Testimony of the Commercial Law League before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust

Bankruptcy Law: Overview and Legislative Reforms, July 15, 2025

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

The CLLA, was founded in 1895, and is the nation's oldest organization of attorneys and other experts in credit and finance actively engaged in the field of commercial law, bankruptcy and reorganization. Its membership consists of nearly 1000 individuals. The Bankruptcy Section of the CLLA is made up of bankruptcy lawyers, judges and professionals from virtually every state in the United States. Its members include practitioners with both small and mid-size practices, who represent divergent interests in bankruptcy cases. The CLLA has long been associated with the representation of creditor interests, while at the same time seeking fair, equitable and efficient administration of state-law collection and bankruptcy cases for all parties-in-interest. Members of the CLLA have testified on numerous occasions before Congress as experts in bankruptcy and collections matters, including on bankruptcy venue reform (hearing chaired by Representative Lamar Smith, R-TX, held in October 2011).

We strongly urge the Congress to amend current bankruptcy venue statutes because the provisions of current law enable abusive and pernicious forum and judge shopping. The current venue laws lead to manipulations contrary to the intent of Congress in establishing the legal and equitable principles of the Bankruptcy Code. Moreover, the machinations which current law permit as exemplified by recent case filings result in disrespect of the bankruptcy courts and other federal courts, the Constitution's Bankruptcy Clause, and the rule of law.

Not only do lax venue practices threaten the integrity and effectiveness of the bankruptcy system, but they also increase costs, especially for smaller creditors. Too often smaller creditors are forced to forego meaningful participation in a case or go to the time and expense of hiring lawyers and traveling to distant districts.

THE VENUE PROBLEM IN CHAPTER 11

Since 2015, it is estimated that 13,269 chapter 11 debtors have fled to remote forums from their home state to seek bankruptcy relief.[1] A loophole in 28 U.S.C. §1408

[1] Based on data from the Federal Judiciary Center for the period of 2015 through 2025. To determine whether there was a "home" filing the address on the petition for the debtor and affiliate filings, (i.e. the

allows companies filing chapter 11 to flee their home states and file bankruptcy in remote jurisdictions, and in some cases, before judges they handpicked. For example, in 2020, three bankruptcy judges, out of a total of 375 judges nationwide, heard 57% of all large commercial cases.[2] The financial and human toll is compelling. *Purdue Pharma, Johnson & Johnson* and *Boy Scouts* manipulated lenient venue rules to file in their courts of choice to stack the deck against their creditor victims. The ability of debtors and their professionals to choose their own venue to achieve a desired outcome directly threatens the integrity of the bankruptcy system and erodes public confidence. Forum shopping by corporate debtors to obtain desired results has become so prevalent that United States District Court judges are taking notice and openly questioning the integrity of the bankruptcy system.[3]

The National Association of Attorneys General (NAAG) recognized problems in the current bankruptcy venue laws and in November 2021, issued a comprehensive letter signed by 43 Attorneys General endorsing support for HR 4193 (a predecessor bill to amend the bankruptcy venue statute).[4] NAAG's letter raised serious concerns about corporate debtors increasingly exploiting the generous venue provisions in the Bankruptcy Code, resulting in "unnatural" venue selections in courts with zero connection to the bankrupt companies, and limiting the development of bankruptcy jurisprudence and the adjudication of billions of dollars of liabilities to a handful of judges. The AGs, who are specifically charged with protecting their states' and citizens' legal and financial interests, enforcing consumer protection laws, and protecting the environment from contamination, warned that the rampant forum shopping of bankruptcy cases to distant venues chosen by the debtors is tainting the integrity of the bankruptcy system and breeding widespread distrust of the system.

Last year Judge James C. Ho, who is a Circuit Judge for the U.S. Court of Appeals for the Fifth Circuit, made informed remarks to the Midland County Bar Association (Texas) regarding venue shopping. He noted that in many ways lawyers are expected to find the best possible outcome for their clients, including a favorable forum.

