ASSOCIATION OF BUSINESS TRIAL LAWYERS

abtl REPORT

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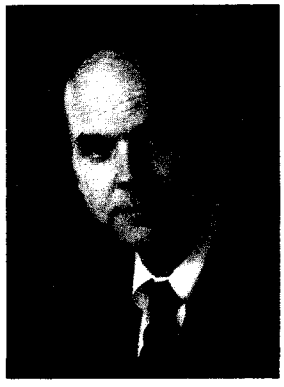
Interview: Handling a Case Before New Federal Judge Robert Bonner

In May, 1989, Robert C. Bonner was appointed to the U.S. District Court for the Central District of California. Recently, ABTL Report *interviewed Judge Bonner to learn his perspectives after ten months on the bench. Following this interview, Judge Bonner started preparing an omnibus pretrial order which will cover special trial preparation, settlement and mandatory status conference procedures.*

The interview was conducted by Thomas J. McDermott, Jr., a partner with Rogers & Wells, and Vivian D. Rigdon, an associate with Sidley & Austin and Associate Editor of ABTL Report.



Judge Robert Bonner

ABTL: Could you describe the procedures that are followed in your court when a new matter is opened?

Judge Bonner: Every week my secretary presents me with the new filings. I read all of the complaints myself. If it is a removed matter, I check to see if the removal appears to be timely.

If I spot what I think is a jurisdictional issue, then I flag it and ask one of my law clerks to advise me. If there is a jurisdictional problem, I issue an Order to Show Cause. Perhaps one in ten, or certainly one in twenty, complaints has some sort of a jurisdictional defect that may result in the case being dismissed.

I have seen two diversity cases in which the amount at issue was under $50,000. In those cases, I did not issue an Order to Show Cause. I simply ordered them dismissed because there was nothing to show cause on.

ABTL: Do you issue any standard orders upon the receipt of a new matter?

Judge Bonner: No. I am still going through a large notebook I have on my desk, which contains a variety of standard case management orders that are used by my brother and sister judges in this district. Not all of them have a standard order that goes out initially. My inclination now is not to issue one of those orders.

ABTL: How do you handle the early meeting of counsel?

Judge Bonner: Generally speaking, the first and only time that I look at the Joint Report of Early Meeting is before the mandatory status conference. In fact, I would like to combine the Early Meeting Report and the Joint Status Report so that counsel would not be put to the burden of submitting two separate documents in such a short time.

ABTL: Do you set the mandatory status conference within a certain period of time?

Judge Bonner: Yes. Within 120 days or so after the Complaint is filed, I will notice a mandatory status conference for a Monday afternoon at 1:30. In addition to acquainting myself with the gist of the action, I discuss the prospects for dispositive motions, the prospects for settlement and so forth. One of the key things that I do at the mandatory status conference is set the discovery cut-off date, the cut-off date for law and motion hearings, the date for the pre-trial conference and the trial date. The mandatory status conference is going to be held within two months after the answer to the Complaint is filed.

ABTL: About how many months after the mandatory status conference are you setting a trial date?

Judge Bonner: Usually, five or six months is adequate to complete discovery. So, leaving aside the unusually complex case, I am setting the trial date for less than 12 months from the filing date of the Complaint. And, in many cases, seven or eight months from the date of the Complaint.

ABTL: What are the most common problems that you have found so far with pleadings?

Judge Bonner: On some occasions, there are inadequate jurisdictional allegations. Federal courts are courts of limited jurisdiction and so jurisdiction becomes very important. The citizenship or principal place of business of a corporate party must be alleged for the court to determine whether there is complete diversity.

Some Complaints are pretty horridly drafted. That is not of great importance given the federal practice of notice pleading. But an unintelligible complaint will be dismissed. If I do not have the foggiest notion what claims for relief are being alleged, the Complaint is going to be dismissed. That is principally a problem with pro per plaintiffs.

ABTL: Are there any types of claims to which you give particular scrutiny?

