, however, rejected the Second Circuit's finding that the only way to reconcile the congressional intent with the holding of *Granfinanciera* is to imply authorization for the bankruptcy judges to conduct jury trials.⁹⁵ The instant court found it more likely that Congress never considered whether one has a right to a jury trial in bankruptcy or which court would conduct such a trial.⁹⁶ Even though a finding of implied statutory authority is not contrary to the bankruptcy legislation, the court stated that for the power to be implied, it must be

89. *United Missouri Bank*, 901 F.2d at 1454. The court referred to 28 U.S.C. §§ 636(a)(3), (c)(1) (1988), which authorize magistrates to conduct jury trials in specific cases, as evidence that Congress has previously granted express statutory authority to non-Article III judges to conduct jury trials. *Id.*

90. *United Missouri Bank*, 901 F.2d. at 1454-57.

91. *Id.* at 1454-55.

92. *Id.* at 1455. The court referred to a comment in the legislative record, which provides little direction due to its vagueness. *See* 130 CONG. REC. H6242 (daily ed. Mar. 21, 1984). The court concluded, however, that "if anything can be gleaned from this commentary, it is that Congress intended to continue the Emergency Rule's prohibition against bankruptcy judges conducting jury trials." *United Missouri Bank*, 901 F.2d. at 1455.

93. *Id.* at 1455.

94. *Ben Cooper, Inc. v. Ins. Co. of Pa. (In re Ben Cooper, Inc.)*, 896 F.2d 1394, 1402 (2d Cir. 1990), *vacated on other grounds*, 111 S.Ct. 425 (1990). *See supra* notes 72-79 and accompanying text for a discussion of *Ben Cooper*.

95. *United Missouri Bank*, 901 F.2d at 1456.

96. *Id.*

"practically indispensable and essential."⁹⁷ The court went on to hold that the power to conduct jury trials is not indispensable for bankruptcy judges to carry out their duties conferred by the 1984 Act.⁹⁸

The Eighth Circuit concluded that it must not overstep its bounds to imply jury trial authority simply to create a more efficient and systematic bankruptcy scheme.⁹⁹ The court's decision reflects the principle that courts should "avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative poses no constitutional question."¹⁰⁰ The reasonable alternative is to have the district court conduct the jury trial. Because of the lack of express statutory language and legislative support, in addition to the constitutional questions, the Eighth Circuit reasoned that bankruptcy judges have no statutory authority to conduct jury trials.¹⁰¹

V. DISCUSSION

A. Analysis

In *United Missouri Bank*, the Eighth Circuit, agreeing with two other circuits, concluded there is no express statutory language within the 1984 Bankruptcy Act for bankruptcy judges to conduct jury trials. The circuits reached opposite conclusions regarding the existence of implied authority. The reasoning of the Eighth Circuit that no implied authority exists is persuasive for several reasons. The lack of express or implied language in the 1984 Act and throughout the legislative record clearly supports the Eighth Circuit's holding that bankruptcy judges may not preside over jury trials.

There are three possible explanations for this lack of express or implied statutory language. First, in 1984, Congress was unsure if a right to a jury trial existed in a bankruptcy proceeding, and therefore omitted the necessary language altogether. Congress, however, had no intention of forbidding jury trials in the bankruptcy court if a seventh amendment right did exist. The Second Circuit used this reasoning in finding sufficient implied authority.¹⁰² A second argument is that Congress, by not expressly authorizing jury trial authority in a bankruptcy matter, did not intend in any way to grant that right to the bankruptcy court.¹⁰³ A more plausible explanation for a lack of express language is that Congress never considered which court should

97. *Id.* (quoting 2A SUTHERLAND STAT. CONST. § 55.03 (4th ed. 1972)).

98. *Id.*

99. *Id.*

100. *Id.* at 1456 (quoting *Gomez v. United States*, 490 U.S. 858 (1989)).

101. *United Missouri Bank*, 901 F.2d at 1457.

102. *Ben Cooper*, 896 F.2d at 1402.

103. *See supra* notes 62-65 and accompanying text.

conduct a jury trial in a bankruptcy proceeding because "[u]ntil *Granfinanciera*, it was possible for Congress to presume that jury trial rights would not extend to core proceedings."¹⁰⁴ This view is consistent with the chaotic legislative and case history that has developed over the years since the 1898 Bankruptcy Act. On this matter the Eighth Circuit concluded:

We think it more plausible that Congress simply intended [by enacting the 1984 Act] to transfer all proceedings relating to the bankruptcy estate to the sole jurisdiction of the bankruptcy court without regard to whether a party was entitled to a jury trial, or which forum would conduct the trial. In fact, it appears Congress did not even consider the need to provide jury trial authority.¹⁰⁵

Congress is well aware of the language necessary to authorize bankruptcy courts to preside over jury trials. The lack of statutory authority cannot be overcome merely because *Granfinanciera* authorized a jury trial right in certain core proceedings. Furthermore, it is not desirable to imply authority where Congress has not clearly expressed an intent to delegate that authority.