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principal place of business) was compared with the forum where the case was actually filed.

[2] Oversight of the Bankruptcy Code, Part I: Confronting Abuses of the Chapter 11 System: Hearings before the Subcommittee on Antitrust, Commercial, and Administrative Law, of the House Judiciary Committee, I 17th Cong. (2021) (written testimony of Adam Levitin): https://docs.house.gov/meetings/JU/JU05/20210728/113996/HHRG-117-JU05-Wstate-LevitinA-20210728.pdf. Similarly, a 2015 study by the Government Accountability Office, between 20 10 and 2014 found that 71% of large companies (assets and liabilities of $50 million or more) filed for bankruptcy in two Districts.

[3] Memorandum Opinion of US District Court, *Patterson v. Mahwah Bergen Retail Group* (In re Retail Group, Inc.), 2022 WL 135398 (E.D. Va. Jan. 13, 2022). (Court observed that 91% of large chapter 11 cases filed in only four Districts and in reversing the bankruptcy court's confirmation of a plan with broad third-party releases, judge remanded the matter to a different bankruptcy court and not the one chosen by the debtors)

[4] *See*, a copy of the NAAG letter at https://www.naag.org/policy-letter/naag-endorses-bankruptcy-venue-reform-act-of-2021/

However, Judge Ho identified another species of this phenomenon called "forum selling" that the bankruptcy and patent bench and bars are increasingly experiencing - courts making decisions that encourage parties to return again and again.[5] Bipartisan bankruptcy venue reform is needed to solve this systemic problem.

THE IMPACT OF FORUM AND JUDGE SHOPPING

On February 8, 2022 the Senate Judiciary's Subcommittee on Federal Courts, Oversight, Agency Action and Federal Rights held a hearing entitled "*Abusing* Chapter *11: Corporate Efforts to Side-Step Accountability through Bankruptcy*".[6] The hearing focused on Johnson & Johnson's attempt to isolate talc tort claims in a newly created entity for the sole purpose of filing bankruptcy and using the bankruptcy to limit victim claims to the new entity. Members of the Committee observed that the then pending venue reform bills (HR 4193 and S 2827) could provide solutions to these attempts to manipulate the bankruptcy system by allowing courts to consider the propriety of this new tactic instead of judges chosen by the debtors themselves. On January 30, 2023, the Third Circuit dismissed the LTL bankruptcy citing LTL's effort to "manufacture venue" finding that LTL's petition has no valid bankruptcy purpose.[7] In response, LTL forum shopped again, this time re-filing in the Southern District of Texas. Two other significant cases further illustrate the growing problem and the adverse impact on law and practice.

A) Purdue Pharma

This case involved a complicated and long fought legal battle with an opioid manufacturer resulting in a U.S. Supreme Court 5-4 decision holding that the Bankruptcy Code does not authorize releases as part of a plan of reorganization against non-debtors without consents of other claimants. *Harrington v Purdue Pharma L.P.*, 603 US 204, 144 S. Ct. 2071 (2024). How this case was forum and judge shop was stunning. As explained in the CLLA's amicus brief[8]

Purdue Pharma Inc. is based in Stamford, Connecticut. However, they wanted a judge that they perceived to be more likely to approve a release of the Sacklers. He sat in White Plains, New York. On March 1, 2019, Purdue entered a change in address to an empty office suite in Westchester County. Purdue's case was assigned to Judge Drain, the sole bankruptcy judge sitting in White Plains (Westchester County). Purdue's choice of Judge Drain was not surprising. Judge Drain was one of three sitting bankruptcy judges

[5] *See*, "The Volokh Conspiracy," Josh Blackman, 4/15/2024, Section V (A), *https://reason.com/volokh/2024/04/15/judge-james-c-hos-remarks-to-the-midland-county-bar-association/*

[6] *See*, https://www.judiciary.senate.gov/meetings/abusing-chapter-11-corporate-efforts-to -side-step-accountability-through-bankruptcy/

[7] LTL Opinion footnote 19 found on page 54 of the 3rd Circuit Opinion.