Judge Bonner: Some claims do get a bit more scrutiny. The one that immediately springs to mind is civil RICO, especially if that is the only federal claim in a case involving a profusion of state law claims.

ABTL: What do you mean by close scrutiny?

Judge Bonner: There are two ways that a civil RICO claim for relief can get scrutiny. In the initial Complaint review, I have in one case issued an order requiring greater specificity in a Complaint, consistent with the dictates of Rule 9(b) of the Federal Rules of Civil Procedure. More often, the scrutiny is in response to a motion to dismiss under Federal Rule 12(b) (6).

ABTL: What about claims for tortious breach of contract, would they also get closer scrutiny on a 12(b) (6) motion?

Judge Bonner: After *Foley v. Interactive Data Corp.*, [47 Cal. 3d 654 (1988)], of course. What would also get scrutiny from me

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would be, "Why is a tortious breach of contract or bad faith claim in federal court?" I look at what the pendent state law causes of action are.

ABTL: With respect to Rule 12(b)(6) motions, do you have any particular propensity either in favor of or against 12(b)(6) motions?

Judge Bonner: No propensity either way really, except that, in my view, 12(b)(6) is over-utilized. If you have a good statute of limitations violation that is evident on the face of the complaint, bring a 12(b)(6) motion because it's going to end the case. On the other hand, if you are just complaining that the plaintiff has failed to allege a claim for relief — that is, left out some of the elements — all you end up with is leave to amend and you have educated the plaintiff and his attorney as to a potential defect in his case. Why bother? Frankly, many times such a defect may be exploited later in the case. Frequently, a motion to dismiss will not help the defendant; it will help the plaintiff. In federal court, a well-crafted, well-drafted summary judgment motion is a far more effective device than a 12(b)(6) motion.

ABTL: If any defects were discovered down the road, would you permit the complaint to be amended to conform to proof?

Judge Bonner: A party probably will not be permitted to introduce evidence related to a new theory or claim if it is not set out and preserved in the pretrial conference order. You can always relieve a party for manifest injustice from a pretrial conference order, but it's going to be pretty late in the day at trial to come up with a totally different theory as to what your case is and what the liability of the defendant is based upon. Moreover, I am not likely to be receptive to a motion for leave to amend filed to avoid, or in an attempt to avoid, an otherwise well taken summary judgement motion.

ABTL: How many times would you give a plaintiff leave to amend a complaint before you would dismiss without leave to amend?

Judge Bonner: Well, I do not know. It depends. I have not really confronted that. I frankly think that there is a fundamental misconception or confusion between federal practice and state practice in this regard. The chances that I am going to dismiss a case on a Rule 12(b)(6) motion are not very great. The real testing of the complaint should come with a summary judgment motion. It's always been my sense that federal judges are more inclined to grant summary judgment motions than state court judges. In part, no doubt this stems from the *Celotex* and other U.S. Supreme Court cases that give federal courts greater latitude in granting summary judgment motions.

ABTL: Are you receptive to summary judgment motions that are dispositive as to some causes of action or even some portions of a cause of action as opposed to the entire complaint?

Judge Bonner: Sometimes that does make sense, to limit issues. I am certainly not unreceptive to so-called partial summary judgment motions.

ABTL: Do you allow oral argument on all your motions?

Judge Bonner: That is the custom and practice in the Central District, and I follow it with respect to most motions. Occasionally, if the issue is very clear-cut, I will take the motion off calendar and simply rule on the papers.

But let me define what I mean by oral argument. At the hearing, I normally indicate how I am likely to rule and ask counsel to respond. In essence, I ask the tentatively losing side to talk me out of my tentative ruling. If they significantly change my view on the case, I will hear from the other side. If not, ordinarily I will simply rule from the bench at that time.

So, I suppose if my tentative ruling is in your favor, you probably do not want to say a whole lot unless I ask. If I ask, you can assume that the attorney for the tentatively losing party has said something that may have changed my views.

ABTL: You mentioned pendent claims earlier. How do you deal with pendent claims?

