UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:	)	Case No. 04-24042
	)	
ARMBRUSTER ENERGY ENTERPRISES, LLC,	)	Chapter 7
Debtor.	)	Adversary Proceeding No. 05-1420
	)	
ARMBRUSTER ENERGY ENTERPRISES, LLC,	)	Judge Arthur I. Harris
Plaintiff,	)	
	)	
v.	)	
	)	
FIFTH THIRD BANK,	)	
Defendant.	)	

ORDER REQUIRING PARTIES TO FILE STATEMENTS ADDRESSING ISSUES OF (1) CORE/NON-CORE, (2) CONSENT/NON-CONSENT TO BANKRUPTCY JUDGE ENTERING FINAL JUDGMENT, AND (3) CONSENT/NON-CONSENT TO BANKRUPTCY JUDGE PRESIDING OVER POSSIBLE JURY TRIAL

The complaint in this adversary proceeding was initially filed in state court by the debtor, Armbruster Energy Enterprises, LLC, on June 6, 2005. On July 11, 2005, the defendant, Fifth Third Bank, filed a notice of removal, removing the action to the United States District Court for the Northern District of Ohio. The lawsuit was removed to federal court under 28 U.S.C. § 1452, as related to the debtor's Chapter 11 bankruptcy case, which was filed on November 3, 2004. The lawsuit was initially assigned to the Honorable Dan Aaron Polster and given district court case number 1:05CV1748. While the case was before Judge Polster,

Fifth Third Bank filed an answer and a motion to dismiss Counts II and V of the five-count complaint. On August 4, 2005, Judge Polster ordered the case transferred to the United States Bankruptcy Court for the Northern District of Ohio. The action was initially assigned miscellaneous case number 05-103, but on August 19, 2005, the matter was redesignated as adversary proceeding #05-1420. When the debtor's main case was converted from Chapter 11 to Chapter 7 on August 24, 2005, the Chapter 7 trustee automatically assumed responsibility for prosecuting this adversary proceeding on behalf of the debtor's estate under 11 U.S.C. § 348 and Rule 2012.

The case is currently before the Court on the defendant's motion to dismiss Counts II and V of the five-count complaint. Before addressing the motion, however, the Court requests that each party clarify whether the proceeding is core or non-core and, if non-core, that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge.

Ordinarily, the core/non-core and consent/non-consent issues are addressed in the complaint and answer of the adversary proceeding pursuant to Bankruptcy Rules 7008(a) and 7012(b). Because this case was filed in state court and then removed to federal court, the parties should have addressed these issues pursuant to Bankruptcy Rule 9027(a)(1) and (e)(3). Rule 9027 provides in

pertinent part:

> (a) *Notice of Removal*.
>
> > (1) *Where Filed; Form and Content*. . . . The notice shall . . . contain a statement that upon removal of the claim or cause of action the proceeding is core or non-core and, if non-core, that the party filing the notice does or does not consent to entry of final orders or judgement by the bankruptcy judge . . . .
> >
> > . . . .
>
> (e) *Procedure After Removal*.
>
> > . . . .
> >
> > (3) Any party who has filed a pleading in connection with the removed claim or cause of action, other than the party filing the notice of removal, shall file a statement admitting or denying any allegation in the notice of removal that upon removal of the claim or cause of action the proceeding is core or non-core. If the statement alleges that the proceeding is non-core, it shall state that the party does or does not consent to entry of final orders or judgment by the bankruptcy judge. A statement required by this paragraph shall be signed pursuant to Rule 9011 and shall be filed not later than 10 days after the filing of the notice of removal.

Accordingly, the Court will require the defendant to file a statement addressing the core/non-core and consent/non-consent issues required under Rule 9027(a)(1) on or before February 3, 2006. The trustee shall file a statement addressing the core/non-core and consent/non-consent issues required under Rule 9027(e)(3) on or before February 13, 2006.

In addition, the Court notes that the complaint filed in state court includes a jury demand. Under 28 U.S.C. § 157(e) a bankruptcy judge may only preside over a jury trial if (1) specifically designated to exercise such jurisdiction by the district

court (which has been done), and (2) with the express consent of all the parties. The Court has not yet determined whether the claims in this adversary proceeding are of a type for which a right to a jury trial exists under the Seventh Amendment of the United States Constitution. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989). Nevertheless, in order to secure the just, speedy, and inexpensive determination of this matter, the Court requests that the parties also indicate whether they consent or do not consent to the bankruptcy judge presiding over a jury trial. Any party consenting to the bankruptcy judge presiding over a possible jury trial shall remain free to consent to the withdrawal of the jury demand, *see* Bankruptcy Rule 9015 and Fed. R. Civ. P. 38(d), or to assert that no right to a jury trial exists or that such a right has been waived.

IT IS SO ORDERED.

/s/ Arthur I. Harris 1/24/2006
Arthur I. Harris
United States Bankruptcy Judge