[8] CLLA Purdue Amicus Brief, pages 13-15; to download, go to https://clla.org/venue-reform-workroom/

in SDNY who has written several opinions approving of nondebtor releases. *See e.g., In re MPM Silicones, L.L.C.*, 2014 Bankr. LEXIS 3926, *99–105 (Bankr. S.D.N.Y. Sept. 9, 2014) (Drain, Bankr. J.) (allowing third-party release); *Lynch v. Lapidem Ltd. (In re Kirwan Offices S.A.R.L.)*, 592 B.R. 489, 503-512 (S.D.N.Y.2018) (McMahon, J.) (upholding nonconsensual nondebtor release in plan confirmed by Judge Drain).

B) Sorrento

This case vividly illustrates how the current bankruptcy venue statute easily manipulated to manufacture venue in a district that has no connection whatsoever with the debtors, but where the debtors and their counsel perceive they will obtain a more favorable result. Sorrento is a pharmaceutical company that has been based in San Diego for some years. In 2019, Sorrento had formed a subsidiary called Scintilla Pharmaceuticals. The subsidiary was an empty shell, having no assets or operations.

On February 10, 2023, Sorrento wired $60,000 to a Texas bank account in Scintilla's name. This was the first time since its formation four years previously that Scintilla had any assets. It still conducted no business. Two days later, a lawyer from one of the law firms that was preparing Sorrento's bankruptcy opened a UPS box in a town in the Southern District of Texas in the name of Scintilla, listing its business address as San Diego. The very next day, the law firm filed a voluntary Chapter 11 petition for Scintilla in the Southern District of Texas, stating on the petition that Scintilla's principal assets or principal place of business had been in the district for more of the 180 days preceding the filing than elsewhere. *See* 28 U.S.C. §1408(1). Sorrento then filed its Chapter 11 petition in the Southern District of Texas [Case No. 23-90085 (CML)] based on the venue statute's affiliate loophole. *See* 28 U.S.C. §1408(2).

The current venue system allows corporate debtors to pick their preferred judges, tilting the scales of justice in their favor and creating the perception that the bankruptcy system is susceptible to manipulation. This type of form shopping also results in bankruptcy cases being heard in courts far away from the debtor's headquarters or operations in districts with little or no connection to the debtors, hinders access by creditors and employees, thwarts the development of case law by concentrating adjudications into the hands of a small number of judges, and diverts economic activity away from the debtor's home district. For all these reasons, a legislative solution is critically needed.

THE SOLUTION

In the last Congressional session, Representatives Lofgren (D-CA) and Buck (R-CO) introduced the Bankruptcy Venue Reform Act (H.R. 1017).[9] This bipartisan bill

[9] Since 2011, there have been six (6) bipartisan bankruptcy venue reform legislation pending in either or both chambers of Congress. The last US Senate version was S. 2827 that was introduced by Senators Cornyn (R-TX) and Warren (D-MA) in the 117th Congress.

required Chapter 11 cases to stay local by requiring corporate debtors to file where they have their principal assets or principal place of business. If passed and enacted, companies will have to file bankruptcy where they conduct their business. Debtors will no longer be able to unilaterally choose the jurisdiction or the judge they deem friendly. Instead, competent bankruptcy judges assigned randomly would oversee the reorganization of companies that are based in their own communities. A copy of the HR 1017 can be found attached as Exhibit A hereto and can also be located online at: https://www.congress.gov/bill/118th-congress/house-bill/1017.

