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NOTE: Should Bankruptcy Judges be permitted to Conduct Jury Trials?

The issue of whether a bankruptcy judge has the power to conduct a jury trial is the focus of an ongoing dispute among both Congress and the federal courts. [1] Although the Supreme Court, in *Granfinanciera, S.A. v. Nordberg,* [2] concluded that a jury trial must be provided when the relief sought is of a legal nature −− such as money damages, and private rights −− the Court expressly declined to decide whether bankruptcy courts could, within their statutory and constitutional authority, preside over that trial. [3] Furthermore, the Court clouded the controversy by failing to rule on the issue of whether it would violate both Article III and the Seventh Amendment of the United States Constitution if Congress authorized Article I bankruptcy courts to conduct jury trials. [4]

All the circuits that have considered the question of whether a bankruptcy judge may preside over a jury trial have uniformly agreed that no statutory provision either expressly authorizes or prohibits jury trials in bankruptcy courts. [5] The Fourth, Sixth, Seventh, Eighth and Tenth Circuits have held that bankruptcy courts do not have the statutory authority to conduct jury trials and refused to imply such authority. [6] Since this conclusion was reached purely on statutory grounds, the issue of whether or not it is constitutional to conduct such trials was never addressed. [7]

The Second Circuit is the only appellate court that has held that bankruptcy courts may conduct jury trials in core proceedings. [8] The court based its conclusion upon 28 U.S.C. § 151 and § 157(b). [9] In addition, the Second Circuit assessed the constitutional consequences of its holding and concluded that a jury verdict in a core proceeding does not violate the Seventh Amendment's re−examination clause. [10] It also found that jury verdicts in bankruptcy courts do not violate Article III because bankruptcy courts normally have the power to enter final judgments without violating Article III. [11]

This Note demonstrates that bankruptcy judges have the power to conduct jury trials and examines the development and evolution of bankruptcy court jurisdiction. Part I provides a constitutional and statutory background to the use of jury trials in bankruptcy cases. Part II sets forth a case history of the courts' struggle with the constitutionality of the use of jury trials in bankruptcy proceedings. Part III analyzes lower court decisions in the aftermath of *Granfinanciera*. Finally, Part IV demonstrates why Bankruptcy Judges, and not District Court Judges, should preside over jury trials when such a right attaches in the bankruptcy forum.

I. Background and Statutory History

A. The Bankruptcy Act of 1898

Bankruptcy courts were created by Congress pursuant to Article I. [12] As Article I courts, they are courts of limited jurisdiction and cannot exercise the wide range of powers held by Article III courts. [13] Just over twenty years ago, the bankruptcy courts were genuine courts of equity that operated under the authority granted by the Bankruptcy Act of 1898 ("the 1898 Act"). [14] Under the 1898 Act, the jurisdiction of bankruptcy courts was similar to the jurisdiction of the federal courts prior to the merger of law and equity. [15] Therefore, under the 1898 Act, bankruptcy referees exercised limited summary jurisdiction over bankruptcy litigation without the aid of a jury and without the parties' consent. [16] Examples of summary proceedings included: administrative matters arising in the course of a bankruptcy proceeding, such as the allowance and disallowance of claims; disputes over property of the estate; and other related matters in which the parties had consented to the bankruptcy court's jurisdiction. [17] All other bankruptcy related disputes were resolved by plenary suits in a state or federal district court. [18] Because plenary actions were not central

to the bankruptcy case and merely affected the bankruptcy estate, these actions were tried in either the district court or state courts. [19]

Unnecessary litigation over jurisdiction in the bankruptcy court arose because of the division of summary and plenary jurisdiction. [20] This litigation wasted court time and delayed the reimbursement of creditors. [21] In addition, parties would profit by the delay and would never reach the merits of the suit. [22] The accompanying cost and delay to the participants was a major factor in the drafting of the Reform Act of 1978. [23]

B. Jury Trials Under the 1898 Act

Under the 1898 Act, the right to a jury trial was determined by either the Seventh Amendment or by non−bankruptcy state or federal law. [24] Jury trials were not permitted in the bankruptcy forum; however, two narrow exceptions existed involving involuntary petitions and the dischargeability of debts. [25] If a proceeding fell within the bankruptcy court's jurisdiction, it was equitable in nature, and the Seventh Amendment did not apply. [26] The bankruptcy judge would then decide the matter without a jury. [27] Matters that did not fall within the limited jurisdiction of the bankruptcy court, but that were related to the bankruptcy proceeding, were heard in the federal district court or transferred to the appropriate state court. [28]

C. Jury Trials Under the 1978 Act

When Congress revised the Bankruptcy laws in 1978, it abolished the distinction between summary and plenary jurisdiction, and it included among its reforms a new jury trial provision. [29] The Bankruptcy Act of 1978 ("The Code") was interpreted by courts as granting jurisdiction "much broader than that exercised under the former referee system." [30] The Code granted the new courts jurisdiction over all civil proceedings arising under title 11 or arising in or related to cases under title 11. [31] Bankruptcy court judges were vested with all the "powers of a court of equity, law and admiralty," except that they could not "enjoin another court or punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." [32] In addition, Congress permitted bankruptcy judges to conduct jury trials under 28 U.S.C § 1480. [33]

The construction of § 1480 has been and still remains the source of much controversy. A majority of courts believed that if, under the 1898 Act, the matter could have been brought as a plenary proceeding, which would have entitled the litigant to a jury trial, then the litigant had the right to demand a jury trial in the bankruptcy court. [34] The minority view held that Congress' intent in enacting the Act was to extinguish the summary−plenary distinction and instead to have the bankruptcy courts determine whether the issues were legal or equitable. [35]

Regardless of which view was taken, it was evident that the Code transformed bankruptcy judges from referees to judges who were on equal jurisdictional footing with those authorized under Article III, but without lifetime tenure and compensation protection. [36] Article III mandates that the judicial power of the United States be vested in courts with judges who have life tenure and irreducible compensation. [37] The bankruptcy court is not an Article III court, and the Code raised a constitutional question of whether it impermissibly vested "judicial power" in the non−Article III bankruptcy courts. [38]

D. Northern Pipeline and its Aftermath

1. The Northern Pipeline Decision

In addressing the constitutionality of whether the Code vested "judicial power" in non−Article III bankruptcy courts, the Supreme Court, in *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, [39] established two principles to aid in determining what matters Congress may Constitutionally assign to bankruptcy courts. [40] First, by creating a substantive federal right, Congress has the discretion to prescribe the manner in which a matter is adjudicated and may assign it to an adjunct. [41] Second, the functions of the bankruptcy judge must be limited in such a way that the "essential attributes" of the judicial power are retained in the Article III court. [42]

The "Good Behavior Clause" guarantees that Article III judges enjoy life tenure and the "Compensation Clause" guarantees Article III judges protection against the diminution of salary. [43] These provisions were incorporated into the Constitution to maintain a system of checks and balances, and to ensure independence of the Judiciary from the control of the legislative and executive branches of government. [44] Since bankruptcy judges are not protected against reduction in salary and serve for only a term of years rather than for life, the Supreme Court held that the Bankruptcy Reform Act of 1978 was unconstitutional as it vested too much of the Article III judicial power in non−Article III bankruptcy judges. [45]

2. The Emergency Rule

Since Congress delayed in amending the Bankruptcy Code after *Northern Pipeline*, the district courts adopted an Emergency Rule promulgated by the Judicial Conference that prohibited bankruptcy judges from hearing jury trials. [46] The rule revived the adjunct system, which was in effect before the Reform Act. [47] The Emergency Rule carefully defined "related proceedings" and prohibited a bankruptcy judge from entering into a final judgment without the parties' consent in such a proceeding. [48] The rule included other safeguards designed to prevent bankruptcy courts from "exercising the essential attributes" of Article III courts. [49] For example, if a jury trial was required in a bankruptcy matter, only a district court was authorized to conduct the trial. [50]

3. Rule 9015

Further confusion arose when the revised Bankruptcy Rules were issued the following year. [51] In particular, the Supreme Court and Congress approved Rule 9015, [52] which conflicted with the Emergency Rule. [53] This Rule governed the procedure for demanding and conducting jury trials and appeared to reauthorize jury trials. [54] Although the Emergency Rule was still in effect, many courts recognized that Rule 9015 conflicted with the Emergency Rule and concluded that Rule 9015 superseded the Emergency Rule. [55] In 1987, the Judicial Conference abrogated Rule 9015 after the Committee concluded that courts were improperly relying on it to justify jury trials before bankruptcy judges and recognized that it should not result in the alteration of substantive rights. [56]

4. The Bankruptcy Amendments and Federal Judgeship Act of 1984

In response to *Northern Pipeline*, Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("the 1984 Act"). [57] The 1984 Act substantially restructured the jurisdiction of bankruptcy courts by dividing bankruptcy proceedings into core and non−core matters. [58] The bankruptcy court determines whether a matter is a core or non−core proceeding upon its own motion or that of one of the parties. [59] Under the 1984 Act, bankruptcy judges were authorized to hear, determine and enter final orders in all core proceedings subject only to the district court's plenary review on questions of law. [60] In non−core proceedings, the bankruptcy judge may hear the proceedings but only recommend a disposition to the district court, which enters any final judgment after *de novo* review. [61] The 1984 Act provided virtually no guidance as to whether a bankruptcy court had the authority to conduct jury trials as it lacked a specific provision addressing the issue. [62] >

II. Constitutionality Of Jury Trials in Bankruptcy Courts

The United States Constitution further limits the authority that Congress may vest in bankruptcy courts through both Article III and the Seventh Amendment. [63] If the exercise of that power exceeds the limitations set by the Constitution, then that grant of power is unconstitutional and invalid. [64] The Seventh Amendment and Article III both place considerable limitations on the authority that Congress may vest in bankruptcy courts. [65]

A. Seventh Amendment Limitations

The Seventh Amendment demands that the right to a jury trial shall be preserved in suits at common law. [66] It is the second clause of the Seventh Amendment that poses the greatest obstacle to bankruptcy judges conducting jury trials. [67] The second clause prohibits re−examination of any fact tried by a jury unless a new trial is granted in the discretion of the court. [68] The Federal Rules of Civil Procedure establish that appellate review of a judgment of a jury verdict is more restricted than review by a trial court. [69] A trial court may grant a new trial if the jury's verdict is against the

weight of the evidence, whereas an appellate court may not consider the weight of the evidence, except to determine that no substantial evidence exists to support the verdict. [70] To protect the integrity of the jury's findings, the appellate court exercises less discretion in reviewing facts found by a jury and accepted by the trial judge.

It appears that bankruptcy judges in non−core proceedings may not conduct jury trials where the bankruptcy judge submits proposed findings of fact and conclusions of law to the district court for *de novo* review. [71] On the other hand, bankruptcy judges may hear and determine matters in core proceedings subject to only traditional appellate review by district courts. [72] This procedure does not violate the re−examination clause of the Seventh Amendment. [73]

B. *Article III Limitations*

The issue that stems from Article III focuses on the idea that Article I courts should not be empowered to conduct jury trials because they do not share the protected status of Article III judges. [74] Article III defines the "judicial power of the United States" and in order to maintain an independent judiciary, it vests the power to conduct jury trials in courts whose judges enjoy lifetime tenure and salary protection. [75] Some courts hold that bankruptcy judges cannot conduct jury trials, as they do not have these protections. [76] The constitutional debate of whether to allow bankruptcy judges to conduct jury trials continues after *Granfinanciera* because the Court expressly refrained from deciding whether jury trials in bankruptcy courts are constitutional under the Seventh Amendment and Article III..

C. Granfinanciera

In *Granfinanciera*, the Supreme Court decided whether there was a right to a jury trial in a fraudulent transfer case. [77] The Supreme Court applied a three−step analysis to determine if there was a Seventh Amendment right to a jury trial in core proceedings. First, a court must compare the current action to an eighteenth century action brought in the courts of England prior to the merger of the courts of law and equity. [78] Second, the court must decide whether the remedy sought is legal or equitable in nature. [79] Finally, if the first two factors indicate that there is a right to a jury trial, the court must decide if Congress can assign the claim to a non−Article III adjudicative body that does not use a jury as fact finder. [80]

The Court stated that the Seventh Amendment does not entitle a party to a jury trial, even if a legal claim is asserted. [81] The Court also noted that although Congress may assign public rights claims to administrative agencies that do not utilize juries, it "lacks the power to strip parties contesting matters of private rights of their constitutional right to a trial by jury." [82] The Court reasoned that since the Constitution does not grant Congress the authority to convert legal claims into equitable ones, it cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be brought to an administrative tribunal." [83]

The Court found that fraudulent conveyance actions were actions at law, not equity, because of the nature of their remedies and their roots in common law. [84] In addition, the Court concluded that since Congress had not assigned jurisdiction of the action to a non−Article III tribunal sitting without a jury, the Seventh Amendment guarantees petitioners a jury trial upon request. [85]

In *Granfinanciera*, the Supreme Court made it clear that parties in core proceedings may have a Seventh Amendment right to a jury trial, and that Congress may not strip a party of such a right unless the claims assert public rights. [86] Unfortunately, the Court left unanswered the question of which forum was appropriate for the jury trial and the potential problems created if the forum chosen was a bankruptcy court. The Court expressly limited its holding to avoid these issues. [87] The Supreme Court's failure to offer clear guidance on the constitutionality of conducting jury trials in bankruptcy courts has led to an ongoing dispute among the federal courts.