Judge Bonner: As pointed out in *United Mine Workers v. Gibbs* [, 383 U.S. 713 (1966)], the exercise of pendent jurisdiction over state law claims is within the district court's discretion. It is not a matter of right. Consequently, I look at pendent state claims very closely as part of my initial Complaint review. Unless it's facially apparent to me that these pendent claims are properly joined and appropriate, I issue an Order to Show Cause as to why the pendent claims should not be dismissed. If a defendant has answered the Complaint, I also give the defendant an opportunity to respond, and then I usually rule without hearing.

ABTL: What are the general criteria that you apply as to whether a pendent claim ought to remain in a case, assuming a party has stated the proper federal claims or some federal claims?

Judge Bonner: The criteria that are set forth in *United Mine Workers v. Gibbs*. Whether the pendent claims predominate in terms of the issues they raise, the amount of time it's going to consume to prove up and try the pendent state claims, the number of jury instructions, the potential for jury confusion and so on.

ABTL: Do you handle discovery disputes yourself or do you send them to a magistrate?

Judge Bonner: I have a blanket general order which refers all discovery disputes to the magistrate assigned to my cases. I may rescind that order at the suggestion of counsel or on my own initiative, say in a case where you have very contentious counsel who are acting unreasonably or where there is a pending motion for preliminary injunction with short-fused discovery.

ABTL: Which magistrate do you have assigned to you?

Judge Bonner: When a civil case is filed, one of our very able full-time magistrates is appointed. However, I have no one particular magistrate, as desirable as that would be, assigned to all my cases. A different magistrate is assigned to each case.

ABTL: Have you had occasion to order sanctions?

Judge Bonner: Philosophically, I tend to think that attorney sanctions are overused. I am trying to resist the notion that the only way to obtain compliance by attorneys with local rules and various other orders is by monetary sanctions. I have imposed sanctions in a few cases for something that I thought was particularly egregious, for example, violation of a magistrate's discovery orders, failure to timely file proposed pretrial conference orders and the like. But, by and large, I view sanctions as a last resort.

I think counsel should take notice that, while sanctions for discovery abuses are the norm, the Ninth Circuit has taken a dim view of Rule 11 sanctions. Counsel who routinely request a Rule 11 sanction should think twice. Frequently, motions for Rule 11 sanctions are a waste of time.

ABTL: Do you have any advice as to how lawyers might improve either their pleadings or their overall presentations for TRO's and preliminary injunctions?

Judge Bonner: On an *ex parte* application for a TRO, the declaration of the plaintiff's attorney must make clear that efforts have been made to contact the opposing party. Otherwise, there will be an immediate denial.

Also, the parties should address the issue of the amount of the bond, but frequently they don't. The defendant should deal with the fact that if, God forbid, the preliminary injunction should issue, the bond should be more than a nominal amount, and what amount it should be and why. In several TROs and preliminary injunction motions which I have handled, counsel has not addressed this. Then, when I issue the injunction, for the first time I hear that bonds should be set in six or seven figure sums. Because these arguments are not supported by affidavits or declarations, they are unavailing.

ABTL: Have you ever taken oral testimony or allowed testimony on a hearing on a preliminary injunction?

Judge Bonner: I have not taken oral testimony so far at a preliminary injunction hearing. I have been able to resolve these motions based on the declarations. Would I permit it? I think my first blush reaction to that is, I probably would not permit it, certainly not without a prior application and not as to any witness within the control of the party who seeks to call the witness at the hearing.

Would I permit cross-examination of a declarant at a preliminary injunction hearing? I may live to regret these words, but I would be inclined to permit it on a showing that a particular declarant's credibility was at issue and if the declaration were material to the issues. However, I should make very clear that I am certainly not going to sit at a preliminary injunction hearing listening to a discovery exercise.

ABTL: Regarding Rule 9 pre-trial conferences, do you expect that lawyers will give you complete compliance with Local Rule 9?

Judge Bonner: Yes. Not relatively complete. I expect complete compliance with Local Rule 9. That means timely filed memoranda of contentions of fact and law; a timely filed joint exhibit list; or if that cannot be done, a timely filed statement as to why it cannot be done and separate exhibit lists; timely filed witness lists from each side; a timely filed proposed pre-trial conference order and so on.

