



CLLA HILL DAY

March 2-3, 2015

BANKRUPTCY VENUE REFORM

1) PROPOSAL

Eliminate the state of incorporation, restrict affiliate filings and establish the debtor's principal place of business as the proper venue for commencing a Chapter 11 business bankruptcy case. Retired Bankruptcy Judge Steven Rhodes (Bankr. E. D. Michigan) recently commented in the *Wall Street Journal* that the current venue law is "the single most significant source of injustice in chapter 11 bankruptcy cases." The proposed amendment to 28 USC §1408 attempts to put an end to the rampant forum shopping permitted under the current statutory regime. It is based on the bipartisan Chapter 11 Bankruptcy Venue Reform Act of 2011 (H.R. 2533) introduced by Representative Lamar Smith (R-TX) and co-sponsored by Representatives John Conyers (D-MI), Howard Coble (R-NC) and Steve Cohen (R-TN). Although substantively the same, the proposed amendment maintains the format of the current statute and simplifies the language by using terms defined in the Bankruptcy Code. The proposed changes to the bankruptcy venue statute are attached as Exhibit A.

2) BACKGROUND

Forum shopping in bankruptcy has reached epidemic levels. A recent study shows that 70 percent of public companies have filed their chapter 11 cases in venues outside of the district where their principal place of business or principal assets are located. Eighty percent of those companies filed in the District of Delaware or the Southern District of New York. In total, in the nine years from 2004 through 2012, 559 Chapter 11 bankruptcy cases were filed in the District of Delaware and another 104 Chapter 11 bankruptcy cases were filed in the Southern District of New York involving business debtors headquartered in a different state. These cases involved approximately \$2 trillion in debt, 4.5 million creditors and more than 2 million employees, all administered by courts having no meaningful connection with the subject debtors. This trend is not limited to large public companies. Almost half of the Delaware cases involved smaller businesses with less than \$15 million in assets at the time of filing. The full report of the research and findings, along with other articles on venue reform can be found at:

http://www.clla.org/resources/venue_reform.cfm

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3) WHY VENUE REFORM IS NECESSARY

When troubled companies flee their home states and seek bankruptcy protection in remote jurisdictions, trade creditors, employees, retirees and other parties are disenfranchised, public confidence in the bankruptcy system erodes and local interests are ignored.

- The 1997 National Bankruptcy Review Commission recognized that forum shopping and the concentration of cases in Delaware made it more difficult for small creditors and employees to actively participate in a bankruptcy case. The mass concentration of chapter 11 cases far from a debtor's home state deprives local constituents of their due process and tilts the playing field toward financially sophisticated parties who regularly appear in large bankruptcy cases. The situation has continued to deteriorate over time, leading to a growing level of indifference among creditor, employee and retiree constituents unable to participate actively in a process that directly affects their interests.
- When a disproportionately high number of large and middle market companies flee to Delaware or New York to seek refuge from their creditors, the process appears to be subject to manipulation by large moneyed interests. In the *Patriot Coal* case it was noted by the press that "Lenders and lawyers who get the big cases like taking their troubles to courts in New York and Delaware, which are convenient to their homes and offices and attuned to their concerns". Forum shopping directly threatens the integrity of the bankruptcy system by eroding public confidence and calling into question the fairness of a bankruptcy system that can be so easily manipulated.
- The consequences of a business bankruptcy are often most profound in the region and community in which the debtor's principal place of business or principal assets are located. Simply stated, bankruptcy is local. Not only are jobs involved, but the local economy might depend to a large extent on business from that debtor. Bankruptcies filed in remote jurisdictions draw cases away from parties with an important stake in the case's outcome. Local venue ensures that the distinct needs of the community are not overlooked or, worse, ignored.

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EXHIBIT A

28 U.S.C. §1408 should be amended as follows:

(a) Except as provided in section 1410 of this title, a case under title 11 may be commenced only in the district court for the district—

- (1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person or entity were located in any other district; or
- (2) in which there is already pending a case under title 11 concerning ~~such person's~~an affiliate that directly or indirectly owns controls, is the general partner, or partnership holds 50 percent or more of the outstanding voting securities, of the person or entity that is the subject of such later filed case.

(b) For the purpose of this Section 1408, the domicile or residence of a person or entity other than an individual shall be the district in which such person or entity has its principal place of business or principal assets in the United States.