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**Uncovering the Mysteries of Bankruptcy Conference**  
**February 22, 2024 | Pasadena and Virtually**

# **Bigfoot of the Bankruptcy World: The Mythical Bankruptcy Jury Trial**

**Presented by:**

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**Thursday, February 22, 2024**

## Seventh Amendment

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**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.**

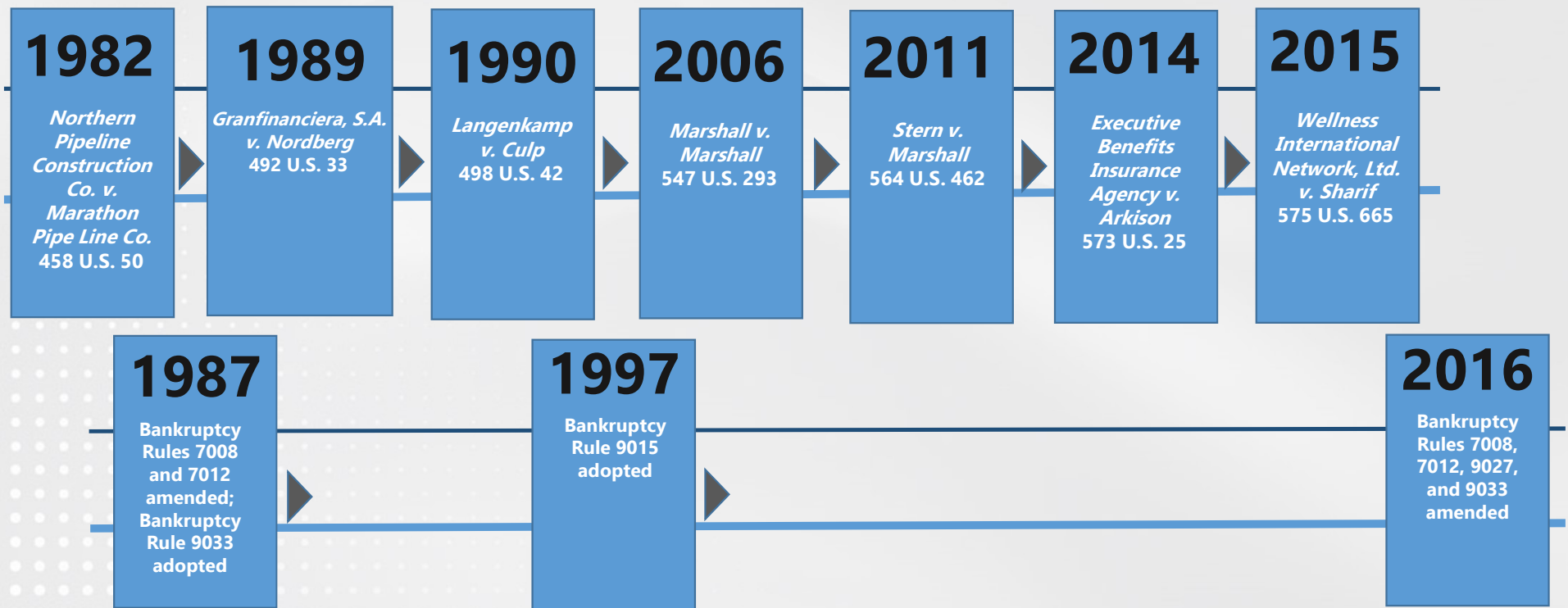
## **28 U.S.C. § 157(e)**

(enacted 1994)

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**If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.**

# Timeline of Supreme Court Cases on Bankruptcy Court Jurisdiction and Bankruptcy Rules 7008, 7012, 9015, 9027 and 9033



# Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982)

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## **Issue:**

The constitutionality of the Bankruptcy Reform Act of 1978's grant of jurisdiction to bankruptcy courts.

## **Decision:**

The Court found the Act's grant of jurisdiction to bankruptcy courts unconstitutional under the separation of powers doctrine. It held that bankruptcy courts couldn't adjudicate state law claims.

## Granfinanciera, S.A. v. Nordberg, 492 U.S. 33 (1989)

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### **Issue:**

Bankruptcy court jurisdiction over fraudulent transfer claims against non-creditors.

### **Decision:**

The Court held that non-creditors are entitled to jury trials on fraudulent transfer claims, which the Court deemed "private rights."