III. Lower court decisions in the aftermath of granfinanciera

A. Core Proceedings

Six circuits have considered the issue of whether a bankruptcy judge may preside over a jury trial. The Second Circuit introduced the primary analysis for upholding bankruptcy court jury trials in core proceedings in *In re* Ben Cooper,

Inc. [88] In *Ben Cooper*, the court held that bankruptcy judges are authorized to conduct jury trials, that such trials satisfy the Seventh Amendment, and that they do not offend Article III. [89] The court followed the analysis used in *Granfinanciera* to determine that because the debtor's claim was legal in nature, the right to a jury trial was preserved. [90]

The court then addressed the issue of whether the bankruptcy court has the authority to preside over the jury trial. [91] Turning to *Granfinanciera*, the Court stated that although *Granfinanciera* left the question open, the opinion "contains several passages indicating the Court's contemplation that its holding may result in jury trials in the bankruptcy court." [92] In addition, the court acknowledged that the relevant statutory provision, 28 U.S.C. § 1411, offered little guidance. [93] With no specific statutory provision, the Second Circuit relied on the implied authority of 28 U.S.C. § 151, which gives a bankruptcy judge the authority conferred with respect to any action, suit or proceeding. [94] In addition, the court's decision rested on 28 U.S.C. § 157, which gives bankruptcy judges the authority to hear and determine and to issue final orders in core proceedings. [95]

Turning next to the constitutional concerns, the court found that allowing jury trials in core matters in bankruptcy courts does not violate the Seventh Amendment's re−examination clause because a jury verdict in a core proceeding is only subject to traditional tests of appellate review and is not subject to *de novo* review. [96] The court further held that jury trials in bankruptcy courts do not violate Article III, assuming that bankruptcy jurisdiction over all "core" matters is constitutional. [97] The court reasoned that since "bankruptcy courts have the power to enter final judgments without violating Article III, it follows that jury verdicts in bankruptcy courts [would] not violate Article III." [98]

The court also noted that other Article I courts preside over jury trials, provided the authority of Article I judges does not "run afoul" of Article III judges. [99] The District of Columbia's court system, which is organized under Article I, may conduct jury trials. [100] These trials do not violate the Seventh Amendment. [101] In addition, magistrate judges, who possess only limited powers, may conduct jury trials with consent of the parties. [102] There are problems, however, when bankruptcy courts are compared to other Article I courts. For example, unlike bankruptcy courts, District of Columbia courts are not situated within any state. [103] Bankruptcy judges differ from magistrates in that there is no express statutory authority for bankruptcy judges to conduct jury trials as there is for magistrates. [104] Although the bankruptcy courts differ from other Article I courts, the fact that other Article I courts are conducting jury trials undermines the argument that jury trials are the sole province of Article III tribunals.

Additional reasoning in support of the authority of a bankruptcy court to preside over a jury trial has been offered by other courts. One court has noted that the Emergency Rule adopted after *Northern Pipeline* contained an express prohibition against a bankruptcy court conducting a jury trial. [105] The court found that since this prohibition was not incorporated into the 1984 Act, Congress impliedly left jury trial authority with the bankruptcy courts. [106] Another court focused on the interplay between 28 U.S.C. § 1411 and 28 U.S.C. § 157(b)(5) in the 1984 Act and held that these provisions do not preclude but instead support jury trials in bankruptcy court because the statute specifies that only personal injury and wrongful death jury trials are to be held in non−bankruptcy courts. [107] Other courts have upheld jury trial authority because of the absence of any express prohibition. [108] These courts looked behind the purposes of Article III and the Seventh Amendment and recognized that Article III was intended to protect the judiciary from encroachment by the other branches of government. [109]

Contrary to the Second Circuit's opinion, many courts believe that bankruptcy courts may not conduct jury trials in core matters because there is no explicit congressional authorization to do so. [110] The Eight Circuit held in *In re United Missouri Bank of Kansas City, N.A.*, [111] that a bankruptcy court has no authority to conduct a jury trial. In that case the court noted "serious Constitutional problems" with allowing jury trials in bankruptcy court, however it decided the case solely on the issue of statutory authority. [112]

United Missouri Bank

declared that bankruptcy courts lack both the constitutional and legislative authority to conduct jury trials. [113] Although bankruptcy judges were not expressly given the authority to conduct jury trials under the 1978 Act, the court reasoned that Congress' extremely broad jurisdictional grant and the legislative history indicate that the legislature intended the bankruptcy courts to conduct jury trials. [114] The Eighth Circuit observed that the Supreme Court struck

down this broad grant of jurisdiction because it was unconstitutional. [115] The court next recognized that the 1984 Amendments to the Bankruptcy Code established a bifurcated system that allocated bankruptcy court jurisdiction between core and non−core proceedings. [116] The Eighth Circuit concluded that there was no express statutory language necessary to grant jury trial authority to bankruptcy judges. [117] The court also looked to legislative history and noted that nowhere does it suggest that Congress intended to grant bankruptcy judges the authority to conduct jury trials. [118] The Eighth Circuit refused to grant the bankruptcy court or judge the authority to conduct jury trials without ever reaching the constitutional issues. [119]

The Seventh Circuit, in *In re Grabill Corp*., [120] was given the opportunity to analyze the permissibility of jury trials in bankruptcy courts. In deciding whether any statutory authority exists for a bankruptcy court to conduct jury trials, the court looked to the express language of the 1984 Act and did not find an express grant of authority. [121] The court then focused on 28 U.S.C. §§ 1411 [122] and 157(b)(5) [123] for potential implicit authority and was unable to discern Congressional intent from the language of the 1984 Act and the scant legislative history available. [124] Finding no affirmative indication that Congress desired to authorize jury trials in bankruptcy courts, the court declined to infer such authority. [125]

The court then turned to the Congressional response to the *Northern Pipeline* decision and observed that Congress "greatly reduced the independent authority of bankruptcy judges." [126] The court observed that Congress repealed 28 U.S.C. § 1481, [127] which had granted bankruptcy judges the "powers of a court of equity, law and admiralty," and replaced it with 28 U.S.C. § 151, [128] which limits bankruptcy judges' powers to those conferred under the 1984 Act. [129] Since the power of bankruptcy judges was substantially decreased, the court refused to find that bankruptcy judges had power equal to that of Article III judges with respect to conducting jury trials.

The court then examined the language of 28 U.S.C. § 157(b)(1), [130] which allows bankruptcy judges to determine all title 11 cases, and concluded that this power vested in the bankruptcy judges alone and could not be delegated to juries. [131] In addition, the court noted that Congress had expressly conferred the power to conduct jury trials upon magistrate judges, who, like bankruptcy judges, are Article I judges. [132] The court reasoned that since Congress had ample opportunity to expressly grant the same power to bankruptcy judges, [133] and it failed to include such a provision in the 1984 Act, this absence was evidence that Congress had not intended to authorize jury trials in bankruptcy courts. [134] Since *Grabill* was decided on purely statutory grounds the constitutional issues concerning the powers of Article III and Article I judges were never reached. [135]

B. Non−core Proceedings

Although the circuits have not reached agreement as to whether a bankruptcy judge may conduct a jury trial in a core proceeding, all agree that a bankruptcy judge may not conduct a jury trial in a non−core proceeding. The 1984 Amendments state explicitly that a bankruptcy judge cannot enter a final judgment in a non−core proceeding unless the parties consent. [136] Because of this limitation, all courts have held that jury trials of non−core matters must occur before a district judge unless the parties agree otherwise. [137] The courts based their decisions upon section 157(c)(1), which requires *de novo* review by a district court in non−core matters, and reasoned that constitutional problems would arise because the Seventh Amendment requires that the facts tried by a jury cannot be re−examined. [138] Courts frequently rule differently on whether an issue is core or non−core, therefore, it is inevitable that inconsistent rulings will result among the courts. [139]

IV. Policies and Practical Considerations in Favor of Entrusting Bankruptcy Courts to Preside Over Jury Trials

Since the bankruptcy system was designed to provide a quick and efficient resolution of bankruptcy matters, it is more practical for a bankruptcy judge to conduct a bankruptcy related jury trial because of the judge's expertise and specialized knowledge of bankruptcy law. [140] Since jury trials are time consuming, some courts believe that they would decrease the efficiency of a bankruptcy court; however, if the jury trial were transferred to a district court, it would prolong the amount of time it ordinarily takes to resolve the case. [141] This transfer would not delay the cases in the bankruptcy courts, but it would further burden the already overloaded dockets of the district court. [142] In addition, the bankruptcy judge would already be familiar with a particular case, and it would be inefficient to pass it to a district court judge who would then have to familiarize himself with the facts and issues of the case.

It is advantageous to hold jury trials in the bankruptcy courts because it would avoid the shifting of a case, or part of a case, from one judge to another. [143] This would conserve both the time and resources of the parties and judges, and would prevent the abusive practice of a litigant demanding a jury trial merely to remove a matter from a particular bankruptcy judge. [144] The removal of the jury trial portion of the proceeding to the district court not only frustrates the efficiency that the bankruptcy courts were designed to encourage, but also further clogs the already overburdened district courts. [145] Although some bankruptcy courts may not have the facilities to handle jury trials, it is unfair to infer that a bankruptcy court cannot conduct a jury trial. [146]

The notion that bankruptcy judges are not competent to conduct jury trials because they lack life tenure is misguided because many judges, such as state trial judges and federal magistrate judges, routinely conduct jury trials even though they lack the life tenure of federal judges. [147] When comparing a bench trial to a jury trial, the main differences between the two are that jury trials have voir dire and jury instructions. [148] Since jury instructions are often drafted by law clerks, "tendered by the litigants," or copied out of formbooks, these additional functions would not burden a bankruptcy judge unduly. [149] In addition, "tenure does not insulate the fact−finding process; quite the contrary, juries protect the citizens from tenured officers." [150] In fact, a bankruptcy judge's fourteen year tenure is the functional equivalent of life tenure because the "active service of an average district judge approximates fourteen years." [151] In addition, because bankruptcy judges are re−appointed, the distinction between bankruptcy judges and Article III judges is even less significant. [152] Congress has left the question of whether bankruptcy judges may conduct jury trials to the courts, and it is apparent that the resolution that best promotes prudent judicial administration is allowing bankruptcy judges to conduct jury trials. [153]

Some argue that there is a possibility of inadvertent bias by bankruptcy judges. Many creditors entitled to a jury trial may prefer a district court judge because they may fear that a bankruptcy judge will favor the rehabilitation of the debtor over the claims of the creditor. [154] Conversely, debtors may prefer the bankruptcy court, with the hope that the bankruptcy judge will be more sympathetic to their concerns. [155] This is not a critical issue, as the possibility of bias will exist in both a bankruptcy court and a district court. [156]

In 1997, the National Bankruptcy Review Commission issued a report urging that bankruptcy courts be recreated as Article III tribunals. [157] The Commission explained the many benefits of making bankruptcy courts into Article III courts, noting that "Article III status would clearly eliminate the need for withdrawal provision, special jury provisions, special abstention provisions, core v. non−core distinctions, a double layer of litigation at the trial level through the present need for proposed findings by one judge which are given to another judge who can retry the same matter." [158]

The proposal would permit sitting judges to complete their current fourteen−year terms and as vacancies were created, Article III judges would be appointed by the President, with the recommendation and consent of the Senate, to hold office during good behavior. [159] In addition, sitting judges would be permitted to apply for Article III judgeships. [160] Bankruptcy court jurisdiction would be transferred to Article III judges appointed in a district, including the power to refer and withdraw cases and proceedings. [161] If a particular district does not have an Article III judge appointed, an Article III bankruptcy judge from another district within the same circuit would be designated to sit. [162] Two tiers of bankruptcy judges would exist during the transition period. [163] About 215 bankruptcy judge terms will expire between 1999 and 2002. [164] Although the National Bankruptcy Review Commission made a compelling case for according Article III status to federal bankruptcy judges, there is no indication that Congress is interested in moving in that direction because there is much opposition. [165]

V. Conclusion

Significant questions and problems persist respecting the authority and necessity for jury trials in bankruptcy proceedings. Although there is no express statutory language granting bankruptcy judges the power to preside over jury trials, it is implicit that Congress intended to vest bankruptcy judges with this power in limited situations. In order to eliminate the confusion among the circuits, a statute should be enacted that would give bankruptcy courts the power to conduct jury trials in core proceedings. The question of whether a bankruptcy judge may preside over a jury trial in a non−core proceeding must be answered. If necessary, Congress should grant bankruptcy judges Article III status and revert back to the 1978 Reform Act. This would resolve the constitutional problems and the dispute among the lower

courts over statutory authority. Clearly, the policy considerations, as well as the statutory and Constitutional implications discussed above, indicate that Congress should decide the jury trial issue in favor of bankruptcy courts.

