

LESSON 1

OVERVIEW AND JURISDICTION

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I. INTRODUCTION

The Internal Revenue Service is frequently one of the major creditors of a debtor. As such, the Service is concerned with the administration of a bankruptcy case to ensure that the debtor's assets are used effectively in the payment of creditors' claims. Under the Bankruptcy Code, a debtor has the choice of liquidating assets to pay the debts in a Chapter 7, or reorganizing the financial situation to pay creditors over a period of time in a Chapter 11, 12 or 13.

Chapter 7 - a trustee collects all the debtor's assets, reduces the assets to cash, and distributes the funds to creditors in the priority set forth in section 726 of the Bankruptcy Code (11 U.S.C. § 726).

Chapter 11 or Chapter 12 case - the debtor continues to operate while formulating a plan to pay the claims of all creditors.

Chapter 13 - the debtor, who is typically a wage-earner, formulates a plan to pay creditors over a period of 3 to 5 years.

To accomplish the proper administration of a bankruptcy estate, the court must determine:

- the debtor's prepetition rights and interests,
- the prepetition rights and interests of some or all creditors against other creditors or transferees,
- the rights of the debtor or trustee under the Bankruptcy Code to recover property or transfers of property,

- the rights of the debtor to retain existing or future property including exemption rights, and
- the debtor's relief from prepetition liabilities granted by the Bankruptcy Code.

II. LEGISLATION

- A. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 95th Cong., 2nd Sess. (1978), repealed the previous Bankruptcy Act in its entirety. To avoid confusion, all cases under the Reform Act of 1978 (title 11 of the United States Code) are referred to as Code cases, and all cases under the old Act are referred to as Act cases. All petitions filed on or after October 1, 1979, are governed by the new Bankruptcy Code.
- B. The Bankruptcy Tax Act of 1980, Pub. L. No. 96-589, 94 Stat. 3389, 1980-2 C.B. 607 (1980), adapted some of the general concepts of federal income taxation to the particular factors inherent in bankruptcy and added rules to facilitate the administration of bankruptcy estates.
- C. The Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA), Pub. L. No. 98-353, 98th Cong., 2nd Sess. (1984), represented the culmination of intense controversy and negotiation following the decision in Northern Pipeline Construction Co. v. Marathon Pipeline Co., 458 U.S. 501 (1982), wherein the Supreme Court invalidated the delegation of Article III judicial power to non-life tenured bankruptcy judges. The BAFJA became fully effective on October 8, 1984.
- D. The Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, created a new Chapter 12 of the Bankruptcy Code which applies only to individual farmers, and provided for the nationwide appointment of United States Trustees.
- E. The Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, made significant changes in bankruptcy law. The provisions of the 1994 Reform Act apply generally to cases filed on or after October 22, 1994.
- F. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, was signed into law on April 20, 2005. With certain exceptions, these provisions became effective for cases filed on or after October 17, 2005.

III. JURISDICTION -- 28 U.S.C. § 1334

Under 28 U.S.C. § 1334 (a) and (b), the district courts have original and exclusive jurisdiction of all cases under title 11, and original but not exclusive jurisdiction of all civil proceedings arising thereunder, or arising in or related to cases thereunder.

IV. VENUE -- 28 U.S.C. §§ 1408-1410

- A. 28 U.S.C. § 1408 provides that a case under title 11 may be commenced in the district court for the district where, for the longest portion of the 180-day period immediately preceding the filing, the debtor had, in the United States, a residence, domicile, principal place of business or principal assets.
- B. In general, under 28 U.S.C. § 1409, a proceeding arising under title 11 or arising in or related to a case under title 11 may be commenced in the district court in which such case is pending.
- C. 28 U.S.C. § 1452 permits removal of any claim or cause of action in a civil action from a non-bankruptcy forum to the district court (if such district court has jurisdiction of such claims or cause of action under 28 U.S.C. § 1334), except proceedings that are pending in the United States Tax Court or a civil action by a governmental unit to enforce a police or regulatory power.

