

FILED
July 15, 2016
U. S. Bankruptcy Court
District of Colorado
Kenneth S. Gardner, Clerk

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF INTERIM ADOPTION OF
PENDING AMENDMENTS TO FED. R. BANKR. P.
7008, 7012, 7016, 9027, AND 9033

GENERAL PROCEDURE ORDER NUMBER 2016-01

THIS MATTER is before the Court upon consideration of pending amendments to Rules 7008, 7012, 7016, 9027, and 9033 of the Federal Rules of Bankruptcy Procedure in light of *Stern v. Marshall*, 131 S.Ct. 2594 (2011) and *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015). Section 157 of title 28, U.S.C. designates certain bankruptcy matters as “core proceedings” by statute. *Stern* held, however, that the bankruptcy court lacks the constitutional authority to enter final judgment on a state-law counterclaim against a creditor who had filed a claim against the estate, notwithstanding the express designation of such a counterclaim as a “core proceeding” under the statute. *Wellness* subsequently held that the bankruptcy court may enter final judgment on a so-called “*Stern* claim” -- one designated as “core” by statute but not subject to final adjudication by the bankruptcy court under the Constitution -- with a party’s consent. Such consent to final judgment in bankruptcy court may be express or implied; either way, consent must be knowing and voluntary.

The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States has submitted proposed amendments to Federal Rules of Bankruptcy Procedure 7008, 7012, 7016, 9027 and 9033, to address *Stern* and *Wellness*, with an anticipated effective date of December 1, 2016. The proposed amendments: (1) eliminate the “core” and “non-core” distinction in the current rules; (2) require parties to state in pleadings whether they consent to entry of final judgment by the bankruptcy court; and (3) allow the bankruptcy court to determine the proper treatment of proceedings involving *Stern* claims, including whether to hear and determine such proceedings fully and finally, whether to propose findings of fact and conclusions of law to the United States District Court, or whether to take other appropriate action.

The Court deems it appropriate to give effect to the proposed amendments in the interim period before December 1, 2016, by implementing certain requirements that supplement the existing Federal Rules of Bankruptcy Procedure. Therefore, it is hereby

ORDERED that, in all adversary proceedings in this Court, and in addition to the general rules of pleadings under Fed. R. Bankr. P. 7008 and Fed. R. Civ. P. 8, the complaint, counterclaim, cross-claim, or third-party complaint shall contain a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court;

IT IS FURTHER ORDERED that all responsive pleadings under Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12 (as applicable), shall include a statement that the party does or does not consent to entry of final orders or judgment by the bankruptcy court;

IT IS FURTHER ORDERED that, under Fed. R. Bankr. P. 7016 and Fed. R. Civ. P. 16, the bankruptcy court shall decide, on its own motion or a party's timely motion, whether: (a) to hear and determine the proceeding; (b) to hear the proceeding and issue proposed findings of fact and conclusions of law; or (c) take some other action;

IT IS FURTHER ORDERED that, upon filing a notice of removal under Fed. R. Bankr. P. 9027, in addition to the requirements of the rule, the party filing such notice shall state whether it does or does not consent to entry of final orders and judgment by the bankruptcy court upon removal. Any party who has filed a pleading in connection with a claim or cause of action removed shall file a statement no later than fourteen days after the notice of removal stating whether it does or does not consent to entry of final orders and judgment by the bankruptcy court;

IT IS FURTHER ORDERED that Fed. R. Bankr. P. 9033 shall apply to all proceedings in which the bankruptcy court has issued proposed findings of fact and conclusions of law, whether designated as "non-core" or otherwise;

IT IS FURTHER ORDERED that this General Procedure Order 2016-1 shall be effective in all cases and proceedings commenced on or after twenty-one days from the date of this General Procedural Order 2016-1, and as otherwise directed by the Court in any pending case or proceeding. This General Procedure Order 2016-1 shall cease to be effective after December 1, 2016.

Dated: July 15, 2016

BY THE COURT:

Michael E. Romero, Chief Judge
Elizabeth E. Brown, Judge
Howard R. Tallman, Judge
Thomas B. McNamara, Judge
Joseph G. Rosania, Jr., Judge