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FOOTNOTES:

[1] See William Delaney, *In re Grabill Corporation: Another "No" for* Jury Trials in the Bankruptcy Courts, 38 Vill. L. Rev. 203, 203 (1993) (discussing debate that has emerged among federal courts); Gary T. Rafool, *Jury Trials in* Bankruptcy Court, 81 Ill. B. J. 146, 146 (1993) (stating that issue of whether bankruptcy judge can conduct jury trial refuses to die); *see also* John A. Terselic, Bankruptcy Judges Conducting Jury Trials: Sidestepping the Statute and Hurdling the Constitution), 4 DePaul Bus. L.J. 227, 227−228 (discussing Congressional action and cases decided after *Northern Pipeline*). Back To Text

[2] 492 U.S. 33 (1989). Back To Text

[3] *See* id. at 50 (stating that Court is not obliged to decide if Congress has authorized bankruptcy courts to hold jury trials in certain actions and if authorization comports with Article III; court also need not consider whether jury trials conducted by bankruptcy court satisfies Seventh Amendment); *see also* U.S. Const. amend. VII (preserving right to jury trial); Delaney, supra note 1, at 204 n.1 (providing that court maintained that there is Seventh Amendment right to jury trial in bankruptcy cases involving fraudulent conveyance). Back To Text

[4] *See* Granfinanciera, 492 U.S. at 50; *see also* Mitchell Hall, *Granfinanciera, Northern Pipeline, and "Public Rights": May a Bankruptcy Judge Preside Over a Jury Trial?*, 80 Ky. L.J. 499, 499 (1992) (arguing that judicial response to *Granfinanciera* decision indicates that bankruptcy judges do not have constitutional right to conduct jury trial); Matthew F. Herman, *Jury Trials in Bankruptcy: "Give 'Em What They Want,"* 57 Alb. L. Rev. 1157, 1157 (1994) (discussing split in circuit courts regarding authority of bankruptcy judges to conduct jury trials); William J. Kelleher III, *The Continuing Saga of Jury Trials in Bankruptcy Court – Is there an Answer?: An Argument for Jury Trials in* Bankruptcy Court, 2 Am. Bankr. Inst. L. Rev. 477, 477−78 (1994) (presenting rationales for allowing bankruptcy courts to hold jury trials). Back To Text

[5] *See* In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1452 (8th Cir. 1990) (stating there is no specific grant of authority allowing or prohibiting bankruptcy judges from hearing jury trials); In re Ben Cooper, Inc., 896 F.2d 1394, 1394 (2d Cir. 1990), cert. granted, 497 U.S. 1023, *vacated and remanded*, 498 U.S. 964 (1990), reinstated, 924 F.2d 36 (2d Cir. 1991), cert. denied, 500 U.S. 928 (1991) (concluding that relevant statutory provision offers almost no guidance but holding that bankruptcy courts may conduct jury trials); El Paso Refinery L.P. v. Lynco−Electric Co., Inc., (In re El Paso Refinery, L.P.) 165 B.R. 826, 828 (W.D. Tex. 1994) (discussing how all circuits have agreed that there is no statutory provision authorizing or prohibiting jury trials in bankruptcy courts). Back To Text

[6] *See* Stansbury Poplar Place, Inc. v. Milton Schwartzman (In re Stansbury Poplar Place, Inc.), 13 F.3d 122, 128 (4th Cir. 1993) (agreeing with Seventh Circuit's conclusion that "any attempt to glean implied congressional authorization from the scant legislative history amounts to 'an illusory search'"); In re Grabill Corp., 967 F.2d 1152, 1157 (7th Cir. 1992) (avoiding "an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative poses no constitutional question") (internal citations omitted); Rafoth v. National Union Fire Ins. Co. (In re Baker & Getty Fin. Servs., Inc.) 954 F.2d 1169, 1172−74 (6th Cir. 1992) (avoiding constitutional questions by finding that bankruptcy courts were not statutorily authorized to conduct jury trials and failing to address whether such authorization would violate Article III and Seventh Amendment of United States Constitution); Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.), 911 F.2d 380, 389−92 (10th Cir. 1990) (following 8th Circuits analysis in *United Missouri Bank* and holding that bankruptcy courts lacked statutory authority to conduct jury trials); In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1450 n. 1, 1456 (finding no statutory authority for jury trials in bankruptcy courts and not reaching constitutional issues). Back To Text

[7] *See* supra note 6 and accompanying text. Back To Text

[8] *See* In re Ben Cooper, Inc., 896 F.2d at 1394 (finding that bankruptcy court may hold jury trial in core proceedings); *see also* In re 131 Liquidating Corp., 222 B.R. 209, 213 (S.D.N.Y. 1998) (concluding that at least one claim at issue was non−core and must be tried by jury in bankruptcy court); In re Donald Sheldon & Co., 1992 WL 396885 at *2 (discussing Second Circuit's decision in *Ben Cooper*). Back To Text

[9] *See* In re Ben Cooper, Inc., 896 F.2d at 1402; *see also* 28 U.S.C. § 151 (1994) (stating that "[e]ach bankruptcy judge, as judicial officer of the district court, may exercise authority conferred under this chapter with respect to any action, suit or proceeding"); 28 U.S.C. § 157(b) (1994) (giving bankruptcy judges authority to conduct trials and issue final orders in core proceedings). Back To Text

[10] *See* 28 U.S.C. § 158(1994) (providing rules for appeals of bankruptcy cases); *see also* supra note 8 and accompanying text (discussing how bankruptcy courts can try jury trials). Back To Text

[11] *See* In re Ben Cooper, Inc., 896 F.2d 1394, 1403 (2d Cir. 1990); *see also* Germain v. Connecticut Nat'l Bank, 988 F.2d 1323, 1332 (2d Cir. 1993) (upholding trustee's request for jury trial in bankruptcy proceeding); Hirsch v. London S.S. Owner's Mut. Life Ins. Ass'n Ltd. (In re Seatrain Lines), 198 B.R. 45, 50 (S.D.N.Y. 1996) (concluding that bankruptcy courts may hold jury trials regarding "core" issues). Back To Text

[12] *See* U.S. Const. art. I, § 8, cl. 9 (authorizing Congress to create courts inferior to Supreme Court); *see also* In re American Window Corp., 15 B.R. 803, 806−07 (Bankr. D. Mass. 1981) (discussing Congress' constitutional right to create Article I courts with broad bankruptcy jurisdiction); In re Segarra, 14 B.R. 870, 874 (Bankr. D.P.R. 1981) (discussing how Congress created bankruptcy court from powers derived from Article I of Constitution, which defines powers of legislature, while Article III defines powers of judiciary); Kevin P. McDowell, *Statutory Authority for Bankruptcy Judges to Conduct Jury Trials: Fact of Fiction?* In re United Missouri Bank of Kansas City, N.A., 50 Mo. L. Rev. 729, 732 (1991) (explaining that bankruptcy courts are Article I courts with limited jurisdiction). Back To Text

[13] *See* In re United Mo. Bank, 901 F.2d 1449, 1451−52 (8th Cir. 1990) (stating that authority of Article I court is not only circumscribed by Constitution, but limited as well by powers given to it by Congress); *see also Ex parte* Bakelite Corp., 279 U.S. 438, 449 (1929); Plastiras v. Idell (In re Sequoia Auto Brokers, Ltd., Inc.), 827 F.2d 1281, 1284 (9th Cir.1987) (stating that "Congress vests bankruptcy courts with their jurisdiction and their authority has no 'inherent' source"). Back To Text

[14] Bankruptcy Act of 1898, ch. 541, §§ 1−70, 30 Stat. 544 (as amended) (repealed 1978)[hereinafter 1898 Act]; *see also* John E. Matthews, The Right to Jury Trials in the Bankruptcy Courts: Constitutional Implications in the Wake of Granfinanciera, S.A. v. Nordberg, 65 Am. Bankr. L. J. 43, 43−44 (1991) (discussing how bankruptcy courts jurisdiction was derived from 1898 Act). Back To Text

[15] *See* Bankruptcy Act, Pub. L. No. 696, 30 Stat. 544; *see also* Robert G. Skelton & Donald F. Harris, Bankruptcy Jurisdiction and Jury Trials: The Constitutional Nightmare Continues, 8 Bankr. Dev. J. 469, 473 (1991) (discussing 1898 Act). Back To Text

[16] Under the 1898 Act, bankruptcy courts had exclusive jurisdiction over all administrative matters arising in the course of bankruptcy proceedings. *See* Thompson v. Magnolia Petroleum Co., 309 U.S. 478, 483−84 (1940) (finding that bankruptcy referees did not have summary jurisdiction over all proceedings involving title to property of estate or debtor); Gill v. Phillips, 337 F.2d 258, 262 (5th Cir. 1964) (stating that "Suits by the receiver and the trustee shall be brought or prosecuted only in the courts where the bankrupt might have brought or prosecuted them if proceedings under this Act had not been instituted, unless by consent of the defendant, except as provided in sections 60, 67, and 70 of this Act"); *see also* Bankruptcy Act of 1898, ch. 541, § 2a(20), 30 Stat. 544. Back To Text

[17] *See* 1 Collier on Bankruptcy ¶¶ 2.01−2.71 (14th ed. 1974); 2 Collier on Bankruptcy ¶¶ 23.04−23.11 (14th ed. 1974); *see also* Skelton & Harris, supra note 15, at 473. Back To Text

[18] *See* Moore's Federal Practice ¶38.30 (2d ed. 1948) (describing plenary actions as litigation involving trustee and third parties brought in form of ordinary civil action; if action is brought in federal court, right of jury trial, when timely demanded, is determined according to nature of issues, just as in any other civil action); *see also* S. Elizabeth Gibson, *Jury Trials in* Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment, 72 Minn. L. Rev. 967, 972 (1988) (discussing resolution of summary and plenary suits); Skelton & Harris, supra note 15, at 473 (describing plenary suits and plenary suits). Back To Text

[19] *See* supra note 18 and accompanying text. Back To Text

[20] *See* 1 Norton Bankruptcy Law & Practice 2d § 4:4 (1994 & Supp. 1997) (stating that any party in interest who would profit by the delay in litigation could object to jurisdiction of Bankruptcy Court which wasted enormous amounts of time and delayed receipt of money by creditors); *see also* Susan Block−Lieb, *The Costs of a* Non−Article III Bankruptcy Court System, 72 Am. Bankr. L.J. 529, 532 (1998) (noting dichotomy between summary and plenary jurisdiction caused undesirable litigation); G. Ray Warner, *Katchen Up in* Bankruptcy: The New Jury Trial Right, 63 Am. Bankr. L.J. 1, 43 (1989) (stating that split between summary and plenary jurisdiction led to wasteful litigation). Back To Text

[21] *See* supra note 20 and accompanying text. Back To Text

[22] *See* 1 Norton Bankruptcy Law & Practice 2d § 4.4 (1994 & Supp. 1997); *see also* 1 Collier on Bankruptcy ¶ 3.01 (Lawrence P. King, et al. eds. rev. 15th ed. 1999) (stating that actions resulted between trustees and defendants over jurisdiction rather than merits); infra note 23 and accompanying text. Back To Text

