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Bankruptcy Reform Primer

**Everything you
need to know
is in this article**



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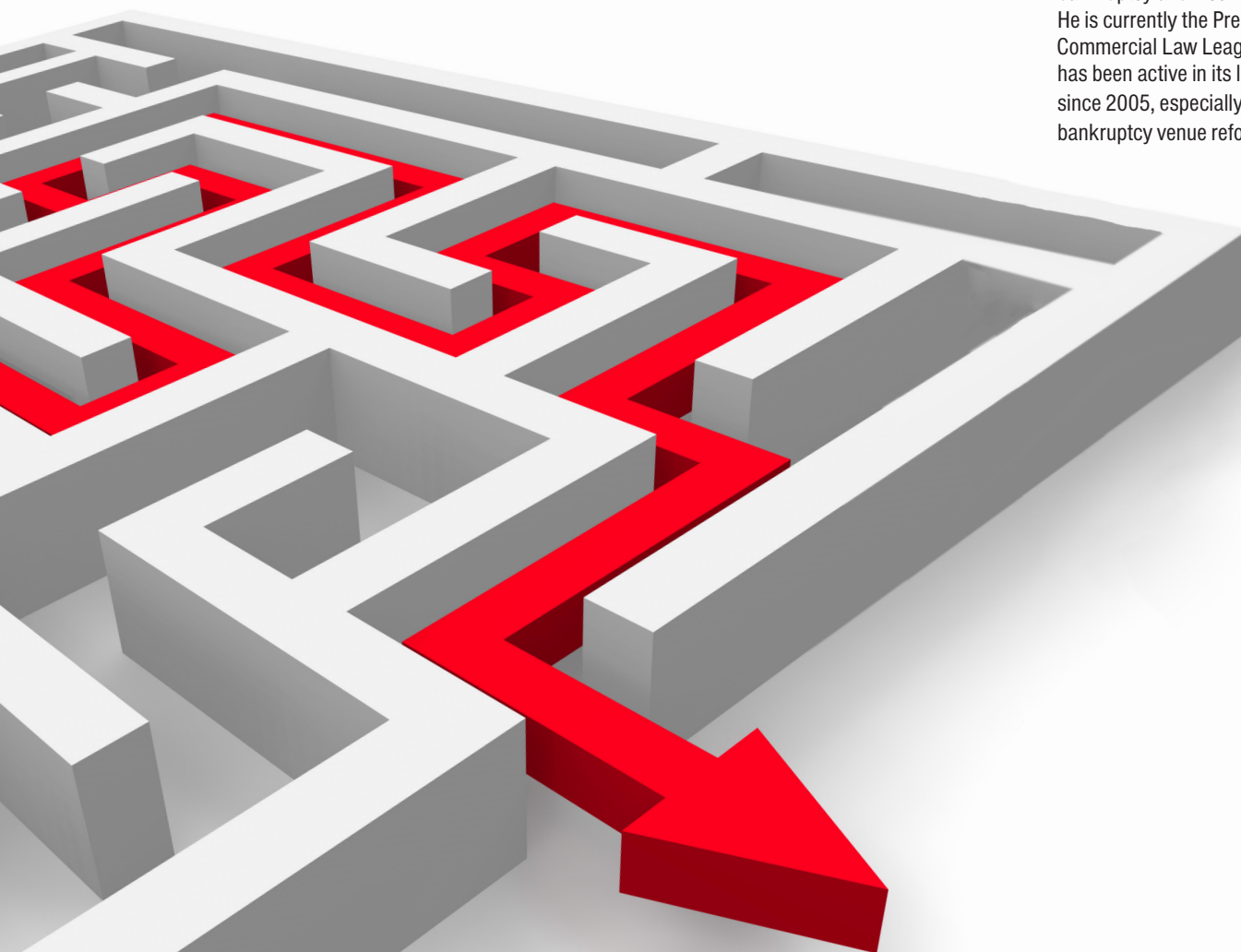
Bankruptcy Reform – Everything you need to know is in this article



by Peter Califano

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Since 1987, he has represented numerous creditors and debtors in all aspects of bankruptcy and insolvency-related matters. He is currently the President-Elect of the Commercial Law League of America and has been active in its legislative efforts since 2005, especially on the issue of bankruptcy venue reform.