The Eighth and Tenth Circuits were critical of the Second Circuit's reasoning in finding proper statutory authority for bankruptcy judges to conduct jury trials.¹⁰⁶ The language of 20 U.S.C. section 157(b), which allows bankruptcy judges to enter final judgments in core proceedings, was most likely not intended to grant jury trial authority because at the time of the statute's enactment, it was doubtful that a jury trial right existed in bankruptcy matters. Congress created the 1984 Act in response to the *Marathon* decision, which held that the broad jurisdiction of the 1978 Act, including authority for bankruptcy judges to conduct jury trials, was unconstitutional.¹⁰⁷ The legislative history leading up to the enactment of the 1984 Act simply does not allow an interpretation that Congress impliedly authorized bankruptcy judges to conduct jury trials. Even though *Granfinanciera* suggests allowing a bankruptcy judge to conduct core proceedings involving a jury trial, courts cannot ignore the lack of express or implied statutory authority merely to create a more efficient bankruptcy system.

An argument not raised by the Eighth Circuit is that the removal of Rule 9015 in 1987 was conclusive proof that bankruptcy courts are not to conduct jury trials.¹⁰⁸ Rule 9015 had formerly given procedural rules for jury trials

104. *Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.)*, 911 F.2d 380, 392 (10th Cir. 1990).

105. *United Missouri Bank*, 901 F.2d at 1456 (footnotes omitted).

106. *Id.* at 1456; *Kaiser Steel*, 911 F.2d at 391.

107. *See Marathon*, 958 U.S. at 50.

108. *See* discussion of Rule 9015 *supra* notes 49-50, 66-68 and accompanying

in the bankruptcy court and was considered evidence that bankruptcy judges could conduct jury trials.

B. Practical Considerations

Because *Granfinanciera* authorized jury trials in certain bankruptcy proceedings, the practical problems of which forum is best suited to conduct these jury trials must be addressed. Regardless of the outcome of *Ben Cooper*, the following practical considerations may be useful in determining the future of jury trials in bankruptcy matters. For example, assuming that no authority exists for allowing jury trials in the bankruptcy forum, these considerations may help in deciding whether Congress should grant this authority. On the other hand, if the Supreme Court finds implied statutory authority in *Ben Cooper*, these considerations may also be helpful in determining whether procedural guidelines are needed to create a more efficient and consistent scheme of trying jury trials in the bankruptcy forum.

Before discussing these practical considerations, one must consider why Congress implemented the bankruptcy court system in the first place. Congress designed the bankruptcy system to provide quick and efficient resolution of bankruptcy matters. Allowing bankruptcy judges to conduct jury trials would reduce the overall efficiency of the bankruptcy system. "[J]ury trials are arguably inconsistent with the expeditious resolution of bankruptcy proceedings as mandated by Congress and the courts."¹⁰⁹ On the other hand, transferring a jury trial to the district court will extend, sometimes by many months, the resolution of the case. This transfer would not delay other cases on the bankruptcy docket, but it would add a burden to the overloaded dockets of the district court. Therefore, the district and bankruptcy courts may have to partially sacrifice their efficiency objectives to process these bankruptcy jury trials.

A second consideration is whether a bankruptcy court is a suitable forum to conduct a jury trial. As mentioned previously, the bankruptcy court is designed to bring a quick and efficient resolution to bankruptcy matters. Bankruptcy judges are not appointed to preside over lengthy adversarial disputes; they are expected to expeditiously resolve bankruptcy matters in the best interests of both the debtors and the creditors. "[B]ankruptcy cases should be separated from the adjudication of adversarial controversies arising out of them."¹¹⁰ Jury trials are more complex proceedings and involve many aspects different from a normal bankruptcy proceeding. These differences include the selection of jurors, formal rules of evidence, more complex

text.

109. Bever & Cantrel, *supra* note 2, at 824.

110. COLLIER ON BANKRUPTCY, App. 2, at 81 (15th ed. 1990).

procedure rules, and a different apportionment of the roles of the judge and jury. The Second Circuit, which found authority for conducting jury trials in the bankruptcy court, noted that no jury trial procedure currently exists in the Bankruptcy Rules.¹¹¹ The Second Circuit suggested relying on Federal Rule of Civil Procedure 38 or upon local rules similar to Rule 9015, now repealed, for proper jury trial procedure in the bankruptcy court.¹¹² If a bankruptcy court is to conduct jury trials, procedural guidelines will be necessary to create an efficient and consistent scheme of processing these trials.¹¹³