ABTL: Do you think these pre-trial requirements cause people to settle?

Judge Bonner: I know they do. I used to be in private practice. It forces counsel to think through their case, and to focus on, not just it strengths, but its weaknesses as well. Often, this is simply not done until counsel prepares for the pretrial conference.

ABTL: Have you found any areas in which attorneys fail to comply with Local Rule 9?

Judge Bonner: Yes. Some attorneys do not file in a timely fashion, which can get them into great difficulties with any federal judge, including me. Then after the time to file the memorandum of contentions has passed, they come in with some *ex parte* application or stipulation to continue the pre-trial conference date. It is too late.

I have a word of advice to counsel: If you're going to discuss settlement, do it *before* the time for filing pretrial documents. Otherwise, file your Local Rule 9 papers.

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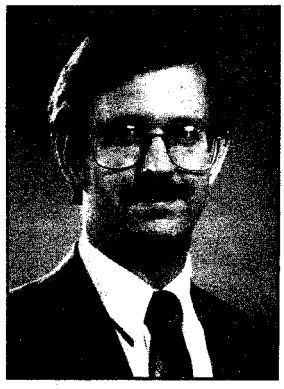
The Right to a Jury Trial After *Granfinanciera*

Many litigators find themselves involuntarily drawn into proceedings before a bankruptcy court when a client receives property or a payment from an entity shortly before that entity files for protection under the Bankruptcy Code. With the bankruptcy filing come demands by the trustee in bankruptcy[1] for a return of the property or payment because it was a preference or fraudulent transfer.[2] A recent decision by the United States Supreme Court, *Granfinanciera, S.A. v. Nordberg*, ___ U.S. ___, 109 S.Ct. 2789 (1989), raises tactical considerations for the litigator advising a client in that position.

Granfinanciera clearly held that the recipient of an alleged fraudulent monetary transfer who has not filed a claim against the bankruptcy estate has an absolute Seventh Amendment right to a jury trial in defense of an action to recover the transfer. 109 S.Ct. at 2782. (While the holding in *Granfinanciera* related to fraudulent *monetary* transfers, the Court suggested that generally the result would be the same with non-monetary transfers or preferences. 109 S.Ct. at 2792, n. 5 and 2799, n. 13.)



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In so holding, *Granfinanciera* strongly suggests in dicta, however, that the right to a jury trial may be lost if the recipient has filed a claim against the bankruptcy estate. This suggestion arises from *Granfinanciera's* failure to overrule *Katchen v. Landy*, 382 U.S. 331 (1966), which stands for the proposition that the right to a jury trial does not attach in an action to recover preferential transfers if the recipient has filed a claim against the bankruptcy estate.

Accordingly, under some circumstances, it may be advisable to give up a claim against a bankruptcy estate to preserve the right to a jury trial. The preservation of this right may result in a trial, not before the bankruptcy court, but in what many would consider the friendlier confines of the district court.

Katchen v. Landy's Limitation on the Jury Trial Right

Katchen v. Landy was decided under the Bankruptcy Act of 1898 (the "Act"), which has been superseded by the Bankruptcy Reform Act of 1978, as modified by the Bankruptcy Amendments and Federal Judgeship Act of 1984. Under the Act, the jurisdiction of bankruptcy courts, which were presided over by referees appointed by district judges, was limited to matters falling within the bankruptcy court's "summary" jurisdiction. In general terms, summary jurisdiction included only disputes over the "res" — the bankruptcy estate. Thus, bankruptcy courts possessed jurisdiction to adjudicate claims against the bankruptcy estate, but lacked jurisdiction to entertain lawsuits brought by the trustee seeking the return of preferential or fraudulent transfers. The latter actions could only be pursued in federal district or state courts in what were referred to as "plenary" suits. It was generally accepted that there was no constitutional right to jury trials in summary proceedings. In plenary suits,

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whether the right to a jury trial existed would be determined under the Seventh Amendment or other law.

