Advocacy

It Is Time to Change Bankruptcy Forum Laws

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Forum shopping, the act of seeking the most favorable jurisdiction or court in which a claim might be heard, has a long history in the United States dating back to at least 1842 in the case of *Swift v. Tyson*, 41 U.S. 1 (1842). For more than 250 years, courts and legislatures have taken steps to rein in rampant forum shopping. Nevertheless, forum shopping continues to be prevalent in two sectors of the law. The first is patent litigation where in 2021, approximately 23% of all patent cases were filed in Waco, Texas. This issue was apparently noted by Chief Justice Roberts in his 2021 year-end report on the Federal Judiciary, highlighting "an arcane, but important matter of judicial administration: judicial assignment and venue for patent cases in federal trial court."[1] The second sector of the law involves corporations using the current venue statute to file bankruptcy petitions in only a small handful of districts such as the Southern District of New York or Delaware rather than where the corporation is headquartered. In testimony provided at a House Judiciary Committee hearing, Georgetown Law professor Adam Levitin testified that in 2020 "57% of all large, public company bankruptcy cases ended up before just three of the country's 375 bankruptcy judges."[2] Currently, bills have been proposed in both the House and the Senate intended to curtail bankruptcy forum shopping.

I. The Venue Statute

The current version of 28 USC § 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. This is a rule that is exclusive to business entities, since individuals must file in the district where

they live. 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.[3]

II. 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. As explained below, the result is an adverse impact on the practice of bankruptcy and the resolution of bankruptcy cases throughout the country.

More recently, bankruptcy venue laws are being used by corporations seeking to address mass tort litigation in a way that is advantageous for the corporation and its principals, but sometimes, with little regard for the victims. While many judges have repeatedly held that the automatic stay does not apply to non-debtors and that the Bankruptcy Code does not permit confirmation of a chapter 11 plan which includes third-party non-consensual releases, some judges have taken a different view. While it is natural (and indeed a pillar of American jurisprudence) for judges to have differing views and interpretations of the law, it is another thing for parties with advanced knowledge of a judge's view to deliberately and intentionally use the system to ensure the case is heard by a judge with a view that is favorable to the corporation's goals. One of the most obvious examples is the case of *In re Purdue Pharm, LP* ("*Purdue Pharma*"), a Connecticut based company incorporated in Delaware. Purdue Pharma filed its bankruptcy petition in White Plains, New York knowing that at that time, all bankruptcy cases filed in White Plains were heard exclusively by one bankruptcy judge. Based on previous decisions, Purdue Pharma could predict that this judge would interpret the Bankruptcy Code in a way that would be advantageous to the company and its principals, namely, the Sackler family. In other words, the bankruptcy venue law, as written, allowed Purdue Pharma to select the exact judge who would hear and determine all matters related to the bankruptcy case.

An even more apparent attempt to side-step accountability for the damages inflicted on mass tort victims is what has been referred to as the Texas Two-Step. Essentially, a corporation uses Texas law to transfer its liabilities and certain minimal assets into a new Texas incorporated shell company, which then reincorporates itself under another state's law for the sole purpose of placing the reincorporated entity into bankruptcy, where it knows the judges in the venue have issued decisions advantageous to the goals of the asset holding entity. By knowing how judges have previously ruled, the companies engaging in the Texas Two Step have confidence that the bankruptcy court in their chosen venue will retain the case despite dismissal requests, extend the automatic stay to non-debtor third-parties (such as the original company which was alleged to have committed the torts), and confirm a chapter 11 plan with non-consensual third-party

releases of non-debtors and approve the scheme to cap financial responsibility and insulate the original company from further liability. As discussed in more detail below, examples of these types of cases include *LTL Management* (*Johnson & Johnson* spinoff), *Bestwall*, *DMP*, *Aldrich Pump*, and *Murray Boiler*.

While nothing in this article is intended as a criticism of the attorneys who utilize the law as written to obtain a favorable outcome for their clients, these examples should serve as an indication that the laws, as written, need to be changed.

III. Forum Shopping and the Consequences

In conjunction with the Commercial Law League of America ("CLLA"), and an ad hoc group of lawyers (sometimes collectively 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, Houston, SDNY or the EDVA. The numbers show:[4]

- From December 1, 2003 to May 31, 2021, at least 934 business debtors filed in the District of Delaware notwithstanding that their principal places of business and principal assets were situated outside of Delaware. These filings meant that approximately $680 billion of assets and $825 billion of liabilities were administered by courts having no meaningful connection with the subject debtors, affecting over 6 million creditors and 1.4 million employees.