The Statute

The current version of 28 USC Section 1408 allows a Chapter 11 debtor three options for filing its case: state of incorporation, principal place of business, or the location of its principal assets. In addition, almost any affiliate can join a pending Chapter 11 case. These venue choices were not always available. Between 1973 and 1978, the debtor's place of incorporation was eliminated as a choice for venue. The 1978 Bankruptcy Reform Act changed that and added back in the state of incorporation as a venue option, which remains as of today.¹

The Venue Problem

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 eleven years from 2004 through 2014, 669 Chapter 11 bankruptcy cases were filed in the District of Delaware and another 120 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, 6.3 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 result of this situation is having an adverse impact on the practice of bankruptcy and the resolution of bankruptcy cases throughout the country.

The American Bankruptcy Institute's Report

During 2012-2014, the ABI created the Commission to Study the Reform of Chapter 11 in order to study and propose various recommendations for improving bankruptcy law and practice under the U.S. Bankruptcy Code. However, oddly, when the Commission came to the controversial issue of bankruptcy venue, it reported:²

Critics of the existing venue statute argue that business debtors may use the venue rules to file cases in jurisdictions thousands of miles away from the company's management, employees, communities, and key constituencies, making it difficult and expensive for these parties to participate in or even follow the chapter 11 case. Critics also point out that the venue selected often appears to bear no meaningful relationship to the business, its operations, its financial difficulties, or its

stakeholders. In addition, some critics also argue that the fees and publicity associated with large chapter 11 cases have led certain jurisdictions to cater to these types of debtors, encouraging businesses to file in their jurisdictions and creating a "race to the bottom" in chapter 11 practice. The two reforms most frequently proposed by critics are the elimination of venue based on place of incorporation and on the affiliate-filing rule.

Supporters of the existing venue statute argue that its flexibility allows business debtors to select the jurisdiction that will facilitate the most effective and value-maximizing reorganization. They observe that many businesses are geographically diverse, with operations, management, employees, and stakeholders dispersed throughout the country (and often overseas). There may not be one particular jurisdiction that is better or more convenient for the business and all stakeholders. They also note that the Southern District of New York and the District of Delaware are typically convenient for most businesses' financial creditors, have expertise in complex financial and operational matters, and have relatively efficient procedures for handling large cases. Moreover, they find value in place of incorporation as a potential venue option because it is easy to identify and it is known, or knowable, by all stakeholders *ex ante*.

And then the Commission inexplicitly "punted" without making a recommendation, prompting Retired Bankruptcy Judge Steven Rhodes (Bankr. E.D. Michigan), in an article in the *Wall Street Journal*,³ to remark:

The commission's rejection of chapter 11 venue reform was a serious mistake, as was its refusal to provide any basis for it. The current bankruptcy venue law is the single most significant source of injustice in chapter 11 bankruptcy cases.

National Bankruptcy Review Commission

Approximately 20 years ago the NBRC had a similar charge to the Commission, yet it addressed the issue of bankruptcy venue and possible reform straight on. After thoroughly reviewing the issue, including considering an extensive minority report from the Delaware Bar, it found that smaller creditors (not necessarily the 20 scheduled creditors) are often disenfranchised in the larger Chapter 11 cases that are filed in remote jurisdictions like Delaware and the SDNY. The NBRC (and the Commission too) found that motions to transfer venue are not often pursued because of the high costs and lack of likely success. And the NBRC noted that the more bankruptcy courts are involved in developing and interpreting the Bankruptcy Code, the better jurisprudence would result. It then recommended:⁴

3.1.5 Venue Provisions under 28 U.S.C. § 1408

28 U.S.C. § 1408(1) should be amended to prohibit corporate debtors from filing for relief in a district based solely on the debtor's incorporation in the state where that district is located.

The affiliate rule contained in 28 U.S.C. § 1408(2) should be amended to prohibit a corporate filing in an improper venue unless such debtor's corporate parent is a debtor in a case under the Bankruptcy Code in that forum. Section 1408(2) should be amended as follows:

(2) in which there is pending a case under title 11 concerning such person's affiliate, as defined in section 101(2)(A) of title 11, general partner, partnership, or a partnership controlled by the same general partner.

The court's discretionary power' to transfer venue in the interest of justice and for the convenience of the parties should not be restricted.