In *Katchen v. Landy*, Katchen had filed claims against the bankruptcy estate. The trustee responded to these claims with the defense that such claims were not allowable because Katchen had received a voidable preference. 382 U.S. at 325. (Under the Act, as well as under current bankruptcy law, 11 U.S.C. § 502(d), claims filed by the recipient of a preferential or fraudulent transfer are not allowed unless the recipient pays the amount of the transfer or returns the property transferred.) The trustee also brought a counterclaim seeking return of the preference. *Katchen v. Landy*, 382 U.S. at 325.

Katchen contended that the trustee's counterclaim was outside of the bankruptcy court's summary jurisdiction, and that, under the Seventh Amendment, he was entitled to a jury trial on the counterclaim. *Id.* at 327-28. In rejecting Katchen's arguments, the Supreme Court accepted the proposition that, had Katchen not filed a claim against the bankruptcy estate, the trustee would have been required to seek recovery of the preferential transfer in a plenary action brought in a state or district court, where the Seventh Amendment right to a jury trial would attach. *Id.* at 336. The filing of his claims, however, changed this result.

The Court first noted that summary jurisdiction includes jurisdiction to consider and determine claims and objections to claims. Thus, the bankruptcy court could determine the validity of the trustee's objection to Katchen's claims, which would involve determining whether Katchen had received a preferential transfer and the amount of such transfer. Once those issues were decided, normal rules of *res judicata* and collateral estoppel would apply and it would be a "meaningless gesture" to require the trustee to conduct a plenary suit to recover the preference. *Id.* at 328-36. Having found that the bankruptcy court possessed jurisdiction over the entire controversy, the Supreme Court held that Katchen had no Seventh Amendment right to a jury trial. "[A]s the proceedings of bankruptcy courts are inherently proceedings in equity, [citations omitted] there is no Seventh Amendment right to a jury trial. . . ." *Id.* at 336-37.

Katchen's final argument was that *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959), and *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962), required the bankruptcy court to stay its determination of the trustee's objection to his claims, pending a jury trial on the trustee's counterclaim in a plenary action conducted outside the bankruptcy court. *Beacon Theatres* and *Dairy Queen* held that, generally, where equitable and legal issues are joined in the same action, a jury trial must be provided on legal issues. The Supreme Court distinguished *Beacon Theatres* and *Dairy Queen*, and thereby rejected Katchen's argument, by noting that neither of these cases "involved a specific statutory scheme contemplating the prompt trial of a disputed claim without the intervention of jury." To require the trustee to endure the "expense and delay" that a plenary action entails would "dismember a scheme which Congress had prescribed." *Katchen v. Landy* at 338-40.

Katchen v. Landy's Validity Appears Clear

Granfinanciera reaffirmed *Katchen v. Landy* in less-than-certain terms, finding that *Katchen v. Landy* "confirms [the *Granfinanciera*] analysis," "supports the result" reached, and "certainly does not compel its opposite." 109 S.Ct. at 2798. Specifically, the Court found that *Katchen v. Landy* rested "on the bankruptcy court's 'having actual or constructive possession' of the bankruptcy estate [citation omitted] and its power and obligation to consider objections by the trustee in deciding whether to allow claims against the estate." *Id.*

Although *Granfinanciera* did not clearly endorse the result in *Katchen v. Landy*, in subsequent decisions, several courts have, not surprisingly, assumed or determined that *Granfinanciera* reaffirmed the validity of *Katchen v. Landy*. *See e.g.*, *Ryan v. Louis* (*In re Corey*), 892 F.2d 829 (9th Cir. 1989); *Kaiser Steel Corp. v. Frantes* (*In re Kaiser Steel Corp.*), ___ Bankr. ___ (1989) (available on Westlaw, 1989 WL 152093) (transferee filed counterclaim); *Bayless v. Crabtree*, 108 Bankr. 299, 304-05 (W.D. Ok. 1989) (transferee filed counterclaim); *Wheeling-Pittsburgh Steel, Corp. v. Blue Cross and Blue Shield of West Virginia, Inc.* (*In re Wheeling-Pittsburgh Corp.*), 108 Bankr. 82, 85 (Bankr. W.D. Pa. 1989); *Hughes-Bechtol, Inc. v. Air Enterprises, Inc.* (*In the Matter of Hughes-Bechtol, Inc.*), 107 Bankr. 552, 565-66 (Bankr. S.D. Ohio 1989); *Chaplin v. The Harbison Group* (*In re Friedberg*), 106 Bankr. 50, 55-56 (Bankr. S.D.N.Y. 1989) (transferee requested that transaction between the parties be