## Langenkamp v. Culp, 498 U.S. 42 (1990)

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### **Issue:**

Creditors' right to jury trials in adversary proceedings before bankruptcy courts.

### **Decision:**

The Court held creditors subject themselves to bankruptcy courts' equitable powers when filing claims against bankruptcy estates and thus are not entitled to jury trials.

## Marshall v. Marshall, 547 U.S. 293 (2006)

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### **Issue:**

Whether bankruptcy courts have the constitutional authority to issue final judgments on state law counterclaims related to a probate action.

### **Decision:**

The Court held that a district court (and by reference, a bankruptcy court) has concurrent jurisdiction with a state probate court over state-law tort claims.



## Stern v. Marshall, 564 U.S. 462 (2011)

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### Central Issues:

- Whether Congress may, under Articles I and III, constitutionally authorize core jurisdiction over a debtors' counterclaims to proofs of claim.
- Whether the Ninth Circuit misapplied *Marathon* and contravened the Court's post-*Marathon* precedent, creating a circuit split in the process, by holding that Congress cannot constitutionally authorize non-Article III bankruptcy judges to enter final judgment on all compulsory counterclaims to proofs of claim.

### Decision:

- The Court held Congress cannot constitutionally authorize non-Article III bankruptcy judges to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim.

## Executive Benefits Insurance Agency v. Arkison, 573 U.S. 25 (2014)

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### **Issue:**

The scope of bankruptcy court jurisdiction over fraudulent conveyance claims.

### **Decision:**

The Court confirmed that while bankruptcy courts couldn't issue final judgments on fraudulent conveyance claims, they could issue proposed findings subject to district court review.

The Court left undecided the issue of litigants' right to consent to bankruptcy courts' jurisdiction to issue final judgments on the fraudulent transfer claims.

## Wellness International Network, Ltd. v. Sharif, 575 U.S. 665 (2015)

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### **Issue:**

Whether parties could consent to bankruptcy court jurisdiction over matters beyond their constitutional authority.

### **Decision:**

The Court ruled that parties could consent to bankruptcy court jurisdiction over matters outside their constitutional authority.

## F.R.Bankr.P. Rule 7008: General Rules of Pleading

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Requires parties to provide certain information in their allegations.

### **1987 Amendment:**

- Added the requirement the pleader include an allegation as to whether the proceeding is core or non-core.
- If there is an allegation that the proceeding is non-core, added the requirement that the pleader state whether it consents to the entry of final orders or judgment by the bankruptcy court.

### **2016 Amendment:**

- Removed the requirement that the pleader state whether the proceeding is core or non-core.
- Added the requirement that in an adversary proceeding before a bankruptcy court, a complaint, counterclaim, or cross claim in an adversary proceeding must state whether or not the pleader consents to the entry of final orders or judgment by the bankruptcy court.

## F.R.Bankr.P. Rule 7012: Defenses and Objections

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Addresses answers, cross-claims, and defenses.

### **1987 Amendment (7012(b)):**

- Added requirement that the responding party include a response to whether the proceeding is core or non-core.
- Included a statement that a final order of judgment may not be entered in a non-core proceeding by a bankruptcy judge unless all parties consent.

### **2016 Amendment (7012(b)):**

- Added requirement that the responding parties state whether they consent to entry of final orders or judgment by the bankruptcy court.
- Removed the requirement that the pleader state whether the proceeding is core or non-core.

## F.R.Bank.P. Rule 9015: Jury Trials

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Adopted in 1997.

- Makes FRCP rules 38, 39, and 81(c) (insofar as they apply to jury trials) applicable in bankruptcy cases.
- Provides that parties may consent to have a bankruptcy judge conduct a jury trial (by jointly or separately filing a statement of consent within any time limits specified by local rules) if:
  - i) Right to a jury trial exists;
  - ii) Bankruptcy judge has been specially designated to conduct the jury trial; and
  - iii) Timely demand has been filed pursuant to FRCP 38(b).

## F.R.Bankr.P. Rule 9027: Removal

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Provides the procedures associated with the removal of a case from bankruptcy court to district court.

### **2016 Amendment:**

- Requires party filing notice of removal to include a statement regarding consent in notice. (Rule 9027(a)(1)).
- Other party must also file statement regarding consent within 14 days after removal. (Rule 9027(e)(3)).

## F.R.Bankr.P. Rule 9033: Findings of Fact & Conclusions of Law

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Provides the procedures for proposed findings of fact and conclusions of law.