[23] *See* Matter of Springs Apartments – Phase II, 33 B.R. 458, 468 (Bankr. N.D. Ga. 1983) (stating that elimination of controversies over appropriate forum and delays and expense in contesting existence or absence of summary jurisdiction was one of major changes wrought by Reform Act.); S. Rep. No. 95−989 at 18, 20, 153−54, 166−67 (1978) (discussing factors considered when drafting reform act); H.R. Rep. No. 95−598 at 7−16 (1977) (discussing same); *see also* In re Cemetery Dev. Corp., 59 B.R. 115, 118 (Bankr. M.D. La. 1986) (stating that one of primary objectives of Bankruptcy Reform Act of 1978 was elimination of dichotomy between summary and plenary jurisdiction and concentration of all bankruptcy jurisdiction in single forum); In re Aurora Cord & Cable Co., Inc., 2 B.R. 342, 344 (Bankr. N.D. Ill. 1980) (stating that purpose of Bankruptcy Reform Act of 1978, and perhaps principal reason for its enactment, was to eliminate summary−plenary impediment to efficient administration of bankruptcy matters). Back To Text

[24] *See* U.S. Const. amend. VII (stating in relevant part that "[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."); 28 U.S.C. § 1411 (1999) (stating that bankruptcy jury trial statute and title 11 do not affect any right to trial by jury that individual has under applicable nonbankruptcy law with regard to personal injury or wrongful death tort claim); In re Hudson, 170 B.R. 868, 872 (E.D.N.C. 1994) (explaining that right to jury trial in bankruptcy proceedings may be found in Seventh Amendment to United States Constitution or in bankruptcy jury trial statute). Back To Text

[25] *See* Act of July 1, 1898, ch. 541 §§ 17(c)(d), 19, 30 Stat. 544 (repealed 1979); *see also* Growers Packing Co. v. Community Bank of Homestead, 134 B.R. 438, 442 (S.D. Fla. 1991) (stating that Bankruptcy Act of 1898 contained no statutory authorization for bankruptcy court to conduct jury trials, although it did provide for jury trials in case of involuntary petitions and discharge of debts.); McDowell, supra note 12, at 732. Back To Text

[26] *See* Beery v. Turner, 680 F.2d 705, 710 (10th Cir. 1982) (stating that there is no constitutional right to jury trial in bankruptcy proceedings as they are equitable in nature); *see also* Christopher G. Lazarini, *Article III and Jury Trials in* Bankruptcy, 22 Mem. St. U. L. Rev. 571, 574 (1992) (discussing same). Back To Text

[27] *See* supra note 26 and accompanying text. Back To Text

[28] *See* Schoenthal v. Irving Trust Co., 287 U.S. 92, 94−95 (1932) (stating that suits to recover preferences do not constitute bankruptcy proceedings but concern controversies arising out of it, and defendants were entitled to jury

trial); *see also* Lazarini, supra note 26, at 575 (discussing same). Back To Text

[29] This provision stated:

> 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.
> b. the bankruptcy court may order the issues arising under section 303 of title 11 [governing involuntary bankruptcies] to be tried without a jury.

28 U.S.C. § 1480 (1982) (repealed 1984); *see also* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 54 (1982) (stating that distinction between summary and plenary jurisdiction eliminated); Torkelson v. Maggio (In re The Guild and Gallery Plus, Inc.), 72 F.3d 1171, 1176−77 (3d Cir. 1996) (discussing Congress' attempt to confer upon district courts complete jurisdiction over cases arising under title 11). Back To Text

[30] Northern Pipeline, 458 U.S. at 54; *see also* Moody v. Martin, 27 B.R. 991, 992 (W.D. Wis. 1983) (stating that new bankruptcy courts were to have broader jurisdiction than that exercised by referees under old system, including jurisdiction to hear claims based on state law, as well as those based on federal law); Brown v. Frank Meador Buick, Inc. (In re Frank Meador Buick, Inc.), 8 B.R. 450, 454 (Bankr. W.D. Va. 1981) (stating that when enacting the 1978 Act, Congress recognized tremendous burdens on bankruptcy court in administration of bankruptcy system with limited and cramped jurisdiction provided in Act of 1898. In doing so, it not only created new court but provided broad jurisdictional range of authority under Code provisions). Back To Text

[31] *See* 28 U.S.C. § 1471 (b) (1976 & Supp. IV) Although the Act initially vests jurisdiction in district courts, 28 U.S.C. § 1471(a) (1976 & Supp. IV), it subsequently provides that "the bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts." § 1471(c) (1976 & Supp. IV); *see also* Northern Pipeline, 458 U.S. at 54. Back To Text

[32] 28 U.S.C. § 1481 (1976 & Supp. IV); *see also* Northern Pipeline, 458 U.S. at 55. Back To Text

[33] 28 U.S.C. § 1480 (1982) (repealed 1984); *see also* Northern Pipeline, 458 U.S. at 55. Back To Text

[34] *See* Belfance v. Sizzler Family Steak Houses (In re Portage Assoc.), 16 B.R 445, 448 (Bankr. N.D. Ohio 1982) (stating that in order to determine if jury trial should be granted, it must first be decided whether instant action would have been summary or plenary proceeding under former Act); Zimmerman v. Mozer (In re Mozer), 10 B.R. 1002, 1004−05 (Bankr. D. Colo. 1981) (stating that Congress intended bankruptcy court's analysis of jury demand to begin with inquiry as to whether matter before court would have been categorized as "plenary" or "summary" suit and that any interpretation omitting this step would result in an expansion of jury trial right beyond its boundaries); In re Lafayette Radio Elec.s Corp., 7 B.R. 187, 188 (Bankr. E.D.N.Y. 1980) (stating that court must decide whether issues raised in proceeding fall within ambit of matters triable by jury prior to October 1, 1979). Back To Text

[35] *See* Pettigrew v. Graham (In re Graham), 747 F.2d 1383, 1387−88 (11th Cir. 1984) (noting that whether party is entitled to jury trial depends on whether issue before court is "legal" or "equitable"); Martin Baker Well Drilling, Inc. v. Koulovatos (In re Martin Baker Well Drilling Inc.), 36 B.R. 154, 155−56 (Bankr. D. Me. 1984) (stating that new Bankruptcy Code abolished distinction between summary and plenary proceedings so actions that formerly had to be tried in state or federal district court can now be tried in bankruptcy court); Busey v. Fleming (In re Fleming), 8 B.R. 746, 748 (N.D. Ga. 1980) (stating that summary−plenary distinction is unnecessary and sole inquiry now is whether Seventh Amendment to United States Constitution provides right to jury trial on contested issues; primary determination which must be made by this court is whether cause of action is in law or equity); *see also* H.R. Rep. No. 595, 95th Cong., 1st Sess. at 445 (1977). Back To Text

[36] *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95−598, 92 Stat. 2549 at 2682−83 (revising bankruptcy laws and eliminating referee system); *see also* In re Benny, 44 B.R. 581, 584 (N.D. Cal. 1984) (stating that 1978 Act replaced referee system with bankruptcy court of substantially expanded jurisdiction and after transition period, bankruptcy

judges were to be appointed to 14−year terms by nomination of President and advice and consent of Senate, subject to removal from office by Judicial Council of Circuit for incompetence, misconduct, neglect of duty or physical or mental disability); In re Hilltop Sand & Gravel, Inc., 35 B.R. 412, 415 (Bankr. N.D. Ohio 1983) (noting that Reform Act replaced bankruptcy referees with bankruptcy judges and jurisdiction over bankruptcy matters under Reform Act is set out in 28 U.S.C. § 1471); *see also*, 28 U.S.C. §§ 151(a), 152, 153(a), 153(b), 1471(b) (1978) (repealed); Rafool, supra note 1, at 147. Back To Text

[37] Article III provides:

The judicial Power of the United states shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

U.S. Const. art. III, § 1. Back To Text

[38] *See* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 60−61 (1982) (noting that bankruptcy judges do not serve for life subject to their continued good behavior; instead, they are appointed for fourteen year terms and can be removed for reasons such as misconduct, incompetency and neglect of duty); In re Allegheny Intern, Inc., 1988 WL 212509, at *2 (W.D. Pa. 1988) (discussing *Northern Pipeline* and stating that Congress cannot vest Article III powers in bankruptcy judges since bankruptcy judges do not enjoy life tenure and privileges enjoyed by Article III judges, however, Congress may vest power in bankruptcy court to adjudicate matters directly related to bankruptcy). Back To Text

[39] 458 U.S. 50 (1982) Back To Text

[40] *See* Northern Pipeline, 458 U.S. at 81; *see also* Hall, supra note 4, at 505, Herman, supra note 4, at 1160. Back To Text

[41] *See* supra note 40 and accompanying text. Back To Text

[42] *See* Northern Pipeline, 458 U.S. at 81, In re Mankin, 823 F.2d 1296, 1304 (9th Cir. 1987) (noting that adjunct is limited "in such a way that the essential attributes of judicial power are retained in the Article III court"); Kalaris v. Donvan, 697 F.2d 376, 385 (D.C. Cir. 1983) (stating that plurality *Northern Pipeline* opinion restricted Congress from conferring essential attributes of judiciary on non Article III judges). Back To Text

[43] *See* U.S. Const. art. III; Northern Pipeline Constr. Co., 458 U.S. at 58; Commodity Futures Trading Comm'n v. Schor, 478 U.S. 833, 841 (1986) (stating that Article III serves to protect independence of judiciary and to safeguard litigants' right to have claims decided before judges who are free from potential domination by other branches of government). Back To Text

[44] *See* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 59 (1982) (discussing purpose of good behavior and compensation clauses); U.S. v. Will, 449 U.S. 200, 217−18 (1980) ("The Compensation Clause has its roots in the longstanding Anglo−American tradition of an independent Judiciary. A Judiciary free from control by the Executive and the Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government."); Geras v. Lafayette Display Fixtures, Inc., 742 F.2d 1037, 1053 (7th Cir. 1984) (stating that Constitution has internal checks and balances, which include good behavior and compensation provisions). Back To Text

[45] *See* Northern Pipeline, 458 U.S. at 87 (concluding that 28 U.S.C. § 1471 of Bankruptcy Act of 1978 impermissibly removed most of essential attributes of judicial power from Article III district court and vested them in non−Article III adjunct); *see also* 28 U.S.C. § 153 (West Supp. 1990); 28 U.S.C.A. § 152(a)(1) (West Supp. 1990) (stating that bankruptcy judges were to be appointed to 14−year terms, however, as of 1982, this provision had not taken effect, and bankruptcy judges were still under six−year appointments); In re Finevest Foods, 143 B.R. 964, 966 (Bankr. M.D.

Fla 1992) (discussing *Northern Pipeline* holding that Congress' broad grant of jurisdiction to bankruptcy courts was unconstitutional). Back To Text

[46] *See* Vihon, Delegation of Authority and the Model Rule: The Continuing Saga of Northern Pipeline, 88 Com. L.J. 64, 77−78 (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 also* In re Comm. of Unsecured Creditors of F S Communications Corp., 760 F.2d 1194, 1198 (11th Cir. 1985) (discussing how Judicial Council of Eleventh Circuit adopted model emergency rule pursuant to its authority under § 28 U.S.C.A. 332(d)(1)); In re Finevest Foods, 143 B.R. at 966 (discussing emergency rule that was adopted in order to keep bankruptcy system functioning). Back To Text

[47] *See* Boone Coal and Timber Co. v. Polan, 787 F.2d 1056, 1059 n.2 (6th Cir. 1986) (stating that Emergency Rule (d)(3)(A) "defined 'related proceedings' as those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a District Court or a State Court"); In re Finevest Foods, 143 B.R. at 966; Butz v. Society Nat. Bank of Miami Valley, 83 B.R. 459, 460 (S.D. Ohio 1987) (noting that Emergency Rule (d)(3)(A) defines related proceedings as civil proceedings which if not for bankruptcy petition could have been permissibly brought in state court, or in case of diversity of citizenship, in federal district court). Back To Text

[48] *See* In re Daniels−Head & Assocs., 819 F.2d 914, 917 (9th Cir. 1987) (stating that under Emergency Rule, bankruptcy courts have no jurisdiction to make final determination on "state−created claims related to the core proceeding arising under the federal bankruptcy laws" without parties consent); F S Communications, 760 F.2d at 1198 (discussing how Emergency Rule prohibits bankruptcy judges from entering judgments or dispositive orders in "related proceedings" except upon consent of parties); In re Finevest Foods, 143 B.R. at 966 (discussing how Emergency Rule distinguished between traditional bankruptcy matters and those only related to bankruptcy case for purposes of defining scope of bankruptcy courts adjudicatory power); In re Hidalgo Industries, Inc., 35 B.R. 804, 808 (Bankr. D.P.R. 1983) (stating that jurisdiction of bankruptcy court over related proceedings as delegated by district court in Emergency Rule is premised on consent of parties for adjudication in last instance). Back To Text