The Current Debate

The public hearings on September 8, 2011 regarding HR 2533, regarding a bill entitled "Chapter 11 Bankruptcy Venue Reform Act of 2011" marked the beginning of the current effort to reform bankruptcy venue and captured the main pro and con arguments for the status quo or reform. Those arguments are summarized as follows:⁵

Honorable Frank J. Bailey

Judge Bailey noted that the venue statutes had "simply not worked out the way Congress intended". Due to the overly permissive venue statute of Section 1408, there has been an unexpected distribution of large bankruptcy cases to New York and Delaware based on the convenience of the debtor, its counsel, and large financial institutions. This distribution has unfortunately been at the expense of small creditors, vendors, employees and pensioners. . *The Polaroid* (U.S. Bankruptcy Court, District of Delaware, Case No. 01-10864) and *Evergreen Solar* (U.S. Bankruptcy Court, District of Delaware, Case No. 11-12590) bankruptcy cases were used as examples of filings made in Delaware instead of Massachusetts where local creditors and interests suffered due to the filing in a remote court. In closing, Judge Bailey discussed at length the competency and professionalism of the bench in Massachusetts and in other states, being entirely capable and equal to the task of handling "mega-cases".

Professor Melissa Jacoby

Professor Jacoby noted that since 2005 nearly 70% of the 200 large public companies that have filed bankruptcy have filed their cases in either Delaware or New York using the current venue law. Although some of the companies were headquartered in New York, most were not. Also it was noted that the present bankruptcy venue law is at odds with other venue statutes, e.g., plaintiffs in civil cases are not permitted to initiate an action in their state of incorporation and forcing a party to appear in that forum to address claims. On another important point, supporters of the existing venue scheme often argue that eliminating state of incorporation for venue will not actually create venue that is more convenient for creditors and other stakeholders than existing current law. The Delaware State Bar Association raised a similar critique in 1996 with the National Bankruptcy Review Commission. The Commission studied the extensive arguments and information provided by the Delaware State Bar and still found that "disenfranchisement of creditors due to a bankruptcy filing in an inconvenient forum was the single most cited reason in favor of a proposal to amend the venue provisions".

Professor David Skeel

Professor Skeel argued that it would be a mistake to overturn the long history of bankruptcy practice with the current venue statute. He claimed that it would undermine the effectiveness of the corporate bankruptcy system, increase administrative cost within the system and not help the parties that venue reform was ostensibly designed to help. He noted the expertise of the bench, innovations and speed of the courts in Delaware and New York has attracted large cases to these locations. Professor Skeel also noted that creditors always have the right to transfer cases that had been filed in the wrong venue, that technology has allowed greater out-of-town participation in proceedings in Delaware and New York and finally noted that availability of traditional and special committees to represent collective interest insure that all parties have an ability to effectively input into a bankruptcy case.

Peter C. Califano, Esq.

Mr. Califano, a bankruptcy practitioner from San Francisco, California and appearing on behalf of the Commercial Law League of America argued that "bankruptcy cases are inherently local".

The consequences of a corporate bankruptcy are most profound in the region and community in which the debtor's principal place of business or principal assets are located, not only are there jobs involved, but also the local economy might depend, to a larger extent, on business from that debtor. Also bankruptcies filed in remote jurisdictions draw cases away from the parties with the most familiarity with the debtor's operations and those who have an important stake in the case's outcome. For example, employees, local vendors, and retirees will often be unable to attend hearings without incurring insurmountable time and travel expenses. There will also be little or no local media coverage on the progress of the debtor's efforts to reorganize and the participation of creditors and stakeholders will wane. Practitioners know that quite often these interested parties will go down to the local bankruptcy court and meet other similarly situated parties, share information, and develop alliances and informal groups to protect their interests. Ultimately, these efforts might impact official or unofficial committees in the case and even have a direct impact on the provisions of the plan of reorganization.

Forum Shopping and the Consequences

In conjunction with the CLLA, an ad hoc group of lawyers (sometimes referred to as "The Venue Group") researched and found that there is evidence that a significant amount of forum shopping occurs regarding middle market and larger chapter 11 bankruptcy cases resulting in venue in either Delaware or the SDNY. The numbers show:⁶

- Nationwide, excluding individual chapter 11 cases, nearly 17% of all chapter 11 cases are filed in Delaware or SDNY;
- 7 out of 10 "mega-cases" filed between January 1, 2007 and June 30, 2012 forum shopped, a statistical increase in frequency of 14% from the early 1990's and an absolute increase of 130% in the number of mega-cases that forum shopped.
- 80% of the mega-cases that forum shopped between 2007 and 2012 filed in Delaware or Southern District of New York;
- 88% of the megacases that forum shopped relied on state of incorporation or the affiliate filing hook.
- From December 1, 2003 to December 31, 2012, at least 559 business debtors filed in the District of Delaware notwithstanding that their principal places of business and principal assets were situated

outside of Delaware. In the same timeframe, 104 business debtors filed in the Southern District of New York notwithstanding that their principal places of business and principal assets were situated elsewhere.