- The top five states that lost Chapter 11 commercial cases to Delaware and SDNY over the last 18 years were:

    - California
    - New Jersey
    - Pennsylvania
    - Illinois
    - Florida

This trend is continuing. From the U.S. Court's website, regarding Bankruptcy Court filings for the 12 month period ending March 31, 2021, out of the total 7360 business chapter 11 cases filed were commenced, fifty two percent (52%) were filed in just four courts:

Delaware	1783
Houston	1267
SDNY	554
EDVA	193
	3797

And tracking the origin of these cases for the year ending on March 31, 2021 (for a slightly larger group of all Chapter 11 cases)[5] the forum shopping is telling:

Court Location of Filed Cases	Total Cases	Origin of Case Was Outside of Filed District	Percent From Outside Filed District
Delaware	1784	1760	99.8%
Houston	1271	928	73.0%
SDNY	562	334	59.4%
EDVA	199	92	46.2%

The result of this forum shopping[6] is having an adverse impact on the practice of bankruptcy and the resolution of bankruptcy cases throughout the country in at least three ways:

A. 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 a large amount of mega-cases flee to other jurisdictions or when a disproportionately high number of large and middle market companies run to Delaware, Houston, SDNY or EDVA 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? 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.

And it appears that the "other shoe has dropped" with respect to forum shopping. In *Purdue Pharma*, the maker of OxyContin filed for bankruptcy in White Plains, New York. The filing was to address the nearly 3,000 lawsuits that were filed regarding the company's role in the national opioid crises that had killed an estimated 500,000 people over two decades due to overdose. After two contentious bankruptcy litigations, a bankruptcy plan of reorganization was filed and approved by Judge Robert D. Drain. The bankruptcy plan not only released the debtor from the liability of the opioid claims, but also the Sacklers (the principals of Purdue Pharma) who had not filed for bankruptcy protection. The bankruptcy plan also enjoined any nonconsenting third-party from pursuing claims against the Sacklers. The outrage was predictable, as the U.S. Trustee's Office was joined by the Attorneys General in Washington, Connecticut, Maryland, and the District of Columbia, along with other parties to reverse the confirmation of the plan. In a 142 page opinion issued on December 16, 2021, Judge Colleen McMahon of the U.S. District

Court, Southern District of New York, vacated the Bankruptcy Court's confirmation order, essentially stating that the Bankruptcy Code does not provide for third party releases of nonconsenting parties and it was a violation of due process to do so.

And most recently in *Patterson v. Mahwah Bergen Retail Group, Inc*., 2022 WL 135398 (E.D. Va. Jan. 13, 2022), on appeal the court reversed a plan or reorganization that had been forum shopped to the Eastern District of Virginia seeking over expansive releases of third-parties. Noteworthy in this case is that the U.S. District Court sharply criticized the Bankruptcy Court for confirming the Plan with such releases, stating as follows:

> The Bankruptcy Court extinguished a broad swath of claims held by a wide variety of people. However, despite this drastic action, the Bankruptcy Court failed to determine whether it had the authority to rule on those claims or whether the facts supported extinguishing those claims. Indeed, the Bankruptcy Court plainly lacked the constitutional power to adjudicate many of the claims encompassed by the Third-Party Releases and to confirm the Reorganization Plan. Therefore, the Court VACATES the Bankruptcy Court's Order (cite omitted) confirming Debtors' Reorganization Plan, VOIDS the Third-Party Releases and RENDERS the Third-Party Releases UNENFORCEABLE. The Court FINDS the voided Third-Party Releases to be SEVERABLE from the Reorganization Plan and, therefore, SEVERS the voided Third-Party Releases from Debtors' Reorganization Plan.
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> Additionally, the Court FINDS the Exculpation Provision to be overly broad and, therefore, VOIDS the Exculpation Provision as currently drafted. However, the Court believes that the Exculpation Clause could be redrafted to comply with the applicable law in a manner consistent with this Opinion.
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> Consequently, the Court hereby REMANDS this case to the Bankruptcy Court with instructions to redraft the Exculpation Provision in a manner consistent with this Opinion and then to proceed with confirmation of the Plan without the voided Third-Party Releases.
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> **Finally, the Court FINDS that the interests of justice warrant reassigning this case to another Bankruptcy Judge in this district outside of the Richmond Division and therefore ORDERS the Chief Judge of the Bankruptcy Court for this district to REASSIGN this case on remand to another Bankruptcy Judge in this district outside of the Richmond Division. The Chief Judge may reassign the case to himself if he believes the interests of justice so warrant.** (emphasis added)