[49] *See* Phar−Mor, Inc. v. Coopers & Lybrand, 22 F.3d 1228, 1234 (3d Cir. 1994) (noting that Emergency Rule mandated that bankruptcy judge's final decision was subject to appeal to district court); F S Communications, 760 F.2d at 1198 (noting that rule includes other safeguards against bankruptcy courts exercising the "essential attributes" of Article III courts); *see also* In re Lafayette Radio Elecs. Corp. 761 F.2d 84, 90 (2d Cir. 1985) (stating that under emergency rules, bankruptcy judges are "subject to the control of Article III judges" and that bankruptcy courts are not authorized to "conduct jury trials"). Back To Text

[50] *See* F S Communications, 760 F.2d at 1198 (stating that Emergency Rule provides that bankruptcy courts may not conduct jury trials); Growers Packing Co. v. Community Bank of Homestead, 134 B.R. 438, 444 (S.D. Fla. 1991) (stating that Emergency Rule (d)(1)(D) prevented bankruptcy courts from exercising subject matter jurisdiction over jury trials). Back To Text

[51] *See* In re O.P.M. Leasing Servs., Inc., 48 B.R. 824, 829 (S.D.N.Y. 1985) (discussing confusion in law governing jury trials in bankruptcy court); In re Rodgers & Sons, Inc. 48 B.R. 683, 685 (Bankr. E.D. Okla. 1985) (noting that Bankruptcy Rule 9015 sets forth detailed provisions for bankruptcy judges conducting jury trials and adds to confusion over issue). Back To Text

[52] Fed. R. Bankr. P. 9015, 11 U.S.C. app. at 140 (Supp. IV 1986). *Back To Text*

[53] *See* supra notes 51−52 and accompanying text. Back To Text

[54] *See* Gaildeen Indus., 59 B.R. 402, 404 (N.D. Cal. 1986) (stating that although there was no express provision of authority to bankruptcy judges to conduct jury trials in Rule 9015, it nevertheless used word court, which was defined by Rule 9001 to include bankruptcy courts established under 1978 Act); Lombard−wall Inc. v. New York City Hous. Dev. Corp. (In re Lombard−Wall, Inc.), 48 B.R. 986, 992 (S.D.N.Y. 1985) (stating that Rule 9015 permits bankruptcy courts to hold jury trials); Martin Baker Well Drilling v. Koulovatos (In re Martin Baker Well Drilling), 36 B.R. 154,

158 (Bankr. D. Me. 1984) (incorporating Rule 9001, which includes bankruptcy court in definition of court in Rule 9015). Back To Text

[55] *See* O.P.M. Leasing Serv., Inc., 48 B.R. at 828 (noting that Supreme Court would not have drafted Rule 9015 if jury trials in bankruptcy courts were unconstitutional); Young v. Peter J. Saker, Inc. (In re Paula Saker & Co., Inc.), 37 B.R. 802, 809 (Bankr. S.D.N.Y. 1984) (reasoning that local district court rules cannot prevail over nationwide uniform rules promulgated by Supreme Court); Nashville City Bank & Trust Co. v. Armstrong (In re River Transp. Co.), 35 B.R. 556, 559 (M.D. Tenn. 1983) (stating that because new rules continue to allow bankruptcy judges to preside over jury trials, they must override the contrary provision in local rule). Back To Text

[56] *See* Amy Field Herzog, *Jury Trials in Bankruptcy Court? The Seventh Circuit Adds its Voice to the Debate in* In re Grabill Corp., 25 Loy. U. Chi. L.J. 137, 145 (1993) (discussing conclusions at 1987 Judicial Conference regarding Rule 9015). Back To Text

[57] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98−353, 98 Stat. 333 (codified as amended in scattered sections of 5 U.S.C.A., 11 U.S.C.A., and 28 U.S.C.A.); *see also* Herzog, supra note 56, at 145; Matthews, supra note 14, at 56. Back To Text

[58] *See* 28 U.S.C. § 157(b)(1) (West Supp. 1990) (providing that Bankruptcy judges may hear and determine all cases under title 22 and all core proceedings and may enter appropriate orders and judgments, subject to review under § 158); 28 U.S.C. 157 (c)(1) (stating that bankruptcy judge may hear non−core proceeding and submit proposed findings of fact and conclusions of law to district court and district judge enters final order after reviewing *de novo*); *see also* In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1453 (8th Cir. 1990) (stating that 1984 Act established bifurcated method of adjudicating claims in bankruptcy court, and allocating bankruptcy court's jurisdiction by distinguishing between core and non−core proceedings). Back To Text

[59] *See* 28 U.S.C. § 157(b)(3) (stating that "bankruptcy judge shall determine on judge's own motion or on timely motion of party, whether proceeding is core proceeding under this subsection or is proceeding that is otherwise related to case under title 11. Determination that proceeding is not core proceeding shall not be made solely on basis that its resolution may be affected by State law") In addition, the 1984 Act provides a non−exclusive list of what constitutes a "core" proceeding in 28 U.S.C. § 157(b)(2) (1994):

A. matters concerning the administration of the estate;
B. allowance and 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 to 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. confirmations 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 assets of the estate or the adjustment of the debtor−creditor of the equity security holder relationship, except personal injury tort or wrongful death claims.

28 U.S.C. § 157(b)(2) Back To Text

[60] *See* 28 U.S.C. § 157(b)(1) (discussing bankruptcy judges' powers in regard to core proceedings); *see also* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1453 (stating that if claim is "core" proceeding, bankruptcy judge may "hear and determine" claim and "enter appropriate orders and judgments," subject to review by district court); In re Finevest Foods, Inc., 143 B.R. 964, 967 (Bankr. M.D. Fla. 1992) (stating that core proceedings may be adjudicated by bankruptcy judge subject to review of district court). Back To Text

[61] *See* 28 U.S.C. § 157(c)(1) (discussing bankruptcy judges' powers in regard to non−core proceedings); *see also* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1453 (stating that in non−core proceedings, bankruptcy judge may only "hear" case, and submit proposed findings of fact and conclusions of law to district court, which retains authority to enter final judgment); In re Finevest Foods, 143 B.R. at 966 (stating that for non−core proceedings bankruptcy judge may hear proceeding, but only recommend disposition to district court). Back To Text

[62] *See* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1453 (discussing 1984 Act and recognizing that there is no specific grant of authority allowing or prohibiting bankruptcy judges from conducting jury trials, although jury trial rights are again preserved); *see also* Matter of Grabill Corp., 967 F.2d 1152, 1153 (7th Cir. 1992) ("There is no express statutory authority in the [1984 Act] granting bankruptcy courts the power to conduct jury trials."); In re Kaiser Steel Corp., 911 F.2d 380, 391 (10th Cir. 1990) ("We are also persuaded by the absence of any express provision authorizing jury trial before bankruptcy judges.") Back To Text

[63] *See* 28 U.S.C. § 1411 (1994) (providing for jury trials); In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1452 (8th Cir. 1990) (noting that power of bankruptcy courts is limited by Constitution); In re Ben Cooper, 896 F.2d 1394, 1403−04 (2d Cir. 1990) (examining whether jury trials in bankruptcy courts are permissible under Article III and Seventh Amendment); *see also* U.S. Const. amend. VII; U.S. Const. art. III § 1. Back To Text

[64] *See* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 87 (1982) (finding grant of authority under Code unconstitutional because it vested bankruptcy courts with power of Article III courts in violation of Article III of Constitution); *see also* supra note 45 and accompanying text (discussing unconstitutional nature of 1978 Act as determined by Supreme Court). Back To Text

[65] *See* Apex Express Corp. v. Wise Co. (In re Apex Express Corp.), 190 F.3d 624, 631−32 (4th Cir. 1999) (discussing core and non−core distinctions that determine and limit jurisdiction of bankruptcy courts); In re Ben Cooper, 896 F.2d at 1403−04 (analyzing constitutionality of jury trials in bankruptcy courts under Article III and Seventh Amendment); supra notes 43−45 and accompanying text. Back To Text

[66] U.S. Const. amend. VII ("In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re−examined in any Court of the United States, than according to the rules of the common law.") Back To Text

[67] *See generally* Conrad K. Cyr, *The Right to Trial by Jury in Bankruptcy: Which Judge is to Preside?*, 63 Am. Bankr. L.J. 53 (1989) (discussing Seventh Amendment obstacle to jury trials); Skelton & Harris, supra note 15, at 501 (discussing same). Back To Text

[68] U.S. Const. amend. VII; *see also* United States v. Wonson, 28 F.Cas. 745, 750 (C.C.D. Mass. 1812) (discussing suits at common law which may not be reexamined unless new trial is granted). **Back To Text**

[69] *See* Fed. R. Civ. P. 52 ("Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous."); 5 A.J. Moore, Moore's Federal Practice ¶¶ 50.02[2]−[3], 50.03[2], 50.05[1], 50.07[1], 50.12, 51.04 (2d ed. 1985); 6 A.J. Moore, Moore's Federal Practice ¶¶ 59.08[1], 59.08[4]−[5] (2d ed. 1985). Back To Text

[70] *See* supra note 69 and accompanying text. Back To Text

[71] *See* Taxel v. Electronic Sports Research (In re Cinematronics, Inc.), 916 F.2d 1444, 1451 (9th Cir. 1990) (stating that Seventh Amendment poses problem in non−core proceedings). Back To Text

[72] *See* 28 U.S.C. § 157(b)(1) (1994); Grabill Corp. v. Mellon Bank (In re Grabill Corp.), 132 B.R. 725, 725 (N.D. Ill. 1991) (noting Eighth and Tenth Circuits disagreement with Second Circuit as to whether jury trials should actually be held in core proceedings). Back To Text

[73] *See* In re Ben Cooper, 896 F.2d 1394, 1403 (2d Cir. 1990) (stating that Seventh Amendment is not violated because core proceedings are subject only to traditional standards of appellate review). *But see* Weiner's Inc. v. T.G. & Y. Stores, Co., 191 B.R. 30, 34 (S.D.N.Y. 1996) (noting re−examination clause of Seventh Amendment would be violated if bankruptcy court held jury trial in non−core proceeding). Back To Text

[74] *See* U.S. Const. art. III § 1; *see also* supra notes 43−45 and accompanying text. Back To Text

[75] *See* id., *see also* The Federalist Nos. 78−79 (Alexander Hamilton) (Max Beloff ed., 1948) (stating that next to permanency in office, nothing can contribute more to independence of judges than fixed provision of their support); *see also* John A. Terselic, Bankruptcy Judges Conducting Jury Trials: Sidestepping the Statute and Hurdling the Constitution), 4 De Paul Bus. L.J. 227, 268 (1991) (discussing Article III and powers of bankruptcy judges). Back To Text

[76] *See* Hoffman v. Brown (In re Brown), 56 B.R. 487, 488 (Bankr. Md. 1985) (stating that 1978 Bankruptcy Reform Act allowing bankruptcy courts to conduct jury trials was found to be unconstitutional delegation of powers to Article I courts); Cameron v. Anderson (In re Am. Energy, Inc.), 50 B.R. 175, 181 (Bankr. D.N.D. 1985) (stating that grant of Article III powers to bankruptcy judge was unconstitutional delegation to adjunct court); Terry v. Proehl (In re Proehl), 36 B.R. 86, 87 (Bankr. W.D. Va. 1984) (stating that it would be unconstitutional delegation of power to permit bankruptcy judge to preside over jury trial). Back To Text

[77] *See* Granfinanciera v. Nordberg, 492 U.S. 33, 42 (1989) (stating that current statutory provisions for jury trials in bankruptcy proceedings are ambiguous and that petitioners rest claim to jury trial on Seventh Amendment alone); *see also* Campana v. Pilavis (In re Pilavis), 228 B.R. 808, 808−09 (Bankr. D. Mass. 1999) (describing Supreme Court's resolution of issue of whether trustee in bankruptcy may have jury trial to determine if trustee may recover for fraudulent transfer); Frost, Inc. v. Miller, Canfield, Paddock & Stone, P.C. (In re Frost, Inc.), 145 B.R. 878, 880 (Bankr. W.D. Mich. 1992) (noting that *Granfinanciera* is leading case on issue of jury trials in bankruptcy and decided whether there is jury trial where trustee in bankruptcy sues to recover fraudulent conveyance). Back To Text

[78] *See* Granfinanciera, 492 U.S. at 42 (noting that Seventh Amendment applies to actions to enforce statutory rights analogous to causes of action decided in law courts in eighteenth century England); *see also* Tull v. United States, 481 U.S. 412, 417−18 (1987) (stating that to determine if jury trial is permitted, it must first be determined whether statutory action is more similar to cases that were tried in courts of law than to suits tried in courts of equity or admiralty, Court must examine both nature of action and of remedy sought); Luper v. Banner Indus., Inc. (In re Lee Way Holding Co.), 118 B.R. 544, 546 (Bankr. S.D. Ohio 1990) (acknowledging that cause of action must be compared to eighteenth century actions brought before merger of law and equity courts in England). Back To Text