- These 663 filings meant that at least \$860 billion of assets and \$1.8 trillion of liabilities were administered by courts having no meaningful connection with the subject debtors, affecting over 4.5 million creditors and more than 2 million employees.
- The top five states that lost hometown businesses to Delaware and SDNY over the last 10 years were:
 - California (85 cases, \$47.3B in assets, \$52.2B liabilities, 617,000 creditors, 87,000 employees);
 - New Jersey (51 cases, \$19.6B assets, \$23.1B liabilities, 313,600 creditors, 100,200 employees);
 - Pennsylvania (47 cases, \$28.3B in assets, \$30.2B liabilities, 140,000 creditors, 47,000 employees);
 - Illinois (38 cases, \$20.3B in assets, \$28B liabilities, 87,000 creditors, 61,000 employees); and
 - Florida (32 cases, \$10.3B assets, \$11B liabilities, 285,000 creditors, 115,000 employees).

Even New York has been the victim of forum shopping, having lost at least 32 cases to Delaware consisting of \$12.1B in assets, \$12.6B liabilities, and affecting 216,000 creditors and 30,000 employees.

Of the chapter 11 business cases filed in Delaware in 2013 (through September 30, *including* cases that were affiliates of other cases), all but three identified a state other than Delaware as the location of the debtor's principal place of business (a California grocery chain, which claimed that its principal place of business was CT's Wilmington office, is treated as a non-Delaware debtor for this purpose). Of the chapter 11 business cases filed in the SDNY in 2013 (through September 30), 35 identified a state other than New York as the location of the debtor's principal place of business (excluding foreign debtors).

With the mega-cases and middle market debtors fleeing to Delaware and SDNY, what is left behind in the other 88 federal districts are individual and small business cases. Because the Administrative Office does not publish statistics on the size of companies filing for chapter 11, it is necessary through ECF to sample filings. As an example, we examined filings in the Northern District of Illinois. Of the first 50 business

chapter 11 filings in that District in 2013, only two had assets of more than \$5 million (and neither of them had assets of more than \$15 million).

The result of this forum shopping⁷ is having an adverse impact on the practice of bankruptcy and the resolution of bankruptcy cases throughout the country in at least three ways:

The Appearance of Venue Manipulation Undermines Public Confidence in the Bankruptcy System

The threat of forum shopping to the integrity of the bankruptcy system is and should be of paramount concern. “Rampant forum shopping undermines the perception and integrity of the bankruptcy system.” When 7 out of 10 mega-cases flee to other jurisdictions or when a disproportionately high number of large and middle market companies run to Delaware or SDNY to seek refuge from their creditors, employees and local communities, one cannot deny that forum shopping has become rampant. Under current law, the burden is on creditors to request a change of venue and courts have been reluctant to challenge a debtor’s choice. Debtors can simply choose any jurisdiction that they perceive will provide them with a desired outcome at the expense of constituents. “The process appears to be manipulable.” This perception erodes public confidence and calls into question the fairness of the bankruptcy system.

The perception is that the deck is stacked in favor of debtors and the institutional players. Judges in more favored venues certainly strive to hear the voices of all interested parties who want to speak, but the suspicion that a debtor chose a particular venue for a reason is nonetheless present and it is not irrational. Why else, a creditor located far from where the case was filed must ask itself, did my customer file for bankruptcy in a district where it does not do business or have any meaningful connection if not to obtain an advantage over the other parties in its bankruptcy case? Recently, the *Wall Street Journal* described the frequency of forum shopping in an article about the *Patriot Coal* case: “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.” This cynical view will only grow as forum shopping continues to run rampant.

Admittedly it is difficult to directly measure the erosion in public confidence caused by forum shopping. However, when 7 out of 10 mega-cases forum shop, and 80% of those cases are filed in two districts, a reasonable person can conclude that cynicism is rising while confidence in our bankruptcy system is eroding.

