

Op-Ed: Bankruptcy Venue – A Time for Change

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By former American Airlines GC Gary Kennedy

(June 11) – In November 2011, American Airlines filed for bankruptcy. It was the largest aviation-related bankruptcy on record.

As general counsel of the company, I took advantage of broad venue selection rules under the bankruptcy code and elected to have the case filed in the Southern District of New York.



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Based on my first-hand experience managing a large corporate restructuring in a distant locale, it is my view that Congress should amend the bankruptcy laws and eliminate venue shopping. U.S. corporations should be required to file bankruptcy cases in their hometown jurisdiction.

The selection of venue for the company's bankruptcy filing was a hotly debated topic between me and the company's outside legal advisors.

Under current bankruptcy rules, a debtor is authorized to file in its state of incorporation, its principal place of business, or where one or more of its affiliates conducts business. Under these rules, a debtor need only have a tangential relationship to its preferred venue.

Given the broad venue selection rules, we narrowed our choices to two locales – Dallas/Fort Worth (our principal place of business) and New York City (the location of a company affiliate).

I strongly favored a Texas filing. The Dallas/Fort Worth metroplex is American's home base, with more than 20,000 local employees, consisting of pilots, flight attendants, mechanics, ticket agents, and headquarters staff. The area is also home to thousands of retirees.

A filing in DFW would afford employees and retirees easy access to the courthouse, allowing them to attend and participate in court hearings. As one of the largest employers in North Texas, I was confident that a Texas judge would work hard to ensure that we successfully reorganized our business.

Conversely, our outside legal team advocated in favor of a New York venue. Their argument focused on three factors.

- First, they believed that courts in the Southern District of New York were more sophisticated and better able to manage a large and complex corporate restructuring.
- Second, they suggested that the case law in the Second Circuit Court of Appeals (which includes New York) was much better developed and more favorable to a debtor than the case law in the Fifth Circuit Court of Appeals (which includes Texas).
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- Third, they claimed that the vast majority of attorneys, financial advisors, and bankers were located in New York City, thereby affording the debtor greater efficiency and reduced travel costs.

Reluctantly, I concurred with their reasoning and we filed the proceeding in New York City.

While one can argue the merits of the arguments in favor of a filing in a “mature” jurisdiction, this argument runs contrary to a core principle underlying the Bankruptcy Code.

The Bankruptcy Code is intended to be applied uniformly across all 50 states. Further, I have not seen any evidence to support the notion that judges and practitioners in Dallas are less sophisticated or less able to handle complex Chapter 11 reorganization cases.

More importantly, the Bankruptcy Code’s broad venue selection provisions are fundamentally unfair to employees, retirees, and local constituents. Allowing a debtor to file for bankruptcy in a far-flung jurisdiction significantly impedes access to justice.

A bankruptcy proceeding, by its very nature, is one that carries extraordinary consequences for company employees and retirees. They deserve the opportunity to observe and participate in court proceedings. That opportunity is substantially diminished if the proceedings are held in a remote jurisdiction, one whose access is beyond the reach of most employees and retirees.

The American Airlines bankruptcy proceeding, like so many bankruptcies involving large corporations, was a contentious and emotionally charged affair. Ours continued for more than two years.

During that time, it was difficult for employees or retirees to attend even a single court proceeding. The travel costs alone (despite reduced employee air fare costs) proved prohibitive for all but a fraction of the employee/retiree base. For all practical purposes, they were denied access to the proceedings.

If the bankruptcy case had been prosecuted in American’s hometown, there is little doubt that the proceeding would have resulted in a successful reorganization (as it did in the chosen New York venue).

As the company’s top lawyer, and with the future of the company at stake, I would have taken great comfort being in our hometown as we wrangled with difficult and emotionally charged issues as our case wound its way through the bankruptcy process.

It is time for a change. Senate Bill 2282, introduced by Senator John Cornyn (R-TX) and Senator Elizabeth Warren (D-MA) would substantially narrow venue choices for companies that file Chapter 11 cases.

The proposed legislation would allow companies to file only where their principal place of business or assets are located. The legislation would foreclose the opportunity to file in a company's state of incorporation and it would eliminate the affiliate-filing loophole.

I am confident that the proposed legislation is unpopular in New York and Delaware courts and among its bankruptcy practitioners. Nevertheless, employees, retirees, and others affected by a company's bankruptcy filing have the right to be heard and to participate in the Chapter 11 process. Eliminating venue shopping will assure them of that access.

Gary F. Kennedy is the former General Counsel of American Airlines, and author of the new book, Twelve Years of Turbulence, the Inside Story of American Airlines' Battle for Survival.

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