[79] *See* Granfinanciera, 492 U.S. at 42 (indicating that second stage of analysis is more important than first); *see also* Siemens Components, Inc. v. Choi (In re Choi), 135 B.R. 649, 650 (Bankr. N.D. Cal. 1991) (applying *Granfinanciera* test in deciding that creditor seeking declaration that debt is nondischargeable is not entitled to jury trial because of equitable nature of remedy sought and historical roots of dischargability issues); Clairmont Transfer Co. v. Rice, Rice, Gilbert & Marston (In re Clairmont Transfer Co.), 117 B.R. 288, 289 (Bankr. W.D. Mich. 1990) (positing that right to jury trial in bankruptcy court is determined by analyzing legal or equitable nature of cause of action). Back To Text

[80] *See* Granfinanciera, 492 U.S. at 42 (articulating final stage in deciding if jury trial is required by Seventh Amendment); Romar Int'l Ga. v. Southtrust Bank of Ala. (In re Romar Int'l Ga.), 198 B.R. 407, 409, 411 (Bankr. M.D. Ga. 1996) (relying on *Granfinanciera* in deciding that creditor is not entitled to jury trial in lender liability action against creditor); Splash v. Irvine Co. (In re Lion Country Safari, Inc.), 124 B.R. 566, 570 (Bankr. C.D. Cal. 1991)

(observing that inclusion of third prong was recognition of tie between Article III and Seventh Amendment in bankruptcy cases). Back To Text

[81] *See* Granfinanciera, 492 U.S. at 42 n. 4, 51 (stating that Seventh Amendment protects litigant's right to jury only if cause of action is legal in nature and involves matter of private right); *see also* Atlas Roofing Co., Inc. v. Occupational Safety & Health Review Comm'n, 430 U.S. 442, 455 (1977) (stating that when Congress creates new statutory public rights, it may assign their adjudication to administrative agency with which jury trial would be incompatible, without violating Seventh Amendment's injunction that jury trial is to be preserved in suits at common law); In re Frost, Inc., 145 B.R. 878, 880 (Bankr. W.D. Mich. 1992) (commenting that not all legal claims require jury trial); Leslie Salt Co. v. Marchland Dev., Inc. (In re Marshall Dev., Inc.), 129 B.R. 636, 629 (Bankr. N.D. Cal. 1991) (noting that even if cause of action is legal, petitioner may not be entitled to jury trial if action involves public right). Back To Text

[82] *See* Granfinanciera, 492 U.S. at 52; *see also* Atlas Roofing Co., 430 U.S. at 455 (noting that prior cases support administrative fact−finding in only those situations involving public rights and vast range of other cases as well are not at all implicated); Wilkey v. Inter−Trade, Inc. (In re Owensboro Distilling Co.), 108 B.R. 572, 574 (Bankr. W.D. Ky. 1989) (keeping in mind Supreme Court's statement in *Granfinanciera* quoted in text when deciding that there is no jury trial where statute at issue created right parallel to already existing private right). Back To Text

[83] *See* Granfinanciera v. Nordberg, 492 U.S. 33, 52 (1989); *see also* Atlas Roofing Co., 430 U.S. at 457 (stating that Congress could utterly destroy right to jury trial by always providing for administrative rather than judicial resolution of vast range of cases that now arise in courts); Ross v. Bernhard, 396 U.S. 531, 538 (1970) (stating that legal claims are not magically converted into equitable issues by their presentation to court of equity). Back To Text

[84] *See* Granfinanciera, 492 U.S. at 47−49 (concluding that under eighteenth Century common law, claim before Court in *Granfinanciera* would have been under mandatory jurisdiction of courts of law and remedies available in fraudulent transfer claims were primarily remedies of law, not equity); Torcise v. Community Bank of Homestead, 131 B.R. 503, 505 (S.D. Fla. 1991) (citing *Granfinanciera* for proposition that fraudulent conveyance suit is not action at equity); Salomon v. Luzar (In re Black & Geddes, Inc.), 25 B.R. 278, 280−81 (Bankr. S.D.N.Y. 1982) (distinguishing between when relief sought in fraudulent conveyance action is equitable or is for money had and received when deciding if there is right to jury trial). Back To Text

[85] *See* Granfinanciera, 492 U.S. at 64 (finding that Seventh Amendment gave right to jury trial to petitioners in case at hand); Dery v. National Bank of Detroit (In re B & E Sales Co.), 129 B.R. 133, 136 (Bankr. E.D. Mich. 1990) (asserting that Congress can only assign enforcement of statutory public rights to non−Article III tribunals where government is party or public right is part of legitimate regulatory scheme); Luper v. Langley (*In re* Lee Way Holding Co.); 115 B.R. 586, 589−90 (Bankr. S.D. Ohio 1990) (observing that Congress did not create new cause of action when it classified fraudulent conveyance actions as core proceedings triable by bankruptcy judges and cannot take away jury trial right by placing cause of action in specialized court of equity); Dery v. National Bank of Detroit (In re B & E Sales Co.), 129 B.R. 133, 136 (Bankr. E.D. Mich. 1990) (asserting that Congress can only assign enforcement of statutory public rights to non−Article III tribunals where government is party or public right is part of legitimate regulatory scheme). Back To Text

[86] *See* Granfinanciera, 492 U.S. at 52 (indicating that unless cause of action involves public rights, Congress cannot take away Seventh Amendment right to jury trial); Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.), 911 F.2d 380, 388−89 (10th Cir. 1990) (finding that Seventh Amendment right to jury trial still existed in action referred to bankruptcy court); Ben Cooper, Inc. v. Insurance Co. of Pa. (In re Ben Cooper, Inc.), 896 F.2d 1394, 1401 (2d Cir. 1989) (reasoning that *Granfinanciera* held that there is jury trial right for fraudulent conveyance action based on premise that such action is private right). Back To Text

[87] *See* Granfinanciera, 492 U.S. at 64 (stating that it is not obliged to decide whether bankruptcy courts may conduct jury trials in conveyance suits brought by trustee against person who has not entered claim against state or if Congress has authorized bankruptcy courts to hold jury trials in such actions); In re New York Shoes, Inc., 122 B.R. 668, 671 n.8 (E.D. Pa. 1990) (taking note that Supreme Court in *Granfinanciera* did not decide whether jury trial could be conducted in bankruptcy court); Larsen v. Sloan (In re Larsen), 172 B.R. 988, 993 (D. Utah 1993) (finding that there

is split of authority on whether bankruptcy judges may conduct jury trials and that Supreme Court declined to give opinion on issue in *Granfinanciera*); Splash v. Irvine Co. (In re Lion Country Safari, Inc.), 124 B.R. 566, 569−70 (Bankr. C.D. Cal. 1991) (clarifying that Supreme Court did not decide in *Granfinanciera* whether bankruptcy courts could conduct jury trials or whether there could be jury trials before non−Article III judges overseen by district courts). Back To Text

[88] 896 F.2d 1394 (2d Cir. 1990). Back To Text

[89] *See* Ben Cooper, 896 F.2d at 1402−04 (asserting that Article III and Seventh Amendment allow for jury trials to take place in bankruptcy courts); Michaels v. Lomax (In re Skil−Aire Corp.), 142 B.R. 692, 696−97 (Bankr. D.N.J. 1992) (agreeing with *Ben Cooper* that bankruptcy judges may preside over jury trials upon analysis of implied statutory authority, Article III, and Seventh Amendment); Pollner v. Connecticut Bank & Trust co. (In re Harbor Park Assocs.), 112 B.R. 555, 559−60 (S.D.N.Y. 1990) (positing that concern bankruptcy court cannot conduct jury trial is no longer substantiated after *Ben Cooper*). Back To Text

[90] *See* Ben Cooper, 896 F.2d at 1400 (holding that bankruptcy court has core jurisdiction pursuant to § 157(b)(2)(A), over contract claims under state law when contract was entered into post−petition). Back To Text

[91] *See* id. at 1402 (noting that appellees have right to jury trial in this core proceeding and turning to issue of whether bankruptcy court has statutory and constitutional authority to conduct such trials). Back To Text

[92] Ben Cooper, 896 F.2d at 1401(citing passages from *Granfinanciera*, stating that "one cannot easily say that 'the jury trial would be incompatible' with bankruptcy proceedings, in view of Congress' express provision for jury trials in certain actions arising out of bankruptcy litigation.") Back To Text

[93] *See* id. at 1402 (stating that provision does not even make clear whether jury trials are afforded for other actions, let alone proper forum for those trials). Back To Text

[94] *See* id. at 1402; 28 U.S.C. § 151 (1994) (granting bankruptcy judge authority conferred with respect to any action, suit, or proceeding). Back To Text

[95] *See* In re Ben Cooper, 896 F.2d 1394, 1400 (2d Cir. 1990) (reasoning that because insured item was asset of estate, reorganization plan promised adequate insurance for estate assets, court approval of plan required insurance, and insurance company had knowledge of aforementioned, it was difficult to conceive of claim that would be more intrinsic to estate administration); *see also* 28 U.S.C. § 157(b)(2)(A) (providing that core proceedings include but are not limited to matters concerning administration of estate.) Back To Text

[96] *See* U.S. Const. amend VII (providing that no fact tried by jury shall be otherwise re−examined in any Court of United States, than according to rules of common law); Ben Cooper, 896 F.2d. at 1403 (reasoning that since jury verdict in core proceeding is subject only to traditional standards of appellate review, such proceeding does not violate Seventh Amendment). Back To Text

[97] *See* Ben Cooper, 896 F.2d at 1403 (concluding that core jurisdiction is constitutional and implicit in analysis in opinion). Back To Text

[98] In re Ben Cooper, 896 F.2d 1394, 1403−04 (2d Cir. 1990). Back To Text

[99] Id. at 1403; *see also* Pernell v. Southall Realty, 416 U.S. 363, 363 (1974) (allowing for jury trial in landlord−tenant dispute in District of Columbia); Collins v. Foreman, 729 F.2d 108, 120 (2d Cir. 1984) (noting that reference of suppression motion over defendant's objection to magistrate did not violate defendant's due process rights). Back To Text

[100] *See* Pernell, 416 U.S. at 367 (allowing jury trial in District of Columbia); *see also* District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. 91−358, 84 Stat. 473, 375 (codified at D.C. Code Ann. §

11−101(2) (1981)). Back To Text

[101] *See* Pernell, 416 U.S. at 367 (finding that jury trial in landlord−tenant dispute did not violate Seventh Amendment). Back To Text

[102] *See* 28 U.S.C. § 636(c)(1) (1994) (providing that upon consent of parties, full−time United States magistrate or part−time United States magistrate who serves as full−time judicial officer may conduct any or all proceedings in jury or nonjury civil matter). Back To Text

[103] *See* Northern Pipeline, 458 U.S. 50, 71 (1988) (distinguishing bankruptcy courts from District of Columbia courts and territorial courts); In re Cox Cotton Co., 24 B.R. 930, 954 (1982) (stating that courts created for District of Columbia lie entirely "outside the states of the federal union, unlike the bankruptcy courts"). Back To Text

[104] *See* Poissonnerie La Belle Maree, Inc. v. Johnson (In re Johnson), 115 B.R. 712, 715 (Bankr. S.D. Ala. 1990) (pointing out that unlike magistrates, there is no express statutory authority for bankruptcy judges to conduct jury trials); In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1454 (8th Cir. 1990) (noting title 28 U.S.C. § 157 of 1984 Act did not "contain any specific or express language granting a bankruptcy judge authority to conduct jury trials"). Back To Text

[105] *See* Raliegh v. Stoecker (In re Stoecker), 117 B.R. 342, 346 (Bankr. N.D. Ill. 1990) (noting express prohibition contained in Emergency Rule). Back To Text

[106] *See* id. at 344; Young v. Saker, 37 B.R. 802, 809 (Bankr. S.D.N.Y. 1984) (asserting that Rule 9015 of new Bankruptcy Rules of Procedure "could not be more clear" in stating that bankruptcy courts do have authority to conduct jury trials); Nashville City & Trust Co. v. Armstrong (In re River Transportation Co.), 35 B.R. 556, 559 (Bankr. M.D. Tenn. 1983) (opining that jury trials are authorized in district courts and bankruptcy courts.) Back To Text

