



The CLLA D.C. SUMMIT

February 22-25, 2014

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. 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) correctly proposed a solution through an amendment to 28 USC Section 1408. See, Exhibit A for proposed amendment.

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, over the last 10 years, research indicates that 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

3) WHY VENUE REFORM IS NECESSARY

When troubled businesses 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 1998 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. At the very heart of due process is the idea that those affected should have access to the court proceeding and an opportunity to be heard.
- 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. Forum shopping directly threatens the integrity of the bankruptcy system by eroding public confidence and calling into question the fairness of the bankruptcy system.
- 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 most familiar with the debtor and 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.

For further information please contact:
Peter C. Califano, Esq.
Chair, National Government Affairs Committee
Email: pcalifano@cwclaw.com

EXHIBIT A

28 U.S.C. §1408 should be amended as follows (underlined text indicates proposed changes):

§1408. Venue of cases under title 11

- (a) Except as provided in section 1410 of this title, and subsection (b) of this section, a case under title 11 may be commenced 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 were located in any other district; or
 - (2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

- (b) A case under chapter 11 of title 11 in which the person that is the subject of the case is a corporation may be commenced only in the district court for the district
 - (1) in which the principal place of business in the United States, or principal assets in the United States, of such corporation have been located for 1 year immediately preceding such commencement, or for a longer portion of such 1-year period than the principal place of business in the United States, or principal assets in the United States, of such corporation were located in any other district; or
 - (2) in which there is pending a case under chapter 11 of title 11 concerning an affiliate of such corporation, if the affiliate in such pending case directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting securities of such corporation.