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submitted to court for approval); *Haden v. C.P. Edwards, III (In re Edwards)*, 104 Bankr. 898 (Bankr. E.D. Tenn. 1989); and *Summit Ridge Apartments, Ltd. v. Summit Ridge Associates (In the Matter of Summit Ridge Apartments, Ltd.)*, 104 Bankr. 405, 407 n.3 (Bankr. N.D. Ala. 1989).

The Tactical Considerations

Assuming the validity of *Katchen v. Landy*, a recipient of a preference or fraudulent transfer would lose his Seventh Amendment right to a jury trial in an action to recover that preference or transfer if the recipient filed a claim against the estate. Thus, the recipient who has a claim against a bankruptcy estate must determine which right — the right to participate in the distribution from the bankruptcy estate or the right to a jury trial — is more valuable.

In choosing between these rights, one must remember that any claim against the bankruptcy estate is no more than a right to share in the estate in accordance with the terms of the Bankruptcy Code. In practical terms, the value of the claim will be substantially diminished by a delay in payment during the pendency of the bankruptcy case and by the right to share only pro rata with other creditors with similar claims after distribution has been made to creditors with senior interests (e.g., secured creditors).

In addition, the jury trial right may be of value in settlement negotiations with the bankruptcy trustee who is likely to be interested in a prompt and efficient determination before a bankruptcy judge, rather than a more uncertain and time-consuming jury trial. Of course, before making a demand for a jury trial, the litigator will need to recognize that his client may also suffer expense and delay if the case does not settle and proceeds to a jury trial.

The litigator should also consider that it is not clear whether a demand for a jury trial would certainly lead to a trial in district court. While *Granfinanciera* held that the recipient of an alleged fraudulent transfer is entitled to a jury trial, it left open the question of whether bankruptcy courts may conduct jury trials. Specifically, the Court stated that it was not deciding: (1) whether the current statutory scheme (28 U.S.C. § 1411) authorizes bankruptcy courts to conduct jury trials; (2) whether bankruptcy courts may, consistent with Article III, conduct jury trials; or (3) whether bankruptcy courts may conduct jury trials which "would satisfy the Seventh Amendment's command that 'no fact tried by a jury, shall be otherwise re-examined in any Court in the United States. . .,'" given the current scheme of allowing the district court to review factual determinations of the bankruptcy court. 109 S.Ct. at 2794-95.

Bankruptcy courts were not in agreement on whether they could conduct jury trials before the *Granfinanciera* decision, *see* Gibson, *Jury Trials in Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment*, 72 Minn.L.Rev. 967, 1027-34 (1988), and they continue to be in disagreement on this question, *see e.g., Citibank, N.A. v. Park-Kenilworth Industries, Inc.*, ____ Bankr. ____ (N.D. Ill. 1989) (available on Westlaw, 1989 WL 155546) (yes); *Kroh Brothers Development Co. v. United Missouri Bank of Kansas City (In re Kroh Brothers Development Co.)*, 108 Bankr. 228 (W.D. Mo. 1989) (yes); *Perino v. Cohen (In re Cohen)*, 107 Bankr. 453, 455-56 (S.D.N.Y. 1989) (yes); *Wiley v. Inter-Trade, Inc. (In re Owensboro Distilling Co.)*, 108 Bankr. 572 (Bankr. W.D. Ky. 1989) (no); *Matter of Hughes-Bechtol, Inc.*, 107 Bankr. at 566-74 (no); and *Friedman v. Gold Advice, Inc. (In re Fort Lauderdale Hotel Partners, Ltd.)*, 103 Bankr. 335, 336-37 (Bankr. S.D. Fla. 1989) (no). Given this uncertainty, a jury trial demand may provide a litigator with added leverage in settlement negotiations with a trustee, who is likely to be more comfortable in front of a bankruptcy judge concerned with prompt reorganization of the bankrupt entity.