The appropriateness of a jury trial in either forum raises the possibility of inadvertent bias by the presiding judge. Although the jury maintains the duty of making the factual determinations, the judge retains considerable discretion in granting or denying the different motions made by the parties. A creditor entitled to a jury trial under the seventh amendment may prefer a district court judge. The creditor may fear that a bankruptcy judge will naturally favor the rehabilitation of the debtor over the claims of the creditor. This fear may be the underlying motive when a creditor, such as UMB in the instant case, demands that the district court conduct the jury trial. Creditors may feel that the district court is a more favorable forum for advancing the rights of a creditor in a bankruptcy proceeding. The debtor, however, may naturally prefer the bankruptcy court, with the hope that the bankruptcy judge will be more sympathetic to the concerns of the debtor. Regardless of where the jury trial is conducted, the possibility of bias will exist in either court and does not appear to be a pivotal issue.

The most serious consideration is a belief that all matters relating to the bankruptcy estate should be conducted in the bankruptcy forum. The bankruptcy judge is given wide authority under 28 U.S.C. section 157(b)(1) to "hear and determine all cases."¹¹⁴ It is more appropriate for a bankruptcy judge to conduct a bankruptcy related jury trial because of the judge's expertise in bankruptcy matters, in addition to the judge's familiarity with a particular case. "[T]he adjudication should be performed by bankruptcy courts expert in the subject."¹¹⁵ In *United Missouri Bank*, the complex matter proceeded within the bankruptcy system for two years before the Eighth Circuit thrust the matter into the district court because of the jury trial implications. A forceful argument is that the bankruptcy judge should resolve

111. *Ben Cooper*, 896 F.2d at 1402-03.

112. *Id.*

113. *See, e.g.*, COLLIER BANKRUPTCY RULES PART 2, at 271 (1990), Advisory Committee Note on Rule 9015: "In the event the court of appeals or the Supreme Court define a right to jury trial in any bankruptcy matters, a local rule in substantially the form of Rule 9015 can be adopted."

114. 28 U.S.C. § 157(b)(1) (1988).

115. COLLIER ON BANKRUPTCY, App. 2, at 81 (15th ed. 1990).

the bankruptcy matter in its entirety rather than transferring the case to the district court for the jury trial, only to have the case sent back to the bankruptcy court after the jury trial. The removal to the district court "impairs the bankruptcy court's ability to administer and expeditiously resolve bankruptcy proceedings."¹¹⁶

A weighing of the various factors suggests that the bankruptcy court is best suited to conduct the jury trial. Although the Eighth Circuit correctly decided the statutory authority issue, the result of that decision appears to conflict with the underlying objectives of the bankruptcy scheme. It is of paramount importance to maintain the entire matter within the bankruptcy court to achieve quick, consistent, and expert relief. The disadvantage to this solution is a slight disruption to the efficiency of the bankruptcy scheme. The swelling dockets of the district courts, however, will not have to bear this burden. Procedural guidelines also can be established quickly to ease the transition for bankruptcy judges who conduct these somewhat unfamiliar proceedings. Although these considerations encourage the bankruptcy judge to conduct the jury trial, they simply cannot overcome the absence of the necessary statutory authority.

VI. CONCLUSION

The Supreme Court will soon resolve the issue of whether a bankruptcy judge has authority to conduct a jury trial.¹¹⁷ The relevant statutory provisions, as well as the legislative record behind those provisions, provide no authority for bankruptcy courts to conduct jury trials. In *United Missouri Bank*, the Eighth Circuit correctly concluded that the legislative records of the bankruptcy statutes provide no implied authority for bankruptcy courts to conduct jury trials.

Although *United Missouri Bank* appears to have reached the proper result regarding statutory authority, the final result of that case does not promote an efficient and workable bankruptcy system. Under the present statutory language, *United Missouri Bank* suggests a bifurcated system to resolve bankruptcy matters involving jury trials. This bifurcated system demonstrates the need for Congress to enact new legislation, within the limits established by *Marathon*, to allow jury trials in the bankruptcy forum. The simplest solution is for Congress to convey to bankruptcy judges, as they have done in

116. Bever & Cantrel, *supra* note 2, at 825.

117. See e.g., *Ben Cooper*, 896 F.2d 1394 (2d Cir. 1990), *vacated on other grounds*, 111 S.Ct. 425 (1990) (The Supreme Court remanded this case to the Court of Appeals and directed the court to determine if the court had proper jurisdiction over the case.).

the past with other article I courts, the power to hear jury trials within the limits of the seventh amendment and article III of the Constitution.

The Supreme Court may follow the reasoning of the Second Circuit to establish implied statutory authority for bankruptcy judges to preside over jury trials. This finding, however, does not diminish the need for congressional action to provide rules and procedures for bankruptcy courts to conduct jury trials in the bankruptcy forum.

KEVIN P. MCDOWELL