### **1987 Adoption:**

- 28 U.S.C. § 157(c)(1) requires bankruptcy judges to submit proposed findings of fact and conclusions of law to district courts on non-core proceedings. Rule 9033 was adopted to provide the procedures for those findings of fact and conclusions of law. Rule 9033 was modeled on F.R.Civ.P. 72.

### **2016 Amendment:**

- Amended to delete the limiting language of non-core proceedings. Some proceedings may qualify as core, yet be beyond the constitution power of bankruptcy courts to issue a final adjudication.



## Central District of California General Order 13-05

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- Contains the district's "General Order of Reference"
- "Specially designates" bankruptcy judges of the district to conduct jury trials, with the express consent of all the parties
- Provides that "If the parties consent to a jury trial in a proceeding before a bankruptcy judge, they will be deemed to have consented to the entry of a final order by the bankruptcy judge in that proceeding"
- Authorizes bankruptcy judge to whom a case is assigned to transfer a case or proceeding to the district court if the judge determines that that case or proceeding should be heard in district court

## Central District of California LBR 9015-1

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- Subpart (a): Jury must consist of not less than 6 members
- Subpart (b): Procedures for submitting proposed jury instructions
- Subpart (c): Procedures for objecting to proposed instructions
- Subpart (d): Special verdicts and interrogatories

## Central District of California LBR 9015-2

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- Subpart (a): If you claim a right to a jury trial, you must make a demand for it in the manner specified in subpart (b).
- Subpart (b): How and when to make a demand for a jury trial.
- Subpart (c): Once made, demand for a jury trial cannot be withdrawn without the consent of the parties.
- Subpart (d): Failure to make a demand in accordance with this rule and to file it as required by FRBP 5005 constitutes a waiver of trial by jury (but a court can on its own initiative still order a trial by jury of any or all issues).

## Central District of California LBR 9015-2 (cont'd)

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- Subpart (e): Unless court orders otherwise, an issue as to which no jury is demanded will be tried by the court.
- Subpart (f): In matters in which there isn't a right to a trial by jury, court on its own initiative may try any issue with an advisory jury, or (unless the US is a party and a statute provides for trial without a jury), with the consent of the parties, may order a trial with a jury whose verdict has same effect as if jury trial had been a matter of right.
- Subpart (g): Where a jury is demanded, all pretrial proceedings, through approval and entry of the pretrial order, will be conducted by the bankruptcy judge.
- Subpart (h): Within 7 days after entry of the pretrial order (or earlier if the motion is brought pursuant to 28 U.S.C. § 157(d)), any party may move the district court to withdraw the reference. Failure to bring the motion by this deadline constitutes consent to have the jury trial conducted by the bankruptcy court.

# Local Rule 9015 Within the Ninth Circuit

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## Districts That Have Adopted a Local Rule 9015

Alaska  
Central District of California  
Northern District of California  
Idaho  
Montana  
Nevada  
Oregon  
Western District of Washington

## Districts That Have Not Adopted a Local Rule 9015

Arizona  
Eastern District of California  
Southern District of California  
Guam  
Hawaii  
Northern Mariana Islands  
Eastern District of Washington

# Local Rule 9015 Within the Ninth Circuit

## Alaska

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**Rule 9015-1 Jury Trials — Bankruptcy Court** (a) Applicability of Certain Local U.S. District Court Rules. United States District Court for the District of Alaska Local Civil Rules 47.1 and 51.1 apply when a jury trial is demanded. (b) Consent to Jury Trial Before Bankruptcy Judge. (1) The statement of consent to have a jury trial by a bankruptcy judge under Rule 9015(b), Federal Rules of Bankruptcy Procedure, must be filed not later than sixty (60) days after the demand or the last answer is filed, whichever is later. (2) Consent to the entry of final orders or judgments made under Rules 7008 and 7012(b), Federal Rules of Bankruptcy Procedure, will be deemed a consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e). (3) The filing of a consent to a jury trial being conducted by the Bankruptcy Court under Rule 9015(b), Federal Rules of Bankruptcy Procedure, will be deemed to revoke any earlier nonconsent to the jurisdiction of the Bankruptcy Court made under Rules 7008 or 7012(b), Federal Rules of Bankruptcy Procedure, and as consent to the jurisdiction of the Bankruptcy Court under 28 U.S.C. § 157(c)(2).