In addition, if bankruptcy reform is enacted as proposed, we believe that Judicial Conference of the United States does not need to convert the temporary bankruptcy judges in Delaware to permanent status. The result would be less commercial Chapter 11 cases would be filed in Delaware, reducing the need for more judges and create a cost saving for the entire bankruptcy system since cases would be re-distributed to "home" courts located across the country, and not necessarily those located in Delaware, Manhattan or Houston.

The Commercial Law League of America and National Bankruptcy Venue Reform Committee, a national ad hoc group of bankruptcy judges, lawyers and professionals support bankruptcy venue reform, as described in H.R. 1017. Venue reform has also been formally supported by the National Association of Attorneys General, United Mine Workers of America, National Association of Credit Managers, Iowa Bankers Association, Texas Hotel & Lodging Association, 163 sitting and retired bankruptcy judges, law professors from around the country, and dozens of state and local bar associations. Local businesses and associations constantly indicate to us that they prefer to have the financial problems of local business be addressed in local courts since they will be in the position to better understand the business, the needs of the local communities and have working relationships with the bankruptcy lawyers and financial professionals.

Thank you for considering the views of the Commercial Law League on the topic of venue and Chapter 11. We are available should the Subcommittee have questions or wish to discuss the issue in more detail. For further information, please contact: Peter C. Califano, Esq., (415) 882-5300 or pcalifano@nvlawllp.com.

EXHIBIT A

Shown Here:
Introduced in House (02/14/2023)

118th CONGRESS
1st Session

H. R. 1017

To amend title 28, United States Code, to modify venue requirements relating to bankruptcy proceedings.

IN THE HOUSE OF REPRESENTATIVES

February 14, 2023

Ms. Lofgren (for herself and Mr. Buck) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 28, United States Code, to modify venue requirements relating to bankruptcy proceedings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Short title.

This Act may be cited as the “Bankruptcy Venue Reform Act”.

SEC. 2. Findings and purpose.

(a) Findings.—Congress finds that—

(1) bankruptcy law provides a number of venue options for filing bankruptcy under chapter 11 of title 11, United States Code, including, with respect to the entity filing bankruptcy—

(A) any district in which the place of incorporation of the entity is located;

(B) any district in which the principal place of business or principal assets of the entity are located; and

(C) any district in which an affiliate of the entity has filed a pending case under title 11, United States Code;

(2) the wide range of permissible bankruptcy venue options has led to an increase in companies filing for bankruptcy outside of their home States—the district in which the principal place of business or principal assets of the company is located;

(3) the practice described in paragraph (2) is known as "forum shopping";

(4) forum shopping has resulted in a concentration of bankruptcy cases in a limited number of districts;

(5) forum shopping—

(A) prevents small businesses, employees, retirees, creditors, and other important stakeholders from fully participating in bankruptcy cases that have tremendous impacts on their lives, communities, and local economies; and

(B) deprives district courts of the United States of the opportunity to contribute to the development of bankruptcy law in the jurisdictions of those district courts; and

(6) reducing forum shopping in the bankruptcy system will strengthen the integrity of, and build public confidence and ensure fairness in, the bankruptcy system.

(b) Purpose.—The purpose of this Act is to prevent the practice of forum shopping in cases filed under chapter 11 of title 11, United States Code.

SEC. 3. Venue of cases under title 11.

Title 28, United States Code, is amended—

(1) by striking section 1408 and inserting the following:

"§ 1408. Venue of cases under title 11

"(a) Principal place of business with respect to certain entities.—

"(1) IN GENERAL.—Except as provided in paragraph (2), for the purposes of this section, if an entity is subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange clause 1934 (15 U.S.C. 78m, 78o(d)), the term 'principal place of business', with respect to the entity, means the address of the principal executive office of the entity as stated in the last annual report filed under that Act before the commencement of a case under title 11 of which the entity is the subject.

“(2) EXCEPTION.—With respect to an entity described in paragraph (1), the definition of the ‘principal place of business’ under that paragraph shall apply for purposes of this section unless another address is shown to be the principal place of business of the entity by clear and convincing evidence.