[107] *See* Perion v. Cohen (In re Cohen), 107 B.R. 453, 455 (Bankr. S.D.N.Y. 1989) (noting 1984 Act provisions support jury trials in bankruptcy court); *see also* 28 U.S.C. § 1411 (a) (1994) (providing that Code does "not affect any right to trial by jury that individual has under applicable nonbankruptcy law with regard to personal injury or wrongful death tort claim); 28 U.S.C. § 157(b)(5) (1994) (requiring that such actions be tried in district court). Back To Text

[108] *See* McCormack v. American Inv. Management (In re McCormack), 67 B.R. 838, 842 (D. Nev. 1986) (noting prohibition of jury trials was one of few provisions of Emergency Rule that Congress did not see fit to enact); Morse Elec. Co. v. Logicon, Inc. (In re Morse Elec. Co., Inc.), 47 B.R. 234, 238 (Bankr. N.D. Ind. 1985) (relying on authority stating that bankruptcy judge is authorized to conduct jury trials except in cases expressly excluded by statute); Smith−Douglass, Inc. v. Smith (In re Smith−Douglass, Inc.), 43 B.R. 616, 618 (Bankr. E.D.N.C. 1984) (finding no direct prohibition under Bankruptcy Amendments and Federal Judgeship Act of 1984 against jury trials being conducted by bankruptcy court). Back To Text

[109] *See* Austin v. Healey, 5 F.3d 598, 602 (2d Cir. 1993) (stating Article III protects institutional integrity of judiciary by safeguarding its independence); Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc., 725 F.2d 537, 546 (9th Cir. 1983) (finding continuing plenary responsibility for administration of judicial branch is to protect judiciary and satisfy separation of powers); In re Rheuban, 128 B.R. 551, 565−66 (Bankr. C.D. Cal. 1991) (discussing purpose behind Article III, which is to protect judiciary from legislative and executive branch). Back To Text

[110] *See* In re Grabill Corp., 967 F.2d 1152, 1153, 1159 (7th Cir. 1992) (basing decision on practical considerations in absence of statutory text, precedent, legislative history, or other sources of guidance); Kaiser Steel Corp. v. Frates (In re Kaiser Steel), 911 F.2d 380, 392 (10th Cir. 1990) (finding that court could not grant jury power to bankruptcy judges where Congress has not permitted it); In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1454−57 (8th Cir. 1990) (granting writ of mandamus requiring district court to withdraw this action from bankruptcy court and ordering jury trial by district court); Back To Text

[111] 901 F.2d 1449 (8th Cir. 1990). Back To Text

[112] *See* id. at 1457. Back To Text

[113] *See* id at 1451−52 (observing that Article I courts are courts of special jurisdiction created by Congress that cannot be given plenary powers of Article III courts; authority of Article I court is not only circumscribed by Constitution, but limited as well by powers given to it by Congress). Back To Text

[114] *See* id at 1452−53; *see also* 28 U.S.C. § 1471(c) (1994) (stating that bankruptcy courts shall exercise all jurisdiction granted by 1978 Act); Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 55 (1982) (interpreting § 1480 as providing bankruptcy court with authority to conduct jury trials); H.R. Rep. No. 595, 95th Cong., 1st Sess. 12 (1977), *reprinted in* 1978 U.S.C.C.A.N.5787, 5963, 5973 (stating that bankruptcy courts will be required to hold jury trials to adjudicate plenary suits); id. at 6400 (stating broad grant of jurisdiction to bankruptcy courts allows trial in bankruptcy court of actions that were previously tried in federal or state court). Back To Text

[115] *See* Northern Pipeline, 458 U.S. at 50 (holding that § 1471's broad grant of authority to bankruptcy judges violates Article III); In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1453. Back To Text

[116] *See* In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1453 (8th Cir. 1990) (noting that as to core matters, bankruptcy judge may hear and determine claim and enter orders and judgment subject to review of court, and, as to non−core matters, panel opined that statutory process governing such proceedings are incompatible with any implication that Congress has provided bankruptcy court authority to try jury cases in non−core proceedings); *see also* BAFJA of 1984, Pub. L. No. 98−353, 98 Stat. 333 (1984 Act); 28 U.S.C. § 157(b)(1); 28 U.S.C. § 158(b)(1), (2). Back To Text

[117] *See* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1453 (noting that actual jury trial was preserved). Back To Text

[118] *See* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1455 (stating that there is no discussion in legislative record that suggests that Congress intended to grant bankruptcy judges authority to conduct jury trials). Back To Text

[119] *See* id. at 1457 (finding no statutory authorization afforded to bankruptcy judges or courts to conduct jury trials on legal proceedings). Back To Text

[120] 967 F.2d 1152 (7th Cir. 1992). Back To Text

[121] *See* id. at 1153 (stating that no express statutory authority exists giving bankruptcy courts power to conduct jury trials). Back To Text

[122] 28 U.S.C. § 1411 (1984). Back To Text

[123] 28 U.S.C. § 157(b)(5) (1984). Back To Text

[124] *See* In re United Mo. Bank, 901 F.2d 1449, 1456 (8th Cir. 1990) (remarking that "congressional … support" for authority of bankruptcy judges to conduct jury trials is "lacking"); *see also* In re Grabill, 967 F.2d at 1154 (lamenting that attempts to glean implied congressional intent that bankruptcy judges conduct jury trials from legislative history will prove futile); In re Jackson, 118 B.R. 243, 243 (Bankr. E.D. Pa. 1990) (referring to "the 1984 legislative vacuum"). Back To Text

[125] *See* In re Grabill, 967 F.2d at 1154 (exhibiting reluctance to infer in BAJFA authority that Congress has not clearly conferred, absent discernible intent from statutory language or legislative history). Back To Text

[126] In re Grabill, 967 F.2d at 1152, 1154−55 (7th Cir. 1992). Back To Text

[127] 28 U.S.C. § 1481 (1978) (repealed) Back To Text

[128] 28 U.S.C. § 151 (1984). Back To Text

[129] In re Grabill, 967 F.2d at 1155; *see also* Kaiser Steel Corp. v. Frates (In re Kaiser Steel Corp.), 911 F.2d 380, 391 (10th Cir. 1990) (observing that repeal of § 1481 by 1984 Act is significant indication of reduced authority of bankruptcy judges and is limited specifically by § 151); Griffith v. Oles (In re Hipp, Inc.), 895 F.2d 1503, 1517 (5th Cir. 1990) (stating that §§ 1471−82 were repealed and that § 151 and provisions following § 151 placed greater limitations on bankruptcy courts). Back To Text

[130] 28 U.S.C. § 157(b)(1) (1994) (providing that bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under § 158 of this title); *see also* In re Grabill Corp., 967 F.2d at 1155−56. Back To Text

[131] *See* In re Grabill Corp., 967 F.2d at 1155 (stating that power conferred is personal and limited to bankruptcy judges). The Seventh Circuit adopted the first of the two conflicting interpretations of the ambiguous language of § 157 (b)(1). Id. at 1154−55; *see also* In re Clay, 35 F.3d 190, 197 (5th Cir. 1994) (finding that "[n]either § 151 nor § 157 (b)(1) says anything about juries and procedures"); In re Kaiser Steel Corp., 911 F.2d at 391 (dictating that literal reading of § 157(b)(1) suggests personal grant of power to bankruptcy judges). The Tenth Circuit also stated that:

The personal nature of the power to "hear and determine" cases does not implicitly authorize the bankruptcy judge to delegate his or her duty to make final factual determinations to a jury; in fact, it suggests the impropriety of such delegation.

Id. Back To Text

[132] *See* 28 U.S.C. § 636(a)(3), (c)(1) (1994) (providing magistrates with authority t conduct jury trials under certain conditions); In re Grabill, 967 F.2d at 1152, 1155 (7th Cir. 1992) (finding that Congress has in past expressly granted authority to non−Article III judges); In re United Mo. Bank of Kansas City, N.A., 901 F.2d 1449, 1454 (8th Cir. 1990) (noting statutory authority of magistrate to conduct trials by jury in certain cases). Back To Text

[133] *See* In re Grabill Corp., 967 F.2d at 1155; *see also* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1454, 1456 (noting that Congress was aware of its ability to grant power to conduct jury trials to Article I courts when forming the 1984 Act). Back To Text

[134] *See* In re Grabill Corp., 967 F.2d at 1155−56; *see also* In re United Mo. Bank of Kansas City, N.A., 901 F.2d at 1454 (reasoning that § 636 (a)(3), (c)(1) illustrates Congress' awareness of appropriate language needed for authority to conduct jury trials and since 1984 Act lacks such language, there can be no grant of jury trial authority). *But see* Ben Cooper, Inc. v. Insurance Co. of State of Pa. (In re Ben Cooper, Inc.), 896 F.2d 1394, 1402 (2d Cir. 1990) (holding that bankruptcy courts have authority to conduct jury trials despite lack of statutory language). However, the court in *United Missouri Bank* criticized the Second Circuit's rationale for implying authority, concluding that "the power to conduct jury trials is not indispensable to bankruptcy judges' ability to execute the authority conferred by the 1984 Act." In re United Mo. Bank, 901 F.2d at 1456; *see also* Official Comm. Of Unsecured Creditors v. Schwartzman (In re Stansbury Poplar Place, Inc.), 13 F.3d 122, 128 (4th Cir. 1993) (agreeing with Eighth Circuit that apparent consistency with statutory scheme is insufficient to imply certain powers absent specific statutory language). Back To Text

[135] *See* In re Grabill Corp., 967 F.2d at 1157 (noting that conclusion poses no Constitutional question); *see also* Gomez v. United States, 490 U.S. 858, 864 (1989) (stating same policy). Back To Text

[136] *See* 28 U.S.C. § 157 (c)(1) (Supp. III 1985); *see also* 28 U.S.C. § 157 (c)(2) (stating that if parties consent to bankruptcy court's enter of final judgment, these courts recognize bankruptcy judge's authority to conduct jury trial of non−core proceeding). *See generally* Mauldin v. Peoples Bank (In re Mauldin), 52 B.R. 838, 842 (Bankr. N.D. Miss.

1985) (stating in non−core proceeding, no jury trial is available unless all parties consent to bankruptcy judge presiding over case and entering final order or judgment resulting from jury verdict); Lerblance v. Rodgers (In re Rodgers & Sons), 48 B.R. 683, 688 (Bankr. E.D. Okla. 1985) (stating court is empowered to conduct jury trials in core proceedings and non−core proceedings in which all parties so consent). Back To Text

[137] *See* Palmisano v. Briggs (In re Northern Design, Inc.), 53 B.R. 25, 27 (Bankr. D. Vt. 1985) (discussing futility for bankruptcy court to conduct hearing solely for purpose of submitting proposed findings and conclusions of law to district court only to have hearing followed by jury trial on same issues); Morse Elec. Co. v. Logican, Inc. (In re Morse Elec. Co.), 47 B.R. 234, 238 (Bankr. E.D.N.C. 1984) (stating that since adversary proceeding is related proceeding, Bankruptcy Court cannot enter final judgment in matter, and therefore jury trial would not be effective); Smith−Douglass, Inc. v. Smith (In re Smith−Douglass), 43 B.R. 616, 618 (Bankr. E.D.N.C. 1984) (discussing inability of judges to enter final judgments absent consent of parties, in non−core proceedings makes jury trials in such proceedings impractical). Back To Text

[138] *See* Taxel v. Elec. Sports Research (In re Cinematronics, Inc.), 916 F.2d 1444, 1451 (9th Cir. 1990) (finding that Seventh Amendment problems would arise if jury trial were conducted by bankruptcy court because § 157(c)(1) requires *de novo* review by district court of non−core matters); id. at 1451 (stating Seventh Amendment does not, in first place, allow another court's review of facts found by jury with no standard of deference and with authority to redecide those matters); *see also* Beard v. Braunstein, 914 F.2d 434, 442−43 (3d Cir. 1990) (observing Seventh Amendment's limitation that "no fact tried by jury, shall otherwise be reexamined in any Court of the United States" conflicts with § 157(c)(1)'s requirement of *de novo* review of contested findings by bankruptcy court); In re Tastee Donuts, Inc., 137 B.R. 204, 206 (E.D. La. 1992) (agreeing that to allow jury trials on non−core matters in bankruptcy court and then to have jury determinations subject to *de novo* review by district court would run afoul of Seventh Amendment's provision that "no fact tried by a jury shall be otherwise reexamined in any court of the United States); Fishell v. Soltow (In re Fishell), 132 B.R. 337, 339 (Bankr. W.D. Mich. 1991) (stating that due to Seventh Amendment, jury's opinion would, in essence, be advisory). Back To Text