**Rule 9015-2 District Court Jury Trials — Pretrial Procedures** (a) Core Proceedings. In any core proceeding as defined in 28 U.S.C. § 157(b)(2), if no timely consent to have a jury trial conducted by a bankruptcy judge is made under AK LBR 9015(b), or any party files a notice of nonconsent, the proceeding will not be transferred to the district court except upon the granting of a motion to withdraw the reference under Rule 5011, Federal Rules of Bankruptcy Procedure or as provided in subsection (d). (b) Non-Core Proceedings. In any proceeding that is not a core proceeding as defined in 28 U.S.C. § 157(b) where the parties have not consented to the entry of final orders under 28 U.S.C. § 157(c)(2) or (e), unless the reference is withdrawn or as otherwise ordered by the district court, on its own motion or on the motion of any party, all pretrial matters remain referred to the Bankruptcy Court for hearing and determination as provided in AK LBR 90331. (c) Status Report to District Court. (1) Unless otherwise ordered by the district court, not later than one hundred twenty (120) days after the last responsive pleading is filed, the parties must prepare and lodge with the Bankruptcy Court a joint status report, setting forth: [A] that the matter is ready for trial or the date by which the parties expect to be ready for trial; [B] the current status of discovery and, if discovery has not been completed, the date by which it is expected discovery will be completed; [C] the current status of any pending motions; and [D] any motions expected to be filed and the date by which such motions are to be filed. (2) Within fourteen (14) days after the status report is lodged, the Bankruptcy Court will, by endorsement thereon, indicate either: 71 LOCAL BANKRUPTCY RULES DISTRICT OF ALASKA (12/2023) [A] all matters submitted for determination have been determined by the Bankruptcy Court; or [B] the date by which all matters under submission are expected to be determined. (3) Upon entry of the endorsement by the Bankruptcy Court, the clerk of the Bankruptcy Court will forthwith transmit the status report to the clerk of the district court. (d) Certificate of Readiness for Trial and Transfer to District Court. (1) Unless the reference has been earlier withdrawn, when all pre-trial matters have been completed and the proceeding is ready for trial, the Bankruptcy Court will certify that fact to the district court in writing. (2) Upon certification of readiness for trial by the Bankruptcy Court, the clerk of the Bankruptcy Court will forthwith transmit the certificate of readiness together with the proceeding files to the clerk of the district court.

# Local Rule 9015 Within the Ninth Circuit

## Central District of California

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### **LBR 9015-1. JURY TRIALS**

- (a) **Number of Jurors.** If a trial of the proceeding or matter is to be before a jury, the jury must consist of not less than 6 members.
- (b) **Instructions.**
- (1) Proposed jury instructions must be in writing, and must be filed and served at least 7 days before trial is scheduled to begin. Each requested jury instruction must:
    - (A) Be set forth in full on a separate page;
    - (B) Embrace only one subject or principle of law; and
    - (C) Not repeat a principle of law contained in any other request.
  - (2) The identity of the party requesting the jury instructions must be disclosed on a cover page only and must not be disclosed on the proposed instructions.
  - (3) The authority or source of each proposed instruction must be set forth on a separate page or document and must not be disclosed on the proposed instruction.
- (c) **Objections to Instructions.**
- (1) Objections to proposed instructions must be filed and served on or before the first day of trial unless the court permits oral objections.
  - (2) Written objections must be numbered and must specify distinctly the objectionable matter in the proposed instruction. Each objection must be accompanied by citation of authority.
  - (3) Where applicable, the objecting party must submit an alternative instruction covering the subject or principle of law. The alternative instruction must be set forth on a separate document. The identity of the requesting party or the authority or source of the proposed instruction must not be disclosed on the alternative instruction.

# Local Rule 9015 Within the Ninth Circuit

## Central District of California (cont'd)

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**(d) Special Verdicts and Interrogatories.**

- (1) Any request for a special verdict or a general verdict accompanied by answers to interrogatories must be filed and served at least 7 days before trial is scheduled to commence.
- (2) Special verdicts and interrogatories must conform to the requirements of F.R.Civ.P. 49, and must not bear any identification of the party presenting the form. Identification must be made only on a separate page appended to the front of the special verdict and interrogatory form.

**LBR 9015-2. DEMAND FOR JURY TRIAL**

**(a) Right to Trial by Jury.**

- (1) A party claiming a right to trial by jury must make a demand as specified in subsection (b) of this rule.
- (2) Nothing contained in this rule shall be deemed to create or imply a right to a jury trial where no such right exists under applicable law.