V. PROCEDURES -- 28 U.S.C. § 157

- A. 28 U.S.C. § 157(a) authorizes, but does not mandate, referring any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11, to the bankruptcy judges for the district. As a practical matter, every district court has a standing order that refers bankruptcy cases to bankruptcy judges.
- B. Section 157(b) authorizes bankruptcy judges to hear and determine, upon reference, all cases under title 11, and all core proceedings arising under title 11, or arising in a case under title 11. Section 157(b)(2) provides a nonexclusive list of core proceedings which are central to the bankruptcy process, including the following:
 - 1. matters concerning the administration of the estate;
 - 2. allowance or disallowance of claims against the estate (11 U.S.C. § 502) or exemptions of property from the estate (11 U.S.C. § 522);
 - 3. orders to turn over property of the estate (11 U.S.C. § 542);

4. proceedings concerning preferences (11 U.S.C. § 547);
 5. motions involving the automatic stay (11 U.S.C. § 362);
 6. objections to discharge (11 U.S.C. § 523);
 7. determinations of the validity, extent, or priority of liens;
 8. confirmations of plans (11 U.S.C. §§ 1129, 1225 and 1325);
 9. orders approving the use or lease of property (11 U.S.C. § 363);
 10. orders approving the sale of property other than property resulting from claims brought by the estate against person who have not filed claims (11 U.S.C. § 363);
 11. proceedings affecting the liquidation of the assets of the estate or adjustment of the debtor-creditor relationship (11 U.S.C. § 726); and
 12. recognition of foreign proceedings under Chapter 15.
- C. Whether or not a proceeding is a core or non-core proceeding may be determined on motion under section 157(b)(3). Section 157(c)(1) permits bankruptcy judges to hear related, non-core proceedings, but requires that the district court, in such circumstance, enter any final order or judgment. Section 157(c)(2) permits a bankruptcy judge to enter a final order or judgment in a non-core proceeding upon the consent of all parties to the proceeding. Additionally, a district court may withdraw, on its own motion or that of any party, any case or proceeding in whole or in part, for cause shown under section 157(d).
- Note:** Bankruptcy Rule 7008(a) requires that in an adversary proceeding before a bankruptcy judge, the complaint must state whether the proceeding is core or non-core and, if non-core, whether the pleader does or does not consent to entry of final order or judgment by the bankruptcy judge.
- D. The 1994 Reform Act added subsection 157(e), clarifying that bankruptcy judges may conduct jury trials and enter appropriate orders consistent with those trials if designated by the district court and with the express consent of all parties to the bankruptcy proceeding.

VI. APPEALS -- 28 U.S.C. § 158

- A. 28 U.S.C. § 158(a) confers appellate jurisdiction on the district courts to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges.
- B. Section 158(b) authorizes appeals to bankruptcy appellate panels of orders and judgments from bankruptcy judges determining referred cases and proceedings. The judicial council has the permissive authority to establish a bankruptcy appellate panel comprised of bankruptcy judges

from districts within the circuit, but an appeal may be heard by the panel only on the consent of all parties. Also, no appeal may be referred to a panel unless the district judges for the district, by majority vote, authorize such referral of appeals within the district.

- C. Section 158(c) provides that all appeals from bankruptcy courts shall be heard by a bankruptcy appellate panel, if established and in operation as provided in subsection (b), unless a party makes a timely election to have an appeal heard by a district court.
- D. Section 158(d)(1) provides that the courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered by the district courts or the bankruptcy appellate panels (BAPs). Under Bankruptcy Rule 8013, a court may set aside findings of fact on appeal only if they are clearly erroneous. See In re Caldwell, 851 F.2d 852, 857 (6th Cir. 1988); In re Kimzey, 761 F.2d 421, 423 (7th Cir. 1985) (court of appeals review is also governed by the clearly erroneous standard).
- E. The BAPCPA added new section 158(d)(2) to provide for appeals from bankruptcy court decisions directly to the courts of appeals under limited circumstances without first being heard by the district court or the BAP.
 - 1. Section 158(d)(2)(A) provides that the appropriate court of appeals shall have jurisdiction of appeals from bankruptcy decisions upon certification that (1) the case involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or the Supreme Court of the United States; (2) the case involves a question of law requiring resolution of conflicting decisions; or (3) an immediate appeal may materially advance the progress of the case or proceeding in which the appeal is taken, but only if the court of appeals authorize the direct appeal.
 - 2. Certification that the case qualifies for direct appeal must be made by the bankruptcy court, the district court, or the BAP, acting on its own motion or on the request of a party to the judgment, order, or decree, or all the appellants and appellees acting jointly.
 - 3. If the bankruptcy court, district court, or BAP on its own motion or on request by a party determines that one of the above three circumstances exists or receives a request for certification from a majority of the appellants and a majority of the appellees who represent that one of these circumstances are met, then the bankruptcy court, district court, or BAP must issue the certification.

4. A direct appeal does not stay any proceeding of the bankruptcy court, the district court, or the BAP from which the appeal is taken unless the respective bankruptcy court, district court, or BAP, or the court of appeals in which the appeal is pending issues a stay of such proceeding pending the appeal. 28 U.S.C. § 158(d)(2)(D).
5. Timing.
 - a. A request for certification under section 158(d)(2)(B) must be made not later than 60 days after the entry of the judgment, order, or decree. 28 U.S.C. § 158(d)(2)(E).
 - b. A petition requesting permission to appeal based on a certification made under section 158(d)(2)(A) or (B) must be filed with the circuit clerk no later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the BAP, with a copy of the certification attached. BAPCPA § 1233(b)(4).