Venue Shopping Disenfranchises Creditors, Employees and Other Parties

Whether it is the geographic distance or the perception that the debtor is manipulating the system, the mass concentration of chapter 11 cases in two districts disenfranchises smaller creditors, employees, retirees and other “local” parties with an interest in a bankruptcy case. This concern has long been recognized by proponents of venue reform and independent commissions studying bankruptcy reform. In 1998, the NBRC 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. Others have understood that the channeling of commercial cases to Delaware and the SDNY, to the inconvenience and detriment of parties located more central to the nexus of the debtor’s activities, implicates the norm of equal access to justice.

By choosing to file a chapter 11 case in a distant venue, the debtor is depriving local constituents of their due process. This situation is perhaps best exemplified by the case of *Delphi*, in which retirees in Michigan were disadvantaged by the distance they had to travel to have input in the case, which was filed in New York. In particular, at *Delphi*’s confirmation hearing in New York, only one retiree located in Michigan participated in the hearing, and his participation was by telephone. There is no record of any employees participating in person at the confirmation hearing. Had the bankruptcy case been administered closer to *Delphi*’s center of business contacts, the retirees would have likely had a greater opportunity to participate in the case.

Another example was the *Polaroid Corporation* case, a company that since its inception in 1937 was headquartered in Cambridge, Massachusetts. When financial difficulties arose in 2001, it fled to Delaware far away from its thousands of Baystate employees and retirees. Similarly, a more recent start-up company, *Evergreen Solar, Inc.*, filed for bankruptcy protection in Delaware in 2011, after having received \$58 million in aid from the Commonwealth of Massachusetts. These examples highlight that companies that are closely identified with the citizens and government of Massachusetts have chosen to file for bankruptcy relief far from their home states.

These companies filed far from the employees that hoped for a successful outcome in the bankruptcy case and to save their jobs and perhaps their pensions. These companies filed far from where most vendors of goods and services to those companies had come to expect that they would deal with the companies. These companies filed far from where the local governments – state and municipal – had provided support and, in the case of Evergreen, very large incentives.

As Chief Judge Bailey recognized in his testimony before Congress, if these cases had stayed home in Massachusetts, stakeholders, large and small, would have had an opportunity to participate in the proceedings. “At a minimum, stakeholders would have received notices that told them that they could participate in the proceeding at a courthouse near where they live and work before a judge that lives in the same community as they do. This is to say there would have been the perception that their opportunity was real and accessible. And perception is often paramount.” “The ability of smaller stakeholders to attend proceedings, or at least to feel they could if they so desired, is central to their belief that they are being dealt with fairly.” This sentiment was shared by employees and retirees in *Patriot Coal*:

Shirley Inman of Madison, W.V., is also anxiously awaiting word from Chapman. That’s because Ms. Inman, who used to drive a truck at a coal mine, believes Patriot intends to strip her of the retiree benefits that pay for the heart medication that keeps her alive. She wants the company’s lawyers to look her in the eye when they do it.

“If someone is going to take my health care away from me, I think I ought to be able to watch them do it with my own eyes. And I think they ought to have to see me sitting there while they do it,” Ms. Inman wrote in a letter this week.

Filing cases far from where the debtor conducts its business tilts the playing field toward financially sophisticated and represented parties who regularly appear in large bankruptcy cases, and away from smaller creditors. Creditors and parties in interest who are drawn into a bankruptcy and who do not regularly ply in the bankruptcy process lack the time and the financial resources to actively participate in a faraway venue. Creditors around the country are growing more and more frustrated and disillusioned with the bankruptcy system and the tendency of business debtors to file cases in faraway jurisdictions. The argument that in larger cases, creditors are spread out throughout the country and therefore no venue is convenient for everyone ignores creditor expectations. Vendors, employees, retirees, landlords and other parties doing business with a company understand and expect that they can be sued or may need to file suit in the

state in which their customer, employer or business relationship is headquartered. They do not have a reasonable expectation that their substantive rights will be adjudicated in a district with no connection to the debtor’s principal place of business or assets.