**(b) Demand.**

- (1) Time and Form of Demand. A party must demand a trial by jury in accordance with F.R.Civ.P. 38(b).
- (2) Statement of Consent. A demand must include a statement that the party does or does not consent to a jury trial conducted by the bankruptcy court. Within 14 days of the service of the demand and statement of consent or non-consent, all other parties must file and serve a statement of consent or non-consent to a jury trial conducted by the bankruptcy court.
- (3) Specification of Issues. In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable. If a party has demanded trial by jury for only some of the issues, any other party within 14 days after service of the demand or such lesser time as the court may order may serve a demand for trial by jury of any other or all of the issues of fact in the action.
- (4) Determination by Court. On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition must be granted.
- (5) Cover Sheet Insufficient. Any notation on Official Form 1040, Adversary Proceeding Cover Sheet, filed under LBR 7003-1 concerning whether a jury trial is, or is not, demanded does not constitute a demand for jury trial sufficient to comply with F.R.Civ.P. 38(b) or this rule.



# Local Rule 9015 Within the Ninth Circuit

## Central District of California (cont'd)

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- (c) **Withdrawal of Demand.** A demand for trial by jury made in accordance with this rule may not be withdrawn without the consent of the parties.
- (d) **Waiver.**
- (1) The failure of a party to file and serve a demand in accordance with this rule, and to file it as required by FRBP 5005, constitutes a waiver of trial by jury.
  - (2) Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.
- (e) **Trial by the Court.**
- (1) Subject to the provisions of subsection (d)(2) of this rule, an issue not demanded for trial by jury will be tried by the court.
  - (2) Where a demand for trial by jury has been made in accordance with this rule, the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, may consent to trial by the court sitting without a jury.
- (f) **Advisory Jury and Trial by Consent.** In all actions not triable of right by jury, the court on motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.
- (g) **Pretrial Procedure Where Jury Trial Requested.** Where a jury is demanded, all pretrial proceedings, through approval and entry of the pretrial order, will be conducted by the bankruptcy judge.
- (h) **Motion for Withdrawal of Reference.**
- (1) Within 7 days of the entry of the pretrial order, any party may file and serve a motion to the district court to withdraw reference pursuant to LBR 5011-1.
  - (2) The failure of any party to file and serve a motion to withdraw reference within the 7-day time period constitutes consent by all parties to the jury trial being presided over by the bankruptcy judge.
  - (3) Nothing in this rule precludes an earlier motion to withdraw reference on the grounds set forth in 28 U.S.C. § 157(d).

# Local Rule 9015 Within the Ninth Circuit

## Northern District of California

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**LBR 9015-1. Jury Trial of Right.** FRCivP 38(a)-(d) applies in adversary proceedings.

**LBR 9015-2. Jury Trials and Personal Injury and Wrongful Death Claims.**

- (a) **Determination of Right.** In any proceeding in which a demand for jury trial is made, the Bankruptcy Judge shall, upon the motion of one of the parties, or upon the Bankruptcy Judge's own motion, determine whether the demand was timely made and whether the demanding party has a right to a jury trial. The Bankruptcy Judge may, on the Judge's own motion, determine that there is no right to a jury trial in a proceeding even if all of the parties have consented to a jury trial.
- (b) **Motion and Certification to District Court.** If the Bankruptcy Judge determines that the demand for a jury trial was timely made and the party has a right to a jury trial, and if all parties have not filed written consent to a jury trial before the Bankruptcy Judge, the Bankruptcy Judge shall, after having resolved all pre-trial matters, including dispositive motions, certify to the District Court that the proceeding is to be tried by a jury and that the parties have not consented to a jury trial in the Bankruptcy Court, and shall include in such certification, a report of the status of the proceeding and a recommendation on when the matter would be suitable for withdrawal from the Bankruptcy Court. Upon such certification, the party who has demanded a jury trial shall promptly file a motion in accordance with B.L.R. 5011-2(a) for withdrawal of the reference of the proceeding to be tried to a jury. The motion and the certification shall thereafter be handled in the District Court in accordance with B.L.R. 5011-2(c), (d) and (e).
- (c) **Jury Trial in Bankruptcy Court.** The Bankruptcy Judges of this District are hereby specially designated to conduct jury trials pursuant to 28 U.S.C. § 157(e). If the Bankruptcy Judge determines that a jury demand was timely made and the demanding party has a right to jury trial, and if all parties expressly consent to a jury trial before the Bankruptcy Judge, the Bankruptcy Judge shall try the proceeding by jury and shall enter judgment at the conclusion of the trial.