Tactical Considerations Where a Claim Is Filed

Although *Katchen v. Landy* appears to be "good law," an argument may be made against its applicability. Arguably, *Katchen v. Landy* should not apply now that bankruptcy jurisdiction is vested in district courts, which refer matters to bankruptcy courts, because district courts are entitled to conduct jury trials. Unlike the bankruptcy court in *Katchen v. Landy*, a district court would not be required to stay its proceedings while another court held a jury trial. In fact, one commentator has maintained that, in light of the change in jurisdiction, *Katchen v. Landy* is no longer good law and *Beacon Theatres, supra,* and *Dairy Queen, supra,* guarantee a jury trial on fraudulent transfer or preference issues regardless of whether the recipient has filed a claim against the estate. *See Katchen Up in Bankruptcy: The New Jury Trial Right*, 63 Am. Bankr. L.J. 1 (1989).

Furthermore, *Katchen v. Landy*'s concern with Congressional intent appears to be at odds with *Granfinanciera*'s discussion of such intent. If anything appears clear in *Granfinanciera*, it is that Congressional intent takes a back seat to the Seventh Amendment. In fact, while acknowledging that jury trials "would impede swift resolution of bankruptcy proceedings and increase the expense of Chapter 11 reorganizations," the Court stated that "these considerations are insufficient to overcome the clear command of the Seventh Amendment." 109 S.Ct. at 2801.

This argument may seem weak given the growing line of cases concluding that *Katchen v. Landy*'s vitality was reaffirmed by the U.S. Supreme Court. However, because this particular argument was not addressed by this line of authority, counsel may, despite *Katchen v. Landy*, demand a jury trial, which may provide leverage in negotiations with the bankruptcy trustee.

Conclusion

Granfinanciera may stand for the proposition that a recipient of an alleged preferential or fraudulent transfer is entitled to a jury trial in defense of an action to recover the transfer under the Seventh Amendment if and only if such recipient has not filed a claim against the bankruptcy estate. Accordingly, the litigator who represents a likely defendant in such an action should consider *Granfinanciera* before filing a claim against the bankruptcy estate. If no claim is filed, the recipient unquestionably has a right to a jury trial and, arguably, that right may only be exercised in the district court. Even if a claim is filed, the practitioner may still argue that *Katchen v. Landy* is no longer good law, the jury trial right attaches and the case should be heard in the district court. However, this argument may be futile in light of the weight of recent authority finding that the validity of *Katchen v. Landy* was reaffirmed by the United States Supreme Court.

— Todd M. Bailey

[1] For the sake of simplicity, this article refers to the representative of the debtor's estate as the "trustee," although a trustee would not be appointed in all cases.

[2] Preferences are defined in 11 U.S.C. § 547 and fraudulent transfers are defined in 11 U.S.C. § 548 and by state law.

Contributors to this Issue:

Judge Robert C. Bonner, the first Federal District Judge appointed by President Bush, was the United States Attorney for the Central District of California for approximately 5½ years. A native of Wichita, Kansas, Judge Bonner has also served as an Assistant Division Chief of the U.S. Attorney's Office Criminal Division and as the Chief of the Criminal Complaints Section. A past president of the Federal Bar Association's Los Angeles Chapter (1982-83), he was a partner in the firm of Kadison, Pfaelzer, Woodard, Quinn & Rossi until his appointment as the United States Attorney. Judge Bonner graduated *magna cum laude* from the University of Maryland in 1963 and received his J.D. degree from Georgetown University in 1966.

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