Unlike regular lawsuits, bankruptcy cases are proceedings that affect a myriad number of parties who must either participate or have their legal rights materially affected, and perhaps even lost. To operate effectively, a creditor or party in interest must have legal representation to navigate the bankruptcy issues. It is a burden to do so when the venue for a case is not near the locus of a creditor’s relationship with the debtor. Many creditors find it very expensive to hire counsel in Delaware or the SDNY—especially in Delaware with its requirement that Delaware lawyers must appear in court. While electronic filing has in some respects reduced the burden of participating in a case, it has not eliminated the need to appear at hearings and present evidence. Forcing a creditor to protect its interests or defend a preference in a distant venue adds considerable cost and time to meaningfully participate in the case, and can often result in the creditor too readily compromising its rights to avoid the costs. Although compromise is a worthy goal, inducing early compromises by burdening a party with excessive costs breeds suspicion that the system is rigged in favor of debtors and those parties aligned with debtors.

Federal bankruptcy courts were established in each state to provide direct access by citizens and to support principles of federalism. These principles should be respected, not overridden, by lax venue rules that permit excessive forum shopping by debtors.

The Centralization of Cases in Two Districts Impairs the Evolution of Bankruptcy Law

The concentration of business filings in Delaware and SDNY has enabled them to become a duopoly on chapter 11 jurisprudence. By capturing a large swath of large and middle market cases, these two districts have become magnet courts controlling the creation and evolution of chapter 11 bankruptcy law. This is a problem. “A cornerstone of our judicial system is that the law be subject to a variety of interpretations at the trial level . . .” When decisions are made by a select few judges, the system breaks down. “Without discourse, the review process ceases.” Debtors may be selecting Delaware and the SDNY as their preferred choice of venue to voice approval of those courts’ interpretation of bankruptcy issues. However, there is no assurance that these interpretations of the law are the only correct ones. Absent the benefit of contrary views from other courts, these decisions may be left unchallenged “and are actually strengthened by repeated application to a long string of cases” filed in the same district.

The absence of checks and balances may be more exacerbated when judges consider predictability and consistency within a district as important justifications to support a particular holding. The Code provides for a national bankruptcy court system. “Like the federal judicial system as a whole, the evolution of the law benefits from the input of judges from multiple jurisdictions, which over time reach consensus.” Absent widespread input, legal discourse begins to decline, predictability becomes paramount and constituents (including the general public) become more disillusioned and indifferent.

Debtor in possession financing is an example of the impact on the development of jurisprudence when cases are concentrated in one or two districts leading to the same courts being asked repeatedly to enter substantially similar financing orders. In the first year of the financial crisis, private capital markets virtually froze. The few lenders providing debtor in possession financing began requiring more excessive and burdensome terms. Bankruptcy courts felt compelled to approve more expensive debtor in possession financing and enter orders containing extraordinary terms (e.g., roll ups, quick sales, excessive fees and interest rates, liens on avoidance recoveries, etc.). Thereafter, with the concentration of chapter 11 cases in two districts, the same judges in subsequent cases began seeing again and again their own prior orders or those of their colleagues containing the extraordinary terms that had once been relatively rare. By many accounts, extraordinary DIP financing terms became customary after 2009 even when financing was readily accessible. The Loan Syndication and Trading Association acknowledged that “to be sure, the terms of DIP loans are customized to the bankruptcy process.” Had chapter 11 cases been more widely disseminated over the last few years, proposed DIP financing orders would have been scrutinized by a wider and more varied group of bankruptcy judges who would not have been bound to adhere to principles of predictability and consistency within a single judicial district. One could reasonably conclude that under those circumstances, the extraordinarily burdensome DIP financing provisions would not have become the norm after credit markets improved.

Many critics of venue reform advocate the need for one or two national courts to hear larger sophisticated cases and view the concentration of cases in Delaware and SDNY as filling this need. The flaw with this argument is that these “national courts” are not comprised of judges from around the country. Instead, they draw their judges from within the boundaries of their two respective cities (New York and Wilmington). Such uniformity likely impedes the evolution of bankruptcy jurisprudence, which benefits from diverse viewpoints and discourse. There is much to be said

for the development of innovative case management techniques and legal interpretations from judges from around the nation. Venue reform would help achieve this goal by spreading chapter 11 cases more evenly around the country.

Lastly, there is no basis for the argument that judges and professionals in Delaware and SDNY are more experienced than their counterparts in the 92 other federal districts in administering large, complex chapter 11 cases. Bankruptcy judges and professionals in other districts are more than capable of administering complex chapter 11 cases. Indeed, the competency of the national bankruptcy bench was on display from 2000-2006 when 21 visiting judges from 15 states ably presided over approximately 50% of the chapter 11 cases filed in Delaware.