## Local Rule 9015 Within the Ninth Circuit Northern District of California (cont'd)

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- (d) **Personal Injury and Wrongful Death Claims.** Upon timely motion of a party or upon the Bankruptcy Judge's own motion, the Bankruptcy Judge may determine that a claim is a personal injury tort or wrongful death claim requiring trial by a District Judge. Upon making such a determination, the Bankruptcy Judge shall, after having resolved all pre-trial matters, including dispositive motions, certify to the District Court that the claim is one which requires trial in the District Court under 28 U.S.C. § 157(b)(5) and shall include in such certification, a report of the status of the proceeding and a recommendation on when the matter would be suitable for withdrawal from the Bankruptcy Court. Upon such certification, the party who has demanded a jury trial shall promptly file a motion in accordance with B.L.R. 5011-2(a) for withdrawal of the reference of the proceeding to be tried to a jury. The motion and the certification shall thereafter shall be handled in the District Court in accordance with B.L.R. 5011-2(c), (d) and (e).
- (e) **Procedure.** In any proceeding within the jurisdiction created by 28 U.S.C. § 1334, FRCivP 38(a)-(d), 39, 47-51, and 81(c) shall govern the demand for and conduct of jury trials.
- (f) **Remand and Abstention.** Nothing contained in this rule shall be construed to preclude the entry of any order of remand or abstention.

# Local Rule 9015 Within the Ninth Circuit

## Idaho

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### LBR 9015-1

- (a) **Applicability of Certain Federal Rules of Civil Procedure.** Fed. R. Civ. P. 38, 39, and 47 through 51, and Fed. R. Civ. P. 81 (c) insofar as it applies to jury trials, apply in bankruptcy cases and adversary proceedings, except that a demand made under Fed. R. Civ. P. Rule 38(b) shall be filed in accordance with Fed. R. Bankr. P. 5005.
- (b) **Consent to Have Trial Conducted by Bankruptcy Judge.** If the right to a jury trial applies, a timely demand has been filed under Fed. R. Civ. P. 38(b), and the bankruptcy judge has been specially designated to conduct the jury trial, the parties may consent to have a jury trial conducted by a bankruptcy judge under 28 U.S.C. § 157(e) by jointly or separately filing a statement of consent no later than fourteen (14) days after service of the demand.

# Local Rule 9015 Within the Ninth Circuit

## Montana

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### Rule 9015-2. Jury Trials.

- (a) **Applicability of Certain Federal Rules of Civil Procedure.** Fed. R. Civ. P. 38, 39, 47-51, and 81(c), insofar as they apply to jury trials, apply in all cases and proceedings in this Court, except that a demand made under Fed. R. Civ. P. 38(b) shall be filed in accordance with Fed. R. Bankr. P. 5005.
- (b) **Consent to Have Jury Trial Conducted by Bankruptcy Court.** If the right to a jury trial applies and a timely demand has been filed under Fed. R. Civ. P. 38(b), parties may consent to have a jury trial conducted by the Bankruptcy Court under 28 U.S.C. § 157(e). Parties must jointly or separately file a statement of consent no later than 30 days after the date for demand. Failure to affirmatively file a consent to a jury trial shall be deemed a lack of consent.
- (c) **Voir Dire.** Unless otherwise ordered, the Court shall conduct an interrogation of prospective jurors on *voir dire* examination. In its discretion, the Court may permit questions to be submitted in writing in advance of jury selection or orally at the side of the bar during *voir dire*.
- (d) **Time for Filing a Demand for Jury Trial after Removal.** If, at the time of removal, all necessary pleadings have been served, a party entitled to a jury trial must demand one within 21 days after the Notice of Removal is filed; otherwise, within 21 days after service of the notice of filing of the Notice of Removal on the party entitled to a jury trial. A party making an express demand for trial by jury before removal, in accordance with federal or state law, need not make a demand after removal. If applicable state law in the court from which the case is removed does not require the parties to make express demands to claim a trial by jury, the parties must make demands after removal, in accordance with this paragraph, unless the Court directs them to do so within a specific time. The Court may make such a direction on its own motion and shall do so as a matter of course at the request of any party. The failure of a party to make a jury demand as directed under this sub-paragraph constitutes a waiver of trial by jury.

