

has been filed.

The Court's briefing order instructed the parties to identify the claims or causes of action they believed were subject to jury trial, and to provide citation to and analysis of applicable legal authority. The Court gave the Defendants ample opportunity to comply with the briefing order. The Defendants failed to comply.

This Court has stated that a jury trial may only be allowed in bankruptcy "if the requesting party can demonstrate that the action is historically one brought at law, rather than in equity; that the remedy request[ed] . . . is legal, rather than equitable; and the party's right of action is 'public' versus 'private'." *Fitzgerald v. Mason (In re Mason)*, 96.1 I.B.C.R. 18 (Bankr. D. Idaho 1996) (citing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1990)); see also *Whittier v. Key Bank of Idaho (In re Whittier)*, 94 I.B.C.R. 31 (Bankr. D. Idaho 1994) (similar). That the issues can be complex and difficult is amply illustrated by these decisions and by the dozens of other reported decisions addressing the question of jury trials in bankruptcy cases.

Here the Defendants have not complied with an express order of the Court. By failing to make submissions in accord with the briefing order, these Defendants provide no assistance to the Court in understanding the basis for their claims to a right of jury trial and no support for their demands thereto. They have not otherwise demonstrated that the facts, pleadings and case law support the claim of

a right to a jury trial. The failure, under the circumstances, amounts to a waiver of the asserted right.

Therefore, the Court concludes, based on the record before it, that these Defendants' requests and demands for jury trial shall be, and the same hereby are DENIED. The bench trial shall occur as presently scheduled.

DATED: June 3, 2005



A handwritten signature in black ink, reading "Terry L. Myers". The signature is written in a cursive style with a large, prominent "T" and "M".

TERRY L. MYERS
CHIEF U. S. BANKRUPTCY JUDGE

CERTIFICATE RE: SERVICE

A “notice of entry” of this Decision, Order and/or Judgment has been served on Registered Participants as reflected by the Notice of Electronic Filing. A copy of the Decision, Order and/or Judgment has also been provided to non-registered participants by first class mail addressed to:

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Case No. 04-6098 (Elsaesser v. Ioane)

Dated: June 3, 2005

/s/Jo Ann B. Canderan
Judicial Assistant to Chief Judge Myers