Finally, forum shopping appears to have pushed over the "redline" when Johnson & Johnson, recently used a divisive merger and bankruptcy in an effort to limit its liability in approximately 38,000 lawsuits alleging its talcum-based baby powder contained asbestos and

caused ovarian cancer in a debtor-friendly forum. J&J created a new subsidiary (LTL Management) for its personal injury litigation, then transferred that new affiliate to North Carolina, seeking venue before a preferred judge and in a judicial district with favorable precedents making dismissals of Chapter 11 cases difficult. This obvious manipulation of the bankruptcy system was "daylighted" when the North Carolina bankruptcy judge transferred the LTL case to New Jersey for the Bankruptcy Court to consider dismissal and on February 8, 2022 the Senate Judiciary Committee, Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights held a hearing titled *Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy* where Senators, judges and professors questioned the tactics and outcomes of how profitable companies where gaming the bankruptcy system. At one point during the hearing, Chairman Senator Sheldon Whitehouse observed "It looks like the big companies are getting away with dodging real responsibilities by using complicated trickery that ordinary people don't have access to".[7]

B. 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 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. 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.
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> "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.

C. 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.

IV. 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.
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> 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.
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> 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.

V. The Solution

One simple solution to bankruptcy forum shopping is for Congress to pass and the President to sign into law H.R. 4193 or S. 2827 as currently proposed. The venue reform bills pending in the Senate and House, sponsored by Senators Cornyn (R-TX) and Warren (D-MA) in the Senate, and by Reps. Lofgren (D-CA) and Buck (R-CO) in the House, have wide bipartisan support and are part of the solution to the problems posed by forum shopping. Specifically, H.R. 4193[9] proposes to amend 28 USC § 1408 to eliminate the place of incorporation in favor of filing where the debtor's principal place of business or principal assets are located. It will also eliminate the affiliate-filing loophole. The bill also proposes to rewrite 28 USC § 1412 to facilitate a prompt transfer of cases back to where they should have been filed. These provisions, taken together, will significantly curtail a corporation's ability to choose its own forum and ensure that judges have the ability and the obligation to swiftly transfer cases that have been filed in the wrong forum.

The Insolvency Law Committee and the Business Law Section of the California Lawyers' Association support bankruptcy venue reform and the current proposed bills. Bankruptcy venue reform is also supported by the Commercial Law League of America, the National Association of Attorneys General (with 43 Attorneys General signing a letter in support), the United Mine Workers of America, the National Association of Credit Managers, the Iowa Bankers Association, the Texas Hotel & Lodging Association, 163 sitting and retired bankruptcy judges, law professors from around the country, and dozens of state and local bar associations.

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. Corporations will no longer be able to use their advanced knowledge of how a particular judge has ruled in previous cases to select a judge with a view of the law that is most advantageous to the corporation's goals. The conclusion should be a better reorganization process. 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] Chief Justice's Year-End Report on the Federal Judiciary (2021): https://www.supremecourt.gov/publicinfo/year-end/2021year-endreport.pdf.

[2] Oversight of the Bankruptcy Code, Part 1: Confronting Abuses of the Chapter 11 System: Hearings before the Subcommittee on Antitrust, Commercial, and Administrative Law, of the House Judiciary Committee, 117th Cong. (2021) (written testimony of Adam Levitin): https://docs.house.gov/meetings/JU/JU05/20210728/113996/HHRG-117-JU05-Wstate-LevitinA-20210728.pdf

[3] National Bankruptcy Review Commission Final Report, pp 766-768 (1997).

[4] 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.

[5] Ed Flynn Research

[6] 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.

[7] Jonathan Randles WSJ article dated 2/8/2022

[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.

[9] https://www.congress.gov/bill/117th-congress/house-bill/4193/text?r=90&s=1