# Local Rule 9015 Within the Ninth Circuit

## Nevada

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### Local Rule 9015. Jury Trials.

- (a) **Designation to Conduct Jury Trials.** The bankruptcy judges of this district are designated to exercise all jurisdiction in civil jury cases under 28 U.S.C. § 157(e). Consent of the parties may be made in writing or orally on the record and, unless the court orders otherwise, must be given at least thirty (30) days before the date first set for trial.
- (b) **Demand for Jury Trial.** Fed. R. Civ. P. 38 applies in adversary proceedings where there is a right to trial by jury.
- (c) **Form of Demand.** A demand for a jury trial must appear immediately following the title of the complaint or answer containing the demand, or in another document as may be permitted by Fed. R. Civ. P. 38(b). Any notation on an adversary proceeding cover sheet filed under LR 7003 concerning whether a jury trial is, or is not, demanded does not constitute a demand for a jury trial under these Local Rules.
- (d) **Procedure.** In any proceeding in which a demand for jury trial is made, the court will, on a motion of one (1) of the parties or on the court's own motion, determine whether the demand was timely made and whether the demanding party has a right to a jury trial. Even if all the parties have consented to a jury trial, the court may, on its own motion, determine that there is no right to a jury trial in a proceeding.
- (e) **Consent and Withdrawal.** Upon the court's determination that the demand was timely made and the party has a right to a jury trial, and if all parties have not filed a written consent or consented on the record to a jury trial in the bankruptcy court, the bankruptcy court will certify the matter to the district court. Upon certification, the district court will open a new civil matter, and will assign a date for trial. Unless the assigned judge orders otherwise, all proceedings will continue in the bankruptcy court until the matter is ready for trial.
- (f) **Nonjury Determination.** If the court determines that a jury demand was not timely made, or the demanding party is not entitled to a jury trial, the proceeding will be heard as a nonjury proceeding before the court.
- (g) **Certification to United States District Court.** If, on timely motion of a party or on the court's own motion, the court determines that a claim is a personal injury tort or wrongful death claim requiring trial by a district court judge, the proceeding will be certified to the district court in accordance with 28 U.S.C. § 157(b)(5).

# Local Rule 9015 Within the Ninth Circuit

## Oregon

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### **Rule 9015-1. Jury Trials—Procedures.**

LRs 16-5(b) and (c), 47, 48, and 51-1(c), (d)(1), and (3-6) apply to contested matters and adversary proceedings in which a party is entitled to a jury trial.

(Cross references Local District Rule 2100-6—Jury Trial).

# Local Rule 9015 Within the Ninth Circuit

## Western District of Washington

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### Rule 9015-1. Jury Trial

- (a) **Applicability of Certain Federal Rules of Civil Procedure and District Court Local Rules.** Fed. R. Civ. P. 38, 39, 47-51, and 81(c) (insofar as applicable to jury trials) and Local Rules W.D. Wash. LCR 38, 47, 51, apply in cases and proceedings.
- (b) **Demand for Jury Trial.** Where a jury trial is demanded as permitted by Fed. R. Civ. P. 38, said demand shall be made, whether or not also made in a pleading, in a separate document entitled "Demand for Jury Trial" and be filed
  - (1) with the notice of removal; or
  - (2) with a party's first pleading, or within 30 days of the filing of a notice of removal (pursuant to Fed. R. Bankr. P. 9027 and Local Bankruptcy Rule 9027-1), whichever is earlier.
- (c) **Consent to Have Trial Conducted by Bankruptcy Judge.**
  - (1) If there is a right to jury trial and a demand under Fed. R. Civ. P. 38(b) is timely filed, the parties shall consent or not (28 U.S.C. § 157(e)) to have the trial conducted by the bankruptcy judge by filing a statement of consent or withholding of consent by the later of the time for answer or reply, if the demand is made in a complaint or cross- or counter-claim, or 21 days after the demand is made.
  - (2) In any proceeding in which a demand for a jury trial is filed, the bankruptcy judge shall determine whether the party has a right to a jury trial and whether the demand was properly filed. If so, the bankruptcy judge shall preside at the jury trial if all parties consent. If there is no consent, the bankruptcy judge may designate a party to file a motion in accordance with Local Bankruptcy Rule 5011-1 for withdrawal of reference.
- (d) **No Right Created.** This rule does not expand or create any right to jury trial where the right does not otherwise exist.