“(b) Venue.—Except as provided in section 1410, a case under title 11 may be commenced only in the district court for the district—

“(1) in which the domicile, residence, or principal assets in the United States of an individual who is the subject of the case have been located—

“(A) for the 180 days immediately preceding such commencement; or

“(B) for a longer portion of the 180-day period immediately preceding such commencement than the domicile, residence, or principal assets in the United States of the individual were located in any other district;

“(2) in which the principal place of business or principal assets in the United States of an entity, other than an individual, that is the subject of the case have been located—

“(A) for the 180 days immediately preceding such commencement; or

“(B) for a longer portion of the 180-day period immediately preceding such commencement than the principal place of business or principal assets in the United States of the entity were located in any other district; or

“(3) in which there is pending a case under title 11 concerning an affiliate that directly or indirectly owns, controls, or holds 50 percent or more of the outstanding voting securities of, or is the general partner of, the entity that is the subject of the later filed case, but only if the pending case was properly filed in that district in accordance with this section.

“(c) Limitations.—

“(1) IN GENERAL.—For the purposes of paragraphs (2) and (3) of subsection (b), no effect shall be given to a change in the ownership or control of an entity that is the subject of the case, or of an affiliate of the entity, or to a transfer of the principal place of business or principal assets in the United States of an entity that is the subject of the case, or of an affiliate of the person entity, to another district, that takes place—

“(A) within 1 year before the date on which the case is commenced; or

“(B) for the purpose of establishing venue.

“(2) PRINCIPAL ASSETS.—

“(A) PRINCIPAL ASSETS OF AN ENTITY OTHER THAN AN INDIVIDUAL.—For the purposes of subsection (b)(2) and paragraph (1) of this subsection—

“(i) the term ‘principal assets’ does not include cash or cash equivalents; and

“(ii) any equity interest in an affiliate is located in the district in which the holder of the equity interest has its principal place of business in the United States, as determined in accordance with subsection (b)(2).

“(B) EQUITY INTERESTS OF INDIVIDUALS.—For the purposes of subsection (b)(1), if the holder of any equity interest in an affiliate is an individual, the equity interest is located in the district in which the domicile or residence in the United States of the holder of the equity interest is located, as determined in accordance with subsection (b)(1).

“(d) Burden.—On any objection to, or request to change, venue under paragraph (2) or (3) of subsection (b) of a case under title 11, the entity that commences the case shall bear the burden of establishing by clear and convincing evidence that venue is proper under this section.

“(e) Out-of-State admission for government attorneys.—The Supreme Court shall prescribe rules, in accordance with section 2075, for cases or proceedings arising under title 11, or arising in or related to cases under title 11, to allow any attorney representing a governmental unit to be permitted to appear on behalf of the governmental unit and intervene without charge, and without meeting any requirement under any local court rule relating to attorney appearances or the use of local counsel, before any bankruptcy court, district court, or bankruptcy appellate panel.”; and

(2) by striking section 1412 and inserting the following:

“§ 1412. Change of venue

“(a) In general.—Notwithstanding that a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in the correct division or district, a district court may transfer the case or proceeding to a district court for another district or division—

“(1) in the interest of justice; or

“(2) for the convenience of the parties.

“(b) Incorrectly filed cases or proceedings.—If a case or proceeding under title 11, or arising in or related to a case under title 11, is filed in a division or district that is improper under section 1408(b), the district court shall—

“(1) immediately dismiss the case or proceeding; or

“(2) if it is in the interest of justice, immediately transfer the case or proceeding to any district court for any district or division in which the case or proceeding could have been brought.

“(c) Objections and requests relating to changes in venue.—Not later than 14 days after the filing of an objection to, or a request to change, venue of a case or proceeding under title 11, or arising in or related to a case under title 11, the court shall enter an order granting or denying the objection or request.”.