A Final Word

In an August 3, 2015 decision to transfer a bankruptcy case to the Southern District of California from the Northern District of Texas, Judge Russel F. Nelms highlighted the essential core of the bankruptcy venue debate:⁸

So, what motivates local companies to file so far from their home base? Clearly, part of it is lawyer-driven for reasons that only those lawyers can purport to defend. I doubt, for example, that the president of Quicksilver, whose offices are a two-minute walk from this court, was the one who made the compelling argument that it would be much more convenient for the company if its bankruptcy case were filed 1,400 miles away.

One might ask why we should care where a case is filed as long as the case is successful. The answer lies in the definition of “successful.” Even in “successful” cases hard-working people lose jobs, have their retirement cut, or have their claims significantly compromised. And yet, most large cases today are filed with little or no thought given to whether small or medium-sized creditors can appear and be heard in those cases. Some are filed with a goal of precluding easy access to the court by small creditors, especially if those creditors are soon-to-be former employees.

Individual citizens of this country interact with our judicial system primarily in two venues, the family courts and the bankruptcy courts. It is here where they see justice done or not done. And it is important that they have the opportunity to see it.

There is value in witnessing the messiness and frequent tedium of court proceedings. There

is value in hearing someone argue why you are right and why you are wrong. There is value in watching a judge wrestle with uncomfortable issues that affect your livelihood. There is value in knowing that even though our judicial system is not perfect, those who serve it work hard to achieve what is fair, just, and right under the law.

No employee at Radio Shack's corporate headquarters took off from work early and walked the few short blocks to this court to observe any proceedings in that bankruptcy case. And that's a shame, not necessarily because the result would have been different, but because that employee might have felt a little better about the result and the system after seeing the sausage being made.

The Solution

To solve the bankruptcy venue problem 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 an affiliate that directly or indirectly owns, controls, is the general partner, or 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.

Conclusion

Amending the bankruptcy venue statute as suggested, will result in a better distribution of Chapter 11 cases across the country. This in turn will empower local

courts, trustees, debtors, creditors and all the other professionals in solving economic problems of the businesses and other institutions most relevant to them. The result should be a better reorganization process and results. Large debtors and financial institutions, with their counsel and professionals, will continue to be able to lead and participate in bankruptcy cases, wherever filed. At first there very may well be litigation to clarify the more limited venue choices of principal place of business or the location of the principal assets under the amended venue statute. But it is certain that the resulting decisions will bring back the reorganization process to the communities and regions where the debtor's operations matter the most – the creditors, employees and retirees of “Main Street”. ■

Endnotes

- 1 National Bankruptcy Review Commission Final Report, pp 766-768 (1997).
- 2 *American Bankruptcy Institute – Commission to Study the Reform of Chapter 11* pp 311-312 (2014)
- 3 Steven Rhodes, “The Baffling Rejection of Venue Reform by the ABI Chapter 11 Reform Commission”, the *Wall Street Journal*, February 9, 2015.
- 4 National Bankruptcy Review Commission, Id., p 765.
- 5 Chapter 11 Bankruptcy Venue Reform Act of 2011 Report on Hearing Before the Subcommittee on Courts, Commercial and Administrative Law of the Committee on the Judiciary, House of Representatives, 112th Congress, First Session on H.R. 2533, September 8, 2011, Serial No. 112-88.
- 6 Douglas Rosner, “Venue Fairness Written Statement on Behalf of National Ad Hoc Group of Bankruptcy Practitioners in Support of Venue Fairness Submitted in Support of Testimony of Douglas Rosner Before the ABI Commission to Study the Reform of Chapter 11”, ABI Field Hearing, Jay Westbrook Bankruptcy Conference, November 22, 2013, Austin Texas.
- 7 *See contra*, “James Patton’s Statement, ABI Commission to Study Reform of Chapter 11”, November 22, 2013, Austin, Texas for a comprehensive practitioner’s presentation in support of the status quo of current bankruptcy venue laws.
- 8 *In re The Crosby National Golf Club, LLC*, Case No. 15-41545 in the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division, Memorandum Opinion in Support of Order Granting Motion of the Crosby Estate at Rancho Santa Fe Master Association to Transfer Venue to Southern District of California, [Docket Doc. No. 187], August 3, 2015, pp 12-13.

Copies of all papers cited in this article can be found at:
http://www.clla.org/resources/venue_reform.cfm