VII. BANKRUPTCY JUDGES -- 28 U.S.C. §§ 151-152

- A. Under 28 U.S.C. § 151, the bankruptcy judges in each judicial district who are in regular active service form a unit of the district court known as the bankruptcy court for that district.
- B. Under 28 U.S.C. § 152, the court of appeals for the circuit appoints bankruptcy judges to a term of fourteen years. A bankruptcy judge is subject to removal, by concurrence of a majority of all the judges of the judicial council of the circuit, for incompetence, misconduct, neglect of duty, or physical or mental disability.

VIII. BANKRUPTCY RULES

- A. Rules of Practice and Procedure in Bankruptcy, cited as the Federal Rules of Bankruptcy Procedure, have been promulgated by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 to govern practice and procedure under title 11. Bankruptcy Rule 1001.
- B. The rules cannot abridge, enlarge, or modify any substantive right and cannot be inconsistent with the Bankruptcy Reform Act or other legislation enacted by Congress. As Bankruptcy Rule 9030 explicitly recognizes, the rules cannot extend or limit the jurisdiction of the bankruptcy courts. Many

features of practice and procedure in the bankruptcy court are thus governed by provisions of titles 11 and 28.

C. Adversary Proceedings – Rule 7001

1. Adversary proceedings are governed by the rules in Part VII and are brought by filing a summons and complaint. Rule 7001 contains a list of actions that must be brought as adversary proceedings, including proceedings to –
 - recover money or property;
 - determine the validity, priority, or extent of a lien or other interest in property;
 - obtain approval for the sale of jointly owned property;
 - object to or revoke a discharge;
 - revoke a Chapter 11, 12, or 13 order of confirmation;
 - determine dischargeability of a debt;
 - obtain an injunction or other equitable relief, except when a Chapter 9, 11, 12, or 13 plan provides for the relief;
 - subordinate a claim or interest, except when a Chapter 9, 11, 12, or 13 plan provides for subordination;
 - obtain a declaratory judgment relating to any of the foregoing;
 - or
 - determine a claim or cause of action removed to bankruptcy court.

D. Contested Matters – Rule 9014

1. In a contested matter, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.
2. No response is required under this rule unless the court orders an answer to the motion.
3. The filing of an objection to a proof of claim constitutes a contested matter, and the United States must be served in accordance with Bankruptcy Rule 7004(b)(4) and (5). See In re Morrell, 69 B.R. 147, 149 (N.D. Cal. 1986); In re Simms, 33 B.R. 792, 793 (N.D. Ga. 1983). Contra, In re Heil, 85 B.R. 399, 400 (W.D. Tex. 1988).
4. If proper service is not effectuated, personal jurisdiction over the United States is lacking and actual notice to the Service through its

local Special Procedures Staff does not cure the jurisdictional defect. In re Laughlin, 210 B.R. 659, 661 (B.A.P. 1st Cir. 1997).

IX. U.S. TRUSTEES

As part of the Bankruptcy Judges, United States Trustees and Family Farmer Bankruptcy Act of 1986, a nationwide United States Trustee's program was established. The U.S. Trustee's office consists of an appointed U.S. Trustee and a staff of attorneys and clerical support. Although the duties of the U.S. Trustee vary by jurisdiction, they usually include appointing panel trustees in Chapter 7 cases and standing trustees in Chapter 13 cases, attending the meeting of creditors in Chapter 11 and Chapter 13 cases, and protecting generally the interests of both creditors and debtors. The U.S. Trustee may help the Service, for example, in a delinquent Chapter 11 case by filing a motion for dismissal or conversion to a liquidating proceeding, or, in some instances, seeking a contempt citation.

X. ORGANIZATION OF THE BANKRUPTCY CODE

The Bankruptcy Code is divided into nine substantive chapters, organized as follows:

Chapter 1: General Provisions

Chapter 3: Case Administration

Chapter 5: Creditors, the Debtor and the Estate

Chapter 7: Liquidation

Chapter 9: Adjustments of Debts of a Municipality

Chapter 11: Reorganization

Chapter 12: Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income

Chapter 13: Adjustments of Debts of an Individual with Regular Income

Chapter 15: Ancillary and Other Cross-Border Cases

Chapters 1, 3 and 5 govern the general operation of any bankruptcy case, and all bankruptcy cases are commenced under one of the remaining chapters.