## Case Study of a Bankruptcy Court Jury Trial

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- November 1990: Tidal Acceptance Corp. (Tidal) filed Chapter 11 in Santa Ana, CA. Retired Bankruptcy Judge John Ryan handled the bankruptcy case.
- Tidal was an automobile finance company, which purchased installment contracts for the purchase of automobiles from dealers. Thresher Corp. (Thresher) was Tidal's parent company. Greg Haughey (Haughey) was president of both Tidal and Thresher.
- Security Pacific Credit Corp. (SPCC) was the senior secured creditor, with a multi-million dollar revolving credit facility. Tidal was the borrower under that that credit facility. Thresher and Haughey were guarantors.
- Cash collateral usage disputes persisted from the start of the case (Nov. 1990) through the summer of 1992.

## Case Study of a Bankruptcy Court Jury Trial

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- March 1991: Tidal and Haughey filed a lawsuit in the bankruptcy court against SPCC and three of its employees. The complaint asserted claims for breach of contract, fraud, negligent misrepresentation and intentional infliction of emotional distress. In the complaint, Plaintiffs stated that the adversary proceeding was non-core, but they consented to the bankruptcy court's entry of a final judgment.
- April 1991: SPCC filed its answer. In that answer, SPCC agreed that the proceeding was non-core but it did not consent to the bankruptcy court's entry of a final judgment. In its answer, SPCC requested a jury trial.
- October 1991: SPCC filed a lawsuit against Haughey and Thresher in the Orange County Superior Court. In that lawsuit, SPCC sought to recover on Haughey's and Thresher's guaranties.
- November 1991: Tidal, Thresher and Haughey removed the guaranty lawsuit to the bankruptcy court. In the removal petition, they asserted the proceeding was non-core and that they consented to the Bankruptcy Court's entry of final judgment.

## Case Study of a Bankruptcy Court Jury Trial

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- December 1991: SPCC filed a motion to remand the removed lawsuit. Tidal, Thresher and Haughey opposed that motion.
- May 1992: As directed by Judge Ryan (at a case status conference), Tidal filed a motion to consolidate the two pending bankruptcy lawsuits. Over SPCC's objection, Judge Ryan consolidated the lawsuits. At a subsequent status conference, SPCC indicated that the removed proceeding was non-core and that it did not consent to the Bankruptcy Court entering a final judgment in the removed lawsuit.
- June/July 1992: At a continued evidentiary hearing on Tidal's cash collateral motion, Judge Ryan ordered the case converted to Chapter 7. As part of that ruling, the Bankruptcy Judge entered very lengthy findings of fact detailing Tidal's and Haughey's misrepresentations to the Court and the reasons why the bankruptcy case would be converted to Chapter 7.

## Case Study of a Bankruptcy Court Jury Trial

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- July/August 1992: The Chapter 7 trustee, with consent of Tidal and Haughey's litigation counsel, opted to continue prosecuting the consolidated lawsuit.
- September 1992: In light of Judge Ryan's findings and facts against Tidal and Haughey and conversion of the bankruptcy case to Chapter 7, both SPCC and Plaintiffs switched positions vis-à-vis the Bankruptcy Court's jurisdiction. In competing status conference statements, SPCC agreed the Bankruptcy Court could enter a final judgment on the non-core claims, and withdrew its request for a jury trial. Plaintiffs' counsel requested a jury trial, but (per Court ruling) was deemed to have consented to the Bankruptcy Court conducting a jury trial even though the claims were non-core.
- November/December 1992: Cross-motions for summary judgment were filed and considered by the Bankruptcy Court.

## Case Study of a Bankruptcy Court Jury Trial

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- March 1993: Judge Ryan issued a ruling on the summary judgment motions. In that ruling, Judge Ryan dismissed certain causes of action, but found triable issues of fact on other causes of action and scheduled the lawsuit for a jury trial.
- February 1994: Judge Ryan conducted a 4-5 day jury trial on the remaining causes of action. There was a 6 person jury. Prior to the commencement of the trial, Judge Ryan ruled on nearly 2 dozen motions *in limine*. After a half-day of deliberations, the jury returned a complete defense verdict in favor of SPCC and judgments against Thresher and Haughey on their guaranties. No appeal was taken.