[139] *See* United States Lines, Inc. v. American Steamship Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.), 197 F.3d 631, 635−36 (2d Cir. 1999) (reversing district court's holding that declaratory proceedings brought by trustee was non−core, agreeing instead with bankruptcy court's finding that declaratory proceedings were core); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1101−03 (2d Cir. 1993) (addressing issue left open in *In re Ben Cooper, Inc*. and holding that bankruptcy courts may not conduct jury trials in non−core matters, thus vacating district court's ruling that proceeding was core); In re Cinematronics, 916 F.2d at 1449−1451 (noting that key issue was whether post−petition claims were core or non−core and reversing bankruptcy court's decision that claims were core, thus precluding trial in bankruptcy court on non−core matter because parties had not consented). Back To Text

[140] *See* 1 Collier on Bankruptcy ¶ 3.01, at 81 (Lawrence P. King et al. eds., 15th ed. 1994) (stating that adjudication should be performed by bankruptcy judge because he is expert on subject); *see also* In re Grabill, 967 F.2d 1152, 1160 (7th Cir. 1992) (Posner, J., dissenting) (stating that additional challenge of managing jury trial "is [not] beyond the capacity of bankruptcy judges – experienced, specialized judicial officers"). *But see* In re Clay, 35 F.3d 190, 195 (5th Cir. 1994) (suggesting most bankruptcy judges are unfamiliar with jury procedures); Weeks v. Kramer (In re G. Weeks Sec., Inc.), 89 B.R. 697, 710 (Bankr. W.D. Tenn. 1988) (observing bankruptcy courts are specialized and generally do equity; therefore, bankruptcy courts lack experience with jury trials). Back To Text

[141] *See* In re Clay, 35 F.3d at 195 (opining that "jury trials in bankruptcy courts would impede efficiency). Bankruptcy courts were designed to be "speedy courts," and thus, are inappropriate for long jury trials. Id.; *see also* In re Grabill, 967 F.2d at 1158 (noting possibility of inefficiency if bankruptcy courts conducted jury trials); In re G. Weeks. Sec., Inc., 89 B.R. at 710 (finding jury trials incompatible with bankruptcy court's function and purpose as sources of quick resolution); McDowell, supra note 12, at 744 (discussing burden of transferring bankruptcy cases to district court). Back To Text

[142] *See* Nantahala Village, Inc. v. NCNB Nat'l Bank of Fla. (In re Nantahala Village, Inc.), 976 F.2d 876, 880 (4th Cir. 1992) (noting bankruptcy court's assistance to district court reduces district court's docket and decreases time

needed to reach final decision in bankruptcy court); Sobel v. Weinstein (In re Weinstein), 237 B.R. 567, 577 n.11 (Bankr. E.D.N.Y. 1999) (noting that district courts not appointing bankruptcy judges to preside over jury trials will face increased docket loads); McDowell, supra note 12, at 744 (discussing burden of transferring bankruptcy cases to district court). Back To Text

[143] *See* In re Grabill, 967 F.2d at 1159 (Posner, J., dissenting) (stating that directing part of case to district court : (1) interrupts proceeding; (2) bifurcates case among multiple courts; (3) wastes time and resources of both judges and litigants; and (4) "injects extraneous considerations into a party's decision on whether to demand a jury trial"); Wilson v. Alfa Companies (In re Wilson), 207 B.R. 241, 249 (Bankr. N.D. Ala. 1996) (noting inefficiency of deciding pretrial issues in bankruptcy court and subsequently moving case to district court ignorant of factual background for jury trial). *But see* In re Clay, 35 F.3d 190, 195 (5th Cir. 1994) (noting that fears of inefficiency resulting from transferring bankruptcy cases to district courts for jury trial; concerns about complex core matters being decided by inexpert district courts; and anxieties over strategic requests for jury trials are unfounded and unpersuasive). Back To Text

[144] *See* In re Grabill, 967 F.2d at 1159 (Posner, J. dissenting) (opining that jury trials conducted by bankruptcy judges conserve judicial resources and prevent strategic jury requests); *In re Wilson*, 207 B.R. at 249 (recognizing inefficiency of bifurcating cases between bankruptcy courts and district courts for jury trial); Pelullo v. Kerr (*In re* Pelullo), No. 96−MC−303, 1997 U.S. Dist. LEXIS 12324, at *5 (E.D. Pa. 1997) (observing inefficiency of trying non−core matters before bankruptcy judge unable to enter final order without parties consent). *But see* In re Clay, 35 F.3d at 195 (relating that concerns about strategic jury requests and inefficient distribution of judicial resources are unsound). Back To Text

[145] *See* In re Grabill, 976 F.2d 1152, 1130 (7th Cir. 1992) (Easterbrook, J., dissenting) (noting that removing bankruptcy cases to district court for jury trial forces redundant effort by judges and creates needless potential for conflict in adjudicative approach); M&E Contractors, Inc. v. Kugler−Morris Gen. Contractors, Inc., 67 B.R. 260, 267 (N.D. Tex. 1986) (noting that jury trials in district court would impede ultimate resolution of bankruptcy cases even more than jury trials in bankruptcy court because of overburdened district court dockets); Kelleher, supra note 4, at 488−89(concluding that removing proceedings to district courts for jury trial promotes inefficiency and burdens already encumbered district court dockets). Back To Text

[146] *See* Leonard v. Wessel (In re Jackson), 90 B.R. 126, 135 (Bankr. E.D. Pa. 1988) (concluding that bankruptcy court's inadequate facilities do not preclude it from conducting jury trial). *But see* In re Grabill, 967 F.2d at 1158 (considering lack of staff and proper facilities as militating against jury trials in bankruptcy court); Austin v. Wendell−West Co., 539 F.2d 71, 74 (9th Cir. 1976) (considering bankruptcy court's lack of facilities adequate for extended jury trial as reason for moving location of trial); Kelleher, supra note 4, at 490 (recognizing inadequate facilities of some bankruptcy courts but concluding that correcting such deficiencies constitutes acceptable cost). Back To Text

[147] *See* In re Grabill, 967 F.2d at 1160−61 (Posner, J., dissenting) (identifying that very few state trial judges have life tenure, as well as many federal judicial officers, judges of District of Columbia, and federal magistrates); *see also* 28 U.S.C. § 636(c)(1) (1994) (permitting magistrate judges to conduct jury trials in civil matters); Allen v. Murph, 194 F.3d 722, 724−25 (6th Cir. 1999) (Krupansky, J., concurring) (acquiescing to jury trial conducted by magistrate judge); Fowler v. Jones, 899 F.2d 1088, 1092−93 (11th Cir. 1990) (permitting jury trials by magistrate judges if express consent of parties is given). Back To Text

[148] *See* In re Grabill, 967 F.2d at 1160 (Posner, J., dissenting) (stating that because Federal Rules of Evidence govern both bench and jury trials, only differences for presiding judge is voir dire and jury instructions); U.S. v. Roth, 860 F.2d 1382, 1388 (7th Cir. 1988) (noting "complex strategic and tactical differences between bench and jury trials"); Heiman v. Medlin Marine, Inc., Nos. 75−1258, 75−1287, 75−1381 and 75−1384, 1976 U.S. App. LEXIS 13391, at *16−17 (8th Cir. 1976) (stating that essential difference between bench and jury trials is lower level of deference given to district judge's findings of fact on appellate review). Back To Text

[149] *See* In re Grabill, 967 F.2d at 1160 (Posner, J., dissenting) (noting that law clerks frequently draft jury instructions); Fredonia Broad. Corp., Inc. v. RCA Corp., 569 F.2d 251, 256 n.6 (5th Cir. 1978) (recognizing that law

clerk for district judge probably drafted jury instructions); U.S. v. D'Arco, No. 90−CR−1043, 1992 U.S. Dist. LEXIS 7301, at *40 (N.D. Ill. 1992) (declaring that defendant's objection to law clerk conducting jury instruction conference was frivolous). Back To Text

[150] In re Grabill, 976 F.2d at 1129 (Easterbrook, J., dissenting); Fedders N. Am., Inc. v. Branded Prods., Inc. (In re Branded Prods., Inc.), 154 B.R. 936, 949 (Bankr. W.D. Tex. 1993) (adopting Judge Easterbrook's view regarding juries' beneficial role in proceedings conducted by life tenured Article III judges and concluding that same benefits would be reaped by jury trials in bankruptcy proceedings); *see also* Richard v. Firestone Tire & Rubber Co., 853 F.2d 1258, 1260 (5th Cir.1988) (discussing jury trial judge's role in clarifying jury decisions and duty to reconcile jury conclusions). Back To Text

[151] In re Grabill, 976 F.2d 1152, 1130 (7th Cir. 1992) (Easterbrook, J., dissenting) (asserting that average district judge serves for approximately fourteen years); In re Branded Prods., Inc., 154 B.R. at 949−50 (concurring with Judge Easterbrook that district judges serve actively for roughly fourteen years and noting correspondence with appointed terms in bankruptcy judges). *But see* Linda R. Hirshman, Tough Love: The Court of Appeals Runs the Seventh Circuit the Old Fashioned Way, 63 Chi.−Kent. L. Rev. 191, 192 n.1 (1987) (noting two district court judges who served actively in excess of eighteen years each). Back To Text

[152] *See* In re Grabill, 976 F.2d at 1129 (Easterbrook, J., dissenting) (concluding that because bankruptcy judges rely on Court of Appeals judges for reappointment, bankruptcy judges must exhibit same characteristics of good behavior expected of Article III judges). *See generally* Benny v. England (In re Benny), 812 F.2d 1133, 1139 (9th Cir. 1987) (discussing controversy regarding whether Congress reappointed all bankruptcy judges in office through 1984 legislation in response to *Northern Pipeline*); Armstrong v. Norwest Bank Minn., N.A. (In re Trout), 123 B.R. 333, 335 n.2 (Bankr. D.N.D. 1990) (noting reappointment of magistrate judge). Back To Text

[153] *See* In re Grabill, 967 F.2d at 1161 (Posner, J., dissenting) (concluding that bankruptcy judges should be permitted to hold jury trials); In re Branded Prods., Inc., 154 B.R. at 950 (concluding that bankruptcy courts may conduct jury trials in core proceedings). *But see* Stansbury Poplar Place, Inc. v. Schwartzman (In re Stansbury Poplar Place, Inc.), 13 F.3d 122, 124 (4th Cir. 1993) (holding that bankruptcy courts do not have authority to conduct jury trials). Back To Text

[154] *See* M. Sobel, Inc. v. Weinstein (In re Weinstein), 237 B.R. 567, 573 (Bankr. E.D.N.Y. 1999) (stating that Court of Appeals should recognize that many creditors perceive bankruptcy judges to be more personally and institutionally sympathetic to debtors); McDowell, supra note 12, at 745 (discussing *United Missouri Bank's* desire to bring case in district court instead of bankruptcy court). Back To Text

[155] *See* McDowell, supra note 12, at 745 (noting debtors would prefer bankruptcy courts, hoping the court will be more sympathetic); *see also* In re Curlew Valley Assocs., 14 B.R. 506, 512 (Bankr. D. Utah 1981) (observing that bankruptcy judges feel more personally responsible for success or failure of cases, with this institutional bias causing more unfair decisions in bankruptcy court than elsewhere). Back To Text

[156] *See* McDowell, supra note 12, at 745; *see also* In re Weinstein, 237 B.R. at 573 (explaining how demand for jury trial is meant to protect creditor against adverse effect of perceived judge's bias towards debtor). Back To Text

[157] Nat'l. Bankr. Comm'n, Bankruptcy: The Next Twenty Years, Final Report 1, 752−53 (1997) [hereinafter Commission Report]. Back To Text

[158] *See* id. at 11−12. Back To Text

[159] *See* id. at 75; *see also* Legislative Updates, 16 Am. Bankr. Inst. J. 6, 6 (1997). Back To Text

[160] *See* Commission Report at 75. Back To Text

[161] *See* id. Back To Text

[162] *See* id. Back To Text

[163] *See* Gilman, supra note 159, at 1 (discussing proposal that will create two tiers of bankruptcy judges during transition period). Back To Text

[164] *See* Legislative Updates, supra note 159, at 6. Back To Text

[165] *See Reform: Bankruptcy Review Commission Takes Close Look At Issues Confronting It*, July 11, 1996, available in WL, 7/11/96 BLD d2. (indicating that primary roadblock to this proposal is United States Judicial Conference, which has strongly opposed idea of Article III status for bankruptcy judges); *see also* Skelton, Bankruptcy Jurisdiction and Jury Trials: The Constitutional Nightmare Continues, 8 Bankr. Dev. J. 469, 511−14 (1991) (noting Congressional concerns with making bankruptcy judges